



Competition  
Commission  
SINGAPORE

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

**Notice of Infringement Decision issued by CCS**

**Collusive Tendering (Bid-Rigging) in Electrical and Building Works**

**4 June 2010**

**Case number: CCS 500/001/09**

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## **SECTION I: THE FACTS**

### **A. The Parties**

1. Information received by the Competition Commission of Singapore (“CCS”) (see paragraph 23) indicated that the following operators (each a Party, together, the Parties) described in more detail in paragraphs 2 to 15 below, engaged in fixing of prices through collusive tendering or bid-rigging in the provision of electrical and building works for properties in Singapore:
  - a) Aldale Electrical Services Pte Ltd (“Aldale”);
  - b) Alpha & Omega Engineering Services (“Alpha & Omega”);
  - c) Arisco Engineering & Maintenance Services Pte Ltd (“Arisco”);
  - d) AVL Electrical Engineering Pte Ltd (“AVL”);
  - e) DAE Services (“DAE”);
  - f) E-SP Integrated Services Pte Ltd (“E-SP Integrated”)
  - g) Etora United Engineering (S) Pte Ltd (“Etora”);
  - h) Huang Soon Electrical Engineering Works (“Huang Soon”);
  - i) Integrated One Construction Pte Ltd (“Integrated One”);
  - j) MME Services (“MME”);
  - k) Ronnie Lim Electrical and Plumbing Contractor (“Ronnie Lim Electrical”);
  - l) System Technic Engineering Pte Ltd (“System Technic”);
  - m) Toplist Mechanical and Electrical Services (“Toplist”); and
  - n) Triple H Technology Pte Ltd (“Triple H”).

#### **(i) Aldale Electrical Services Pte Ltd**

2. Aldale is a private limited company registered in Singapore, providing electrical works and general contractor services since 2008. Aldale’s registered address is 38A Jalan Pemimpin, #08-02, Wisdom Industrial Building, Singapore 577179. Aldale’s estimated turnover for the financial year ending 31 December 2009 was S\$[...]<sup>1</sup>. Tong Weng Chuen (“Anthony Tong”) and Tan Ai Peng (Angie), an administrative assistant, are referred to in this Decision.

#### **(ii) Alpha & Omega Engineering Services**

3. Alpha & Omega is a sole proprietorship registered in Singapore, providing building and construction works and engineering services since 2007.

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<sup>1</sup> Information provided by Aldale on 25 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

Alpha & Omega's registered address is 688B Choa Chu Kang Drive, #07-336, Singapore 682688. Alpha & Omega's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>2</sup>. Lam Kien Choon, the sole proprietor of Alpha & Omega and Ngoo Mei Whei, who was working at Alpha & Omega from September 2007 to November 2008 on a profit-sharing basis<sup>3</sup>, are referred to in this Decision.

### **(iii) Arisco Engineering & Maintenance Services Pte Ltd**

4. Arisco is a private limited company registered in Singapore, providing electrical and mechanical engineering works since 1995. Arisco's registered address is 808 French Road, #03-187 Kitchener Complex, Singapore 200808. Arisco's estimated turnover for the financial year ending 31 March 2005 was S\$[...]<sup>4</sup>. Chua Swee Kheng ("Alan Chua"), a shareholder, Anthony Tong, a shareholder and the former managing director and Angie, a former administrative assistant are referred to in this Decision. Anthony Tong left Arisco in 2008 and set up Aldale Electrical Services, a sole proprietorship in August 2008. This was terminated shortly thereafter and Aldale was incorporated in October 2008.

### **(iv) AVL Electrical Engineering Pte Ltd**

5. AVL is a private limited company registered in Singapore, providing electrical and mechanical engineering works since 2000. AVL is formerly known as VL Electrical Engineering Pte Ltd. AVL's registered address is 79 Robinson Road, #25-08 CPF Building, Singapore 068897. AVL's estimated turnover for the financial year ending 30 June 2009 was S\$[...]<sup>5</sup>. Victor Lee Siew Wai ("Victor Lee"), a director and shareholder of AVL, is referred to in this Decision. Victor Lee is the nephew of Anthony Tong<sup>6</sup>.

### **(v) DAE Services**

6. DAE is a sole proprietorship registered in Singapore, providing electrical works and conducting general wholesale trade since 2007. DAE Services' registered address is 12 Arumugam Road, #05-01A Lion Building B,

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<sup>2</sup> Information provided by Alpha Omega on 18 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>3</sup> See Answer to Question 2 of Ngoo Mei Whei's Notes of Information/Explanation provided on 17 Aug 2009.

<sup>4</sup> Information provided by Arisco on 18 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>5</sup> Information provided by AVL on 17 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>6</sup> See Answer to Question 73 of Anthony Tong's Notes of Information/Explanation provided on 6 May 2009.

Singapore 409958. DAE's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>7</sup>. Lee Chin Leng ("Eric Lee"), the sole proprietor of DAE is referred to in this Decision.

**(vi) E-SP Integrated Services Pte Ltd**

7. E-SP Integrated is a private limited company registered in Singapore, providing plumbing, heating (non-electric) and air-conditioning services since 2005. E-SP Integrated's registered address is 163 Geylang Road, #04-01, Singapore 389240. E-SP Integrated's estimated turnover for the financial year ending 31 March 2009 was S\$[...]<sup>8</sup>. Quek Boon Tiong Dennis ("Dennis Quek"), a director and shareholder of E-SP Integrated is referred to in this Decision.

**(vii) Etora United Engineering (S) Pte Ltd**

8. Etora is a private limited company registered in Singapore, providing electrical works and conducting electrical, mechanical and air-condition refrigeration since 2003. Etora's registered address is 3014 Ubi Road 1, #01-326, Singapore 408702. Etora's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>9</sup>. Chua Ping Sun ("Richard Chua"), a director and shareholder of Etora is referred to in this Decision.

**(viii) Huang Soon Electrical Engineering Works**

9. Huang Soon is a sole proprietorship registered in Singapore, providing electrical works and manufacturing and repairing switchgear and switchboard apparatus since 1983. Huang Soon's registered address is 1007 Eunos Avenue 7, #01-41, Singapore 409578. Huang Soon's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>10</sup>. Poa Kim Bock, the sole proprietor of Huang Soon, is referred to in this Decision.

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<sup>7</sup> Information provided by DAE on 20 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>8</sup> Information provided by E-SP Integrated on 16 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>9</sup> Information provided by Etora on 4 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>10</sup> Information provided by Huang Soon on 17 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

**(ix) Integrated One Construction Pte Ltd**

10. Integrated One is a private limited company registered in Singapore, providing building and construction works and conducting retail sale of construction materials, hardware, paint and glass since 1999. Integrated One's registered address is 3016 Bedok North Avenue 4, #06-13, Eastech, Singapore 489947. Integrated One's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>11</sup>. Goh Tong Meng, a director and shareholder of Integrated One, is referred to in this Decision.

**(x) MME Services**

11. MME is a sole proprietorship registered in Singapore, providing services as renovation contractor and residential real estate management services since 2007. MME's registered address is 196 Pandan Loop, #02-15 Pantech Industrial Complex, Singapore 128384. MME's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>12</sup>. Lim Boo Hua ("Eddie Lim"), the sole proprietor of MME, is referred to in this Decision.

**(xi) Ronnie Lim Electrical and Plumbing Contractor**

12. Ronnie Lim Electrical is a sole proprietorship registered in Singapore, providing electrical, plumbing, heating (non-electrical) and air conditioning works since 1989. Ronnie Lim Electrical's registered address is 27 Foch Road, #05-01 Hoa Nam Building, Singapore 209264. Ronnie Lim Electrical's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>13</sup>. Lim Pang Kin ("Ronnie Lim"), the sole proprietor of Ronnie Lim Electrical, is referred to in this Decision.

**(xii) System Technic Engineering Pte Ltd**

13. System Technic is a private limited company registered in Singapore, providing electrical engineering services since 2005. System Technic's registered address is 1 Jalan Remaja, #01-01C Hillview House, Singapore 668662. System Technic's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>14</sup>. Teo Boon Yan ("William Teo"), a director and shareholder of System Technic, is referred to in this Decision.

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<sup>11</sup> Information provided by Integrated One on 23 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>12</sup> Information provided by MME on 17 December 2009 and 21 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>13</sup> Information provided by Ronnie Lim Electrical on 17 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>14</sup> Information provided by System Technic on 4 January and 11 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

**(xiii) Toplist Mechanical and Electrical Services**

14. Toplist is a sole proprietorship registered in Singapore, providing mechanical engineering services since 1989. Toplist's registered address is 196 Pandan Loop, #02-15 Pantech Industrial Complex, Singapore 128384. Toplist's estimated turnover for the financial year ending 31 December 2008 was S\$[...]<sup>15</sup>. Low Leong Chai ("Jeffrey Low"), the sole proprietor of Toplist, is referred to in this Decision.

**(xiv) Triple H Technology Pte Ltd**

15. Triple H is a private limited company registered in Singapore, providing mechanical engineering services and conducting mixed construction activities since 2006. Triple H's registered address is 3025A Ubi Road 3, #01-67, Singapore 408654. Triple H's estimated turnover for the financial year ending 31 March 2009 was S\$[...]<sup>16</sup>. Goh Tong Hwa, a manager of Triple H, is referred to in this Decision. Goh Tong Hwa is the younger brother of Goh Tong Meng<sup>17</sup>.

**B. Background of Related Industry**

16. The Parties provide electrical and building works in Singapore.

**(i) Electrical Work**

17. Under the Electricity Act (Cap. 89A), electrical work is defined as
- any work performed or carried out on any electrical installation and includes the installing, constructing, erecting or repairing thereof or the altering of the structure thereof or the replacing of any part thereof or the adding of any part thereto or the carrying out of any work thereon for the maintenance thereof, but does not include work in relation to —
- (a) the manufacturing of any electrical installation or the assembling thereof in the course of or in connection with its manufacture for the purpose of producing a new article; or
- (b) the oiling, greasing, cleaning or painting of any electrical installation<sup>18</sup>.

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<sup>15</sup> Information provided by Toplist on 15 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>16</sup> Information provided by Triple H on 16 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>17</sup> See Answer to Question 55 of Goh Tong Meng's Notes of Information/Explanation provided on 7 Sep 2009.

<sup>18</sup> See section 2 of the Electricity Act, Cap. 89A

18. The Electricity Act further elaborates that “electrical installation” means any appliance, wire, fitting or other apparatus placed in, on, over or under any premises and used for or for purposes incidental to the conveyance, control or use of electricity supplied or intended to be supplied by an electricity licensee or any other person, and includes a supply installation and any addition, alteration, and repair to an electrical installation, but does not include —
- (a) any electric line, supply line or electrical plant of an electricity licensee;
  - (b) any appliance, wire, fitting or apparatus connected to and beyond any electrical outlet which is installed for the purpose of connecting electrical appliances, fittings or apparatuses and at which fixed wiring terminates; and
  - (c) any appliance, wire, fitting or apparatus which is placed in, on, over or under any premises owned or occupied by a transmission licensee which is not used for the consumption of electricity on the premises or solely for the purposes incidental to the conveyance or control of electricity so consumed<sup>19</sup>.
19. The Energy Market Authority (“EMA”) requires that all electrical work be undertaken or carried out by a licensed electrical worker (“LEW”)<sup>20</sup>. Such electrical work includes new wiring, rewiring and extensions which have to be tested before the supply is turned on. When a consumer needs any electrical work to be done, he is advised to check that the person whom he intends to engage to undertake or perform the electrical work has a valid electrical worker licence issued by the EMA.
20. Typically building managers or Management Corporation Strata Title (MCSTs) would have a maintenance contract with a company offering LEW maintenance services (“appointed LEW company”) for an annual fee. In general, the appointed LEW company would endorse and submit applications for electrical license renewal to EMA, take charge of electrical installations in accordance with EMA’s requirements and conduct periodical inspections on the electrical installations in the building premises. When electrical rectification or improvement work is required, the appointed LEW company would put up their recommendations to the building manager or MCST. The building manager or MCST could either engage the appointed LEW company to perform the electrical rectification or improvement work or invite the appointed LEW company and other

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<sup>19</sup> Ibid.

<sup>20</sup> As stipulated in section 82 of the Electricity Act, Cap. 89A

companies in the business of providing electrical work to submit their quotations for the rectification or improvement work.

## **(ii) Building Works**

21. Under the Building Control Act (Cap. 29), building works refer to
- (a) the erection, extension or demolition of a building;
  - (b) the alteration, addition or repair of a building;
  - (c) the provision, extension or alteration of any air-conditioning service or ventilating system in or in connection with a building,
- and includes site formation works connected with or carried out for the purpose of paragraph (a), (b) or (c)<sup>21</sup>.
22. Air-conditioning works are classified as insignificant building works<sup>22</sup>. Therefore, it is not necessary to apply to the Building and Construction Authority (“BCA”) for approval to proceed with such works. However, the BCA requires owners of premises who want to install air-conditioning units on the exterior of any building or which projects outwards from any building, to engage trained installers who are registered with BCA to do so. This will ensure that the work is being properly carried out. Upon completion of the installation, the installer will submit the installation report to BCA.

## **C. Investigation and Proceedings**

23. On 18 December 2008, CCS received a leniency application that Arisco had entered into bid-rigging arrangements with other companies in the business of providing electrical work, to coordinate the price of quotations submitted with respect to the provision of electrical services.
24. After conducting preliminary enquiries, CCS decided that there were reasonable grounds for suspecting that Arisco, AVL, DAE, MME, Ronnie Lim Electrical and Toplist had engaged in collusive tendering or bid-rigging in relation to the provision of electrical works in Singapore, in breach of the prohibition under section 34 (“the section 34 prohibition”) of the Competition Act (Cap. 50B) (“the Act”).

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<sup>21</sup> See section 2 of the Building Control Act, Cap. 29

<sup>22</sup> Paragraph 12 of the First Schedule of the Building Control Regulations 2003

25. CCS commenced formal investigations under the Act and authorised its officers to enter the premises of Aldale, AVL, DAE, Ronnie Lim Electrical and Toplist under section 64 of the Act. On 6 May 2009, CCS carried out unannounced visits concurrently at these premises. On 20 May 2009, CCS sent a notice requesting documents and information under section 63 of the Act to MME. CCS received the response on 26 May 2009.
26. On 23 June 2009, CCS decided that there were reasonable grounds for suspecting that AVL and DAE were involved in similar bid-rigging arrangements with other Parties in relation to the provision of electrical works. On 16 July 2009, CCS authorised its officers to enter the premises of Integrated One, System Technic and Huang Soon. On 5 August 2009, CCS conducted unannounced concurrent visits to these premises.
27. On 24 July 2009, CCS sent a notice requesting documents and information under section 63 of the Act to Alpha & Omega. CCS received the response on 3 August 2009.
28. Through its investigations, CCS obtained information indicative of collusive tendering or bid-rigging arrangements in respect of the provision of electrical and building works at the following properties:
  - a) The Esplanade Company Ltd;
  - b) Azalea Park;
  - c) Pinewood Gardens;
  - d) The Makena;
  - e) Gloucester Mansions;
  - f) Tiara;
  - g) Precision Magnetics;
  - h) Kaki Bukit Industrial Building; and
  - i) Orrick Investments Pte Ltd
29. Between 2 July 2009 and 17 September 2009, CCS sent notices requesting documents and information under section 63 of the Act to each of the owners of the projects in paragraph 28 to ascertain the number of proposals submitted, the prices and outcome of the proposals. CCS received the responses between 13 July 2009 and 20 October 2009.
30. CCS carried out a number of interviews of the relevant personnel of the Parties and third parties as detailed below under section 63 of the Act:

Name	Company	Designation	Date(s) of interviews	In Attendance
Chin Ah Sun (Adam)	AAT	Sole proprietor	21 Jan 2010	Nil
Tong Weng Chuen (Anthony Tong)	Aldale Arisco	Director Former managing director	6 May 2009 7 May 2009 14 May 2009 3 September 2009 5 February 2010	Nil " " " "
Tan Ai Peng (Angie) (Ms)	Aldale Arisco	Administrative assistant Former administrative assistant	6 May 2009 7 May 2009	Nil "
Lam Kien Choon	Alpha & Omega	Sole proprietor	17 August 2009	Nil
Ngoo Mei Whei	Alpha & Omega	Employee	17 August 2009 24 August 2009	Nil "
Lee Siew Wai (Victor)	AVL	Director & shareholder	7 May 2009 7 September 2009	Nil "
Lee Chin Leng (Eric)	DAE	Sole proprietor	6 May 2009 7 May 2009 4 June 2009 1 July 2009	Nil " " "
Richard Chua Ping Sun	Etora	Director & shareholder	27 October 2009	Nil
Quek Boon Tiong Dennis	E-SP Integrated	Director & shareholder	27 October 2009	Nil
Poa Kim Bock	Huang Soon	Sole proprietor	7 September 2009	Nil

Name	Company	Designation	Date(s) of interviews	In Attendance
Goh Tong Meng	Integrated One	Director & shareholder	7 September 2009 21 October 2009	Nil "
Lim Boo Hua (Eddie)	MME	Sole proprietor	28 May 2009	Nil
Lim Pang Kin (Ronnie)	Ronnie Lim Electrical	Sole proprietor	6 May 2009	Nil
Teo Boon Yan (William)	System Technic	Director & shareholder	7 September 2009	Nil
Low Leong Chai (Jeffrey)	Toplist	Sole proprietor	6 May 2009 23 September 2009	Nil
Goh Tong Hwa	Triple H Technology	Manager	19 October 2009	Nil

31. CCS sent notices requesting documents and information on turnover under section 63 of the Act to each of the Parties on 4 December 2009. CCS received the responses between 18 December 2009 and 25 January 2010.

#### **D. The Projects**

32. The table below sets out, for each of the infringements specified by CCS in paragraphs 84 to 274 below, the project in question, the date the project was put out for a tender or quote, the contractors invited to tender or quote, the contractors who did tender or quote, the infringing parties, and whether the project was awarded. In each case, the Party receiving support from the other Parties in order to secure the project is highlighted in bold in the 'Infringing Parties' column.

Name of Project	Put out for Tender / quote	Contractors Invited to Tender / Quote	Contractors which tendered / put in quotes	Infringing Parties	Award of contract
The Esplanade Company Ltd	Between 12-17 March 2008	<ul style="list-style-type: none"> <li>▪ Arisco</li> <li>▪ AVL</li> <li>▪ Toplist</li> </ul>	<ul style="list-style-type: none"> <li>▪ Arisco</li> <li>▪ AVL</li> <li>▪ Toplist</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Arisco</b></li> <li>▪ AVL</li> <li>▪ Toplist</li> </ul>	Yes (Awarded to Arisco)
Azalea Park	Between 20 and 25 March 2009	<ul style="list-style-type: none"> <li>▪ Ronnie Lim Electrical</li> <li>▪ AVL</li> <li>▪ MME</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ronnie Lim Electrical</li> <li>▪ AVL</li> <li>▪ MME</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Ronnie Lim Electrical</b></li> <li>▪ AVL</li> <li>▪ MME</li> </ul>	No
Pinewood Gardens	15 October 2007	<ul style="list-style-type: none"> <li>▪ Arisco</li> <li>▪ AVL</li> <li>▪ MME</li> </ul>	<ul style="list-style-type: none"> <li>▪ Arisco</li> <li>▪ AVL</li> <li>▪ MME</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Arisco</b></li> <li>▪ AVL</li> <li>▪ MME</li> </ul>	Yes (Awarded to Arisco)
The Makena	Sometime in April 2009	<ul style="list-style-type: none"> <li>▪ Aldale</li> <li>▪ AVL</li> <li>▪ Katon Electrical Services</li> </ul>	<ul style="list-style-type: none"> <li>▪ Aldale</li> <li>▪ AVL</li> <li>▪ Katon Electrical Services</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Aldale</b></li> <li>▪ AVL</li> </ul>	No
Gloucester Mansions	Sometime in July 2007	<ul style="list-style-type: none"> <li>▪ Toplist</li> <li>▪ Arisco</li> </ul>	<ul style="list-style-type: none"> <li>▪ Toplist</li> <li>▪ Arisco</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Toplist</b></li> <li>▪ Arisco</li> </ul>	Yes (Awarded to Toplist)
Tiara	Sometime in May 2008	<ul style="list-style-type: none"> <li>▪ DAE</li> <li>▪ Alpha Omega &amp; Tekyi Electrical Engineering</li> </ul>	<ul style="list-style-type: none"> <li>▪ DAE</li> <li>▪ Alpha Omega</li> <li>▪ Tekyi Electrical Engineering</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>DAE</b></li> <li>▪ Alpha Omega</li> </ul>	No
Precision Magnetics	Sometime in August 2008	<ul style="list-style-type: none"> <li>▪ Integrated One</li> <li>▪ Shelton (S) Pte Ltd</li> <li>▪ Lewe Engineering Pte Ltd</li> </ul>	<ul style="list-style-type: none"> <li>▪ Integrated One</li> <li>▪ Etora</li> <li>▪ E-SP Integrated</li> <li>▪ Shelton (S) Pte Ltd</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Integrated One</b></li> <li>▪ Etora</li> <li>▪ E-SP Integrated</li> </ul>	No

Name of Project	Put out for Tender / quote	Contractors Invited to Tender / Quote	Contractors which tendered / put in quotes	Infringing Parties	Award of contract
Kaki Bukit Industrial Building (I)	3 December 2008	<ul style="list-style-type: none"> <li>▪ AVL</li> <li>▪ Integrated One</li> <li>▪ Huang Soon</li> <li>▪ System Technic</li> </ul>	<ul style="list-style-type: none"> <li>▪ AVL</li> <li>▪ Integrated One</li> <li>▪ Huang Soon</li> <li>▪ System Technic</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>AVL</b></li> <li>▪ Integrated One</li> <li>▪ Huang Soon</li> <li>▪ System Technic</li> </ul>	No
Kaki Bukit Industrial Building (II)	Sometime in August 2008	<ul style="list-style-type: none"> <li>▪ Integrated One</li> </ul>	<ul style="list-style-type: none"> <li>▪ Integrated One</li> <li>▪ Triple H</li> <li>▪ AVL</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Integrated One</b></li> <li>▪ Triple H</li> <li>▪ AVL</li> </ul>	No
Orrick Investments Pte Ltd	Sometime in April 2009	<ul style="list-style-type: none"> <li>▪ Huang Soon</li> <li>▪ AVL</li> <li>▪ Quality Power Management Pte Ltd</li> </ul>	<ul style="list-style-type: none"> <li>▪ Huang Soon</li> <li>▪ AVL</li> <li>▪ Quality Power Management Pte Ltd</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Huang Soon</b></li> <li>▪ AVL</li> </ul>	No

## SECTION II: LEGAL AND ECONOMIC ASSESSMENT

### A. Structure of this Section

33. 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 each infringement, the facts of each project, the evidence of collusion and CCS' analysis of the evidence on which it relies.

### B. The Section 34 Prohibition

34. 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.<sup>23</sup>

35. Section 34(2) of the Act states that

<sup>23</sup> The Section 34 prohibition came into force on 1 January 2006.

... 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; ...

### **C. Application of Section 34 Prohibition to Undertakings**

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

### **D. Agreements**

37. An agreement is formed when parties arrive at a consensus on the actions each party will, or will not, take. The section 34 prohibition applies to both legally enforceable and non-enforceable agreements, whether written or oral, and to so-called gentlemen’s agreements. An agreement may be reached via a physical meeting of the parties or through an exchange of letters or telephone calls or any other means<sup>24</sup>.
38. The mere fact that a party does not abide fully by an agreement that is manifestly anti-competitive does not relieve that party of responsibility for it. In the *Pest Control Case*, 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 had 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 tender it received from the other pest-control operators to gain a competitive advantage over the others, 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 agreement<sup>25</sup>.

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<sup>24</sup> Paragraph 2.10 of the CCS Guidelines on the Section 34 Prohibition.

<sup>25</sup> Collusive Tendering (Bid-Rigging) for Termite Treatment/Control Services by certain Pest Control Operators in Singapore (CCS 600/008/06), paragraphs 120 to 128

## E. Concerted Practices

39. The section 34 prohibition also applies to concerted practices. A concerted practice would be found to exist if parties, even if they did not enter into an agreement, knowingly substituted the risks of competition with co-operation between them<sup>26</sup>.
40. As CCS stated in the *Pest Control Case*<sup>27</sup>, subsequently cited in the *Express Bus Operators Case*<sup>28</sup>:

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

41. This principle was set out in the decision of the European Court of Justice (“ECJ”) in the case of *Suiker Unie and others v Commission*<sup>29</sup>. The case involved major petrochemical producers of polypropylene which had, by a series of price initiatives, regularly set target prices and developed a system of annual volume control to share out the available market between them according to agreed percentage or tonnage levels. The European Court of Justice (“ECJ”) in its decision in 1975 said at ¶ 26 and 173 to 174:

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.

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

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<sup>26</sup> Paragraph 2.16 of the CCS Guidelines on the Section 34 Prohibition.

<sup>27</sup> Pest Control Case, paragraph 42

<sup>28</sup> Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand (CCS 500/003/08), paragraph 50

<sup>29</sup> Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73 [1975] ECR-1 1663.

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.

42. In *P. Hüls AG v. Commission*<sup>30</sup>, 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) [now Article 101] 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 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]

43. In the case of *Cimenteries v Commission*<sup>31</sup>, 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

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<sup>30</sup> Case C-199/92 [1999] ECR I-4287.

<sup>31</sup> Case T-25/95 [2000] ECR II-491

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]

44. Finally the CFI, in *Tate & Lyle plc v Commission*<sup>32</sup>, 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.

...

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

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<sup>32</sup> Case T-202/98, T-204/98 and T-207/98 [2001] ECR II-2035 (upheld by the Court of Justice in its judgment of 29 April 2004 in Case C-359/01P *British Sugar plc v Commission*)

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

## F. Agreement and/or Concerted Practice

45. For the purposes of finding an infringement, it has been established in EC law that it is not necessary to characterize conduct as exclusively an agreement or a concerted practice: *SA Hercules Chemicals v Commission*<sup>33</sup>.
46. It has also been established in the jurisprudence of the EC that conduct may one and the same be a concerted practice and an agreement: *The Community v Interbrew NV and others (re the Belgian beer cartel)*<sup>34</sup>. As set out by the European Commission in its decision in 1986 in the *Polypropylene*<sup>35</sup> case, where major suppliers of polypropylene were found to have met regularly to share the available market according to agreed tonnage or percentages and to set target prices, the important distinction was between collusive and non-collusive behaviour:

The importance of the concept of a concerted practice does not thus result so much from the distinction between it and an ‘agreement’ as from the distinction between forms of collusion falling under Article 85(1) [now Article 101] and mere parallel behaviour with no element of concertation.

47. Similarly, the Competition Appeal Tribunal (“CAT”) in the United Kingdom has taken the position that it is not necessary for the Office of Fair Trading (“OFT”) to characterise an infringement as either an agreement or a concerted practice; it is sufficient that the conduct in question amounts to one or the other. In *JJB Sports plc and Allsports Limited v Office of Fair Trading*<sup>36</sup>, the CAT held in its decision in 2004, that a supplier and two retailers were parties to the same agreement or concerted practice where the supplier, acting as an intermediary in passing on pricing information, dealt separately with the two retailers. In that case, the parties had either agreed to or confirmed their respective intentions not to discount from a certain price or at the very least knowingly gave an intimation or assurance to that effect<sup>37</sup>. Similarly, in *Argos Limited and Littlewoods Limited v Office of Fair Trading*<sup>38</sup>, the CAT in its decision in

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<sup>33</sup> Case T-7/89 [1991] ECR II-711, see paragraph 264.

<sup>34</sup> Case IV/37.614/F3 [2004] CMLR 2, see paragraph 223.

<sup>35</sup> Case 86/398 OJ 1986 L 230/1 at paragraph 87.

<sup>36</sup> [2004] CAT 17 at paragraph 654.

<sup>37</sup> [2004] CAT 17 at paragraph 207.

<sup>38</sup> [2004] CAT 24 at paragraph 778.

2004, found that there had been two bilateral agreements or concerted practices which had operated in parallel.

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

48. Section 34(1) of the Act prohibits “agreements between undertakings ... or concerted practices, which have as their object or effect the prevention, restriction or distortion of competition within Singapore”. In accordance with its plain reading, “object” and “effect” are alternative and not cumulative requirements.

49. CCS had found in the *Pest Control Case*<sup>39</sup>, subsequently applied in the *Express Bus Operators Case*<sup>40</sup>, that the object of an agreement or concerted practice is not based on the subjective intention of the parties when entering into an agreement, but rather on:

.....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]

50. European jurisprudence has established that there can be an infringement even if an agreement does not have an effect on the market: *Tréfilunion v Commission*<sup>41</sup>. Similarly, there can be a concerted practice in the absence of an actual effect on the market: *P. Hüls AG v. Commission*<sup>42</sup>.

51. In *The Community v Interbrew NV and others (re the Belgian beer cartel)*<sup>43</sup>, four brewers had discussed and exchanged information about customers, volumes and prices with regard to private-label beer in Belgium with the intent that whenever there was a new invitation to tender, there would be no undercutting of prices. The brewer who had the contract would bid his price, and the other would make a higher bid. The European Commission found it clear that the aim of these meetings were “firstly, to prevent a price war and adopt a position on prices and, secondly, to share out customers by not making (real) offers to the customers of other brewers.” The European Commission went on to hold that the aims of the

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<sup>39</sup> Pest Control Case, paragraph 49

<sup>40</sup> Express Bus Operators Case, paragraph 71

<sup>41</sup> Case T-148/89 [1995] ECR II-1063, see paragraph 79.

<sup>42</sup> Case C-199/92 [1999] ECR I-4287, see paragraph 164 to 168.

<sup>43</sup> Case IV/37.614/F3 [2004] CMLR 2.

meetings were clearly anti-competitive and that it was not necessary to show that their consequences were also harmful to competition<sup>44</sup>.

52. In *Argos Limited and Littlewoods Limited v OFT*<sup>45</sup>, the OFT had sought to support its case that there was a price-fixing agreement and/or concerted practice by drawing attention to the difference in prices in the relevant catalogues before the alleged agreements or concerted practices and the high degree of similarity in the relevant prices thereafter. In response, the CAT said

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

## **H. Appreciably Prevent, Restrict or Distort Competition**

53. 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.
54. CCS notes that in the current case the agreements and/or concerted practices in question involve bid-rigging. CCS regards agreements or concerted practices involving price-fixing, bid-rigging, market-sharing or output limitations as always having an appreciable adverse effect on competition, notwithstanding that the aggregate market share of the parties falls below the 20% threshold and even if the parties to such agreements are SMEs<sup>46</sup>.

## **I. Collusive Tendering or Bid-Rigging Arrangements**

55. CCS regards collusive tendering or bid-rigging arrangements as restrictive of competition to an appreciable extent by their very nature<sup>47</sup>. Tendering procedures are designed to provide competition in areas where it might otherwise be absent. An essential feature of the system is that tenderers prepare and submit bids independently. Any tenders submitted as a result of

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<sup>44</sup> Case IV/37.614/F3 [2004] CMLR 2 at paragraph 254.

<sup>45</sup> [2004] CAT 24

<sup>46</sup> See paragraph 2.20 of the CCS Guidelines on the Section 34 Prohibition.

<sup>47</sup> See paragraph 3.2 of the CCS Guidelines on the Section 34 Prohibition.

- collusion or co-operation between tenderers will, by their very nature, be regarded as restricting competition appreciably<sup>48</sup>.
56. This is illustrated in the case of *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4 cited in the *Pest Control Case*<sup>49</sup>, where the CAT said this of the nature of the tendering process:
- 208. The essential feature of a tendering process conducted by a local authority is the expectation on the part of the authority that it will receive, as a response to its tender, a number of independently articulated bids formulated by contractors wholly independent of each other. A tendering process is designed to produce competition in a very structured way.
  - 209. ....The competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of the tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market.
  - 210. When the tendering process is selective rather than open to all potential bidders, the loss of independence through knowledge of the intentions of other selected bidders can have an even greater distorting effect on the tendering process. ....
  - 211. Accordingly, since the selective tendering process by its nature has a restricted number of bidders, any interference with the selected bidders' independence can result in significant distortions of competition.
57. As set out by the OFT in a case in 2006, in which it had concluded that a number of roofing contractors had colluded in relation to the making of tender bids for flat roof and car park surfacing contracts in England and Scotland, there are four types of agreements that can result in a pre-selected supplier winning the contract<sup>50</sup>:
- (a) Cover bidding or cover pricing occurs when a contractor that is not intending to win the contract, submits a price for it after communicating with the designated winner. The price is decided upon in conjunction with another contractor that wishes to win the

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<sup>48</sup> See paragraph 3.8 of the CCS Guidelines on the Section 34 Prohibition.

<sup>49</sup> Pest Control Case, paragraph 59

<sup>50</sup> Collusive Tendering for flat roof and car park surfacing contracts in England and Scotland CA 98/01/2006 (Joined Cases CE/3123-03 and CE/3645-03) issued on 22 February 2006, see paragraph 68.

contract. Cover pricing gives the impression of competitive bidding but, in reality, contractors agree to submit token bids that are higher than the bid of the contractor that is seeking the cover.

- (b) Bid-suppression, which takes place when contractors agree amongst themselves either to abstain from bidding or to withdraw bids.
- (c) Bid-rotation, which is a process whereby the pre-selected contractor submits the lowest bid on a systematic or rotating basis.
- (d) Market division/sharing when contractors agree amongst themselves not to compete in designated geographic regions or for specific customers.

58. In the *Apex case*, Apex, a building contractor, had sent another building contractor, Briggs, a fax containing figures for Briggs in respect of two projects with Birmingham City Council for maintenance and improvement services for flat roofs. Briggs declined to quote but five contractors submitted bids, including Apex which was eventually awarded the contract. In finding a concerted practice between Apex and Briggs, the CAT highlighted the anti-competitive harm of cover bids<sup>51</sup>:

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

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

224. In our judgment the conduct of Apex and Briggs in Apex providing, and Briggs receiving and considering, a price for this

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<sup>51</sup> See paragraph 251.

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

...

235. ...The principal object of the cooperation between Apex and Briggs was that Briggs would not win the contract. It was not that Briggs would put in a bid. We therefore accept the OFT's argument that it is immaterial that Briggs did not bid. Furthermore, that conclusion is consistent with the fact that once it is shown that the object of the concerted practice was anti-competitive, it is no longer necessary to show that it had an anti-competitive effect.

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

60. Similarly, the CAT held in *Richard W Price (Roofing Contractors) Limited v OFT*<sup>52</sup> that the fact that the customer decided not to proceed with the project and no contractor was appointed is irrelevant to the question of whether a concerted practice existed in relation to the tendering process.
61. In the *Pest Control Case*, CCS found that 6 pest control operators had engaged in cover bidding practices in the provision of termite control and treatment services using Agenda, a termiticide, for properties in Singapore. Evidence of communication between the operators by way of telephone calls or emails, in requesting for and agreeing to submit cover bids clearly demonstrated that the operators had not independently determined their quotes. The fact that the tender was voided or that the project was ultimately not awarded did not affect CCS' findings that the agreements or concerted practices had the object of preventing or restricting competition and infringed the section 34 prohibition<sup>53</sup>.

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<sup>52</sup> [2005] CAT 5 see paragraph 53.

<sup>53</sup> See paragraphs 119 and 345.

62. In the OFT's recent decision in September 2009 on Bid Rigging in the Construction Industry in England<sup>54</sup>, the majority of the bid rigging activities discovered by the OFT involved cover pricing. In a few infringements, the customer had conducted a tender process but either did not appoint a contractor, or it appointed a contractor but did not proceed with the tendered job. The OFT found that this did not detract from the analysis of the infringements because the parties had entered into an agreement and/or concerted practice with the object of preventing, restricting or distorting competition and also acted in pursuance of that arrangement. As such, the infringement had taken place at a time before it was known that the contract would not proceed. As the OFT was not required to analyse the effects of the arrangement, the fact that the tender process was subsequently abandoned was immaterial to the finding of an infringement<sup>55</sup>.

## **J. Burden and Standard of Proof**

63. The burden of proof rests on CCS to prove the infringements in question. Infringements of the section 34 prohibition are not classified as criminal offences, in contrast to the criminal offences created under sections 75 to 78 and 81 of the Act. Decisions taken by CCS under the Act follow a purely administrative procedure. Directions and any penalties imposed are enforceable by civil proceedings under section 85 by registering the directions in a District Court in accordance with the Rules of Court. As such, the standard of proof to be applied in deciding whether an infringement of the section 34 prohibition has been established is the civil standard, commonly known as the balance of probabilities.
64. CCS is mindful that an allegation of an infringement of the section 34 prohibition is a serious matter which may involve the issue of directions and the imposition of financial penalties. The quality and weight of the evidence must therefore be sufficiently strong before CCS concludes that the allegation is established on a balance of probabilities. The evidence likely to be sufficiently convincing to prove an infringement will depend on the circumstances and the facts. In *JJB Sports plc and Allsports Limited v OFT*<sup>56</sup>, 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

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<sup>54</sup> Decision of the Office of Fair Trading, No. CA98/02/2009, Bid rigging in the construction industry in England, 21 September 2009 (Case CE/4327-04)

<sup>55</sup> *Ibid.* III.114

<sup>56</sup> [2004] CAT 17 at paragraph 206.

particular context and the particular circumstances may be sufficient to meet the required standard.

## **K. The relevant market**

### (i) Introduction

65. Market definition typically serves two purposes in the context of the s34 prohibition. First, it provides the framework for assessing whether an agreement and/or concerted practice has an appreciable effect on competition. Second, it provides the basis for determining the relevant turnover for the purpose of calculating penalties.
66. Agreements and/or concerted practices that involve directly or indirectly fixing prices, bid-rigging, sharing markets and/or limiting or controlling production or investments are, by their very nature, regarded as restrictive of competition to an appreciable extent<sup>57</sup>. Accordingly, CCS notes at the outset that, a distinct market definition is not necessary to establish a section 34 prohibition as the restriction at issue here is one having as its object the restriction of competition. This is also the stance that CCS adopted in the *Pest Control Case*, where the case involved agreements and/or concerted practices involving collusive tendering or bid-rigging and recognised that the market definition is not intrinsic to the determination of liability in such a case.
67. CCS notes, however, that it would be necessary to define the relevant product and geographical market for the purposes of assessing the appropriate level of penalties, if liability has been established.
68. The relevant market will be identified according to the particular facts of the case in hand and the information available to CCS. Identifying the relevant markets usually involves defining all the products and geographic areas that are reasonable demand-side and supply-side substitutes to the product and area under investigation (“focal product and focal area”). In this case, however, there is no need to define markets for the purpose of assessing appreciability. Accordingly, CCS will only delineate market boundaries to the extent that the penalties for the liable parties are affected.

### (ii) The Relevant Product Market

69. This process of defining the relevant product market begins with the product that is the subject of the investigation (‘focal product’). CCS notes

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<sup>57</sup> See paragraphs 2.20 and 3.2 of CCS Guidelines on the Section 34 Prohibition

that the contracts referred to in this Decision can be categorised into two focal products namely (a) electrical rectification and improvement works for commercial/industrial buildings and MCSTs, and (b) installation and maintenance of air-conditioning works for commercial/industrial buildings and MCSTs. Among the projects that the Parties were involved in bid-rigging, CCS has observed a pattern of conduct that the projects were provided to only commercial/industrial buildings and/or MCSTs. Given the pattern of conduct, there is no reason to conclude that for each focal product, the parties would not bid-rig for other similar projects.

(iii) Electrical rectification and improvement works for commercial/industrial buildings and MCSTs

70. As noted in the industry overview section at paragraph 17, electrical work refers to any work performed or carried out on any electrical installation and includes the installing, constructing, erecting or repairing of such installation, the altering of its structure, the replacing of any part of or the adding of any part to such installation and the carrying out of any work on such installation for its maintenance. For the purpose of this Decision, CCS notes that electrical works are procured in the following fashion. Typically, as noted in paragraph 20, building managers or MCSTs would engage a company offering LEW maintenance services in a maintenance contract at an annual fee. For electrical rectification or improvement work that is not covered under the maintenance contracts, building managers or MCSTs could either engage the maintenance LEW company or invite quotations. For the purpose of this decision, CCS would focus only on the latter, which involves electrical rectification or improvement work for commercial/industrial buildings and MCSTs, because this is where bid-rigging conduct occurred.
71. To this end, CCS did consider that the relevant product market might extend beyond electrical rectification and improvement works for commercial/industrial buildings and MCSTs to include other demand and supply side substitutes if they were to exist. However as set out earlier, a distinct market definition is not necessary to establish a section 34 prohibition as the restriction at issue here is one having as its object the restriction of competition. The exercise of defining the relevant product market is undertaken for the purpose of calculating penalties. In order to ensure that the penalties are proportionate to the Parties' involvement in anti-competitive practices, CCS considers that for the purposes of the calculation of penalties, it suffices to consider only the turnover of the narrower market, being the turnover from the provision of electrical

rectification and improvement works for commercial/industrial buildings and MCSTs.

(iib) Air-conditioning installation and maintenance works for commercial/industrial buildings and MCSTs

72. The second focal product that CCS will consider in this Decision is the provision of services pertaining to air-conditioning installation and maintenance works for commercial/industrial buildings and MCSTs. As discussed in paragraph 22, air-conditioning works are classified as insignificant building works by BCA and would not require prior approval from BCA.
73. For the purpose of this Decision, CCS would regard all air-conditioning works pertaining to the installation and maintenance for commercial/industrial buildings and MCSTs to be in one market because the big-rigging conduct spanned across all these works. CCS notes that the amount of penalties will not change, regardless of whether these works are considered as a single market or separate markets.
74. Similarly, CCS would consider that the relevant product market might extend beyond air-conditioning installation and maintenance works for commercial/industrial buildings and MCSTs to other demand and supply side substitutes if they were to exist. However as set out earlier, a distinct market definition is not necessary to establish a section 34 prohibition as the restriction at issue here is one having as its object the restriction of competition. The exercise of defining the relevant product market is undertaken for the purpose of calculating penalties. In order to ensure that the penalties are proportionate to the Parties' involvement in anti-competitive practices, CCS considers that for the purposes of the calculation of penalties, it suffices to consider only the turnover of the narrower market, being the turnover from the provision of air-conditioning installation and maintenance works for commercial/industrial buildings and MCSTs.
75. After due consideration, CCS notes that different parties have colluded to bid rig in different focal products. To clarify, the focal product that each party would be liable for in penalties would be as attached in the following table:

Party	Focal Product	
	Electrical rectification and improvement works for commercial/industrial buildings and MCSTs	Air-conditioning installation and maintenance works for commercial/industrial buildings and MCSTs
Aldale	√	
Alpha & Omega	√	
Arisco	√	
AVL	√	
DAE	√	
E-SP Integrated		√
Etora		√
Huang Soon	√	
Integrated One	√	√
MME	√	
Ronnie Lim Electrical	√	
System Technic	√	
Toplist	√	
Triple H	√	

76. To clarify, CCS understands that each party may be able to provide all the services in both focal products. However, in CCS' deliberation in imposing the penalties of the parties, CCS will only consider the focal products that the parties have participated in bid-rigging for.

(iii) The Relevant Geographic Market

77. For the purposes of calculating relevant turnover and determining penalties in this case, it suffices to consider Singapore only, as all the relevant turnover from the supply of the focal products by the Parties were generated in Singapore.

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

**Background**

78. Arisco was started by Anthony Tong in 1985 as a sole proprietorship and was later incorporated in 1995. Until Anthony left Arisco in 2008<sup>58</sup>, he

<sup>58</sup> See Answer to Question 2 of Anthony Tong's Notes of Information/Explanation Provided on 6 May 2009.

- oversaw all the operations in the company and was in charge of providing quotations for electrical works which Angie Tan would assist in typing up<sup>59</sup>. After he left Arisco, he set up a sole proprietorship, Aldale Electrical Services. This was subsequently incorporated with Roy Teo as the registered director as well as the sole shareholder. Anthony Tong did this because he was worried that if he was the owner, any civil suits may result in his bankruptcy and affect business continuity<sup>60</sup>.
79. Anthony Tong admitted that while at Arisco and subsequently at Aldale, he would coordinate quotations with AVL, MME, Ronnie Lim Electrical and Toplist. On clients' requests for more quotations, Anthony Tong would sometimes prepare and sign quotations on behalf of AVL, MME, Toplist and Ronnie Lim Electrical. According to Anthony Tong, these undertakings were aware of such arrangements as he would call them or fax over the quotations after he has prepared them. The quotations are either sent out to the MCSTs by Arisco or by these undertakings. Most of the time, Arisco's quotes would be the lowest to stand a better chance of winning the project<sup>61</sup>.
80. Angie Tan joined Arisco sometime in 2004 or 2005 but she left in 2008 when Arisco moved. She joined Aldale in September 2008 as an administrative assistant. At both Arisco and Aldale, she reported directly to Anthony Tong and her job scope included general filing, typing quotations or letters and submitting on-line applications through the EMA website<sup>62</sup>. According to Angie Tan, Anthony Tong is the one who makes the decisions as to what prices to quote<sup>63</sup>. She recalled receiving instructions from Anthony Tong to prepare quotations using other companies' letterheads as support quotes where an MCST requires a few quotations. These quotations would then be faxed directly to the MCST by Arisco or by the other companies<sup>64</sup>. Angie Tan would sometime call AVL and Ronnie Lim Electrical to inform them that she was using their letterheads. If she were to

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<sup>59</sup> See Answers to Question 6 and 34 of Anthony Tong's Notes of Information/Explanation Provided on 6 May 2009.

<sup>60</sup> See Answer to Question 2 of Anthony Tong's Notes of Information/Explanation Provided on 6 May 2009.

<sup>61</sup> See Answers to Questions 45, 46, 59 to 61 of Anthony Tong's Notes of Information/Explanation Provided on 6 May 2009.

<sup>62</sup> See Answers to Questions 3 to 7 of Angie Tan's Notes of Information/Explanation Provided on 6 May 2009.

<sup>63</sup> See Answers to Questions 19 and 24 of Angie Tan's Notes of Information/Explanation Provided on 6 May 2009.

<sup>64</sup> See Answers to Questions 45 and 46 of Angie Tan's Notes of Information/Explanation Provided on 6 May 2009.

send out the quotations for AVL and MME, she would use envelopes carrying their respective company stamps<sup>65</sup>.

81. After Anthony Tong left Arisco in 2008, Alan Chua, a shareholder of Arisco, discovered the collusive tendering or bid-rigging arrangements made by Anthony Tong and submitted a leniency application to CCS.
82. The background as stated in paragraphs 78 to 81 provides an introduction to the collusive tendering or bid-rigging arrangements between the Parties for projects where Arisco, Aldale or Anthony Tong were involved.
83. In respect of each individual infringement, the structure of analysis is as follows:
  - a) an outline of the facts and evidence;
  - b) CCS' initial analysis of evidence; and
  - c) CCS' conclusions on the infringement.

#### **i) The Esplanade Company Ltd**

##### **The facts and the evidence**

84. Sometime in Mar 2008, The Esplanade Company Ltd, at 1 Esplanade Drive, Singapore 038981 ("The Esplanade"), invited Arisco, AVL and Toplist to submit quotes for the servicing of high tension and low tension switchgear and switchboard at the Esplanade.<sup>66</sup>
85. As at 17 March 2008, the quotes received by The Esplanade<sup>67</sup> are as follows:

Name of electrical contractor submitting quote	Total Quote price before tax	Date on Quote
Arisco	S\$147,300	13 March 2008
AVL	S\$164,750	17 March 2008
Toplist	S\$181,900	12 March 2008

86. According to The Esplanade, the contract was awarded to Arisco at the price of S\$147,300 before tax (S\$157,611 after tax).

<sup>65</sup> See Answers to Questions 55 and 56 of Angie Tan's Notes of Information/Explanation Provided on 6 May 2009.

<sup>66</sup> See Information provided by Rajah & Tann who acted for The Esplanade, in their letter to CCS dated 23 July 2009 pursuant to CCS' section 63 notice to request for information and documents dated 2 July 2009.

<sup>67</sup> See Quotations provided by Rajah & Tann who acted for The Esplanade, in their letter to CCS dated 23 July 2009 pursuant to CCS' section 63 notice to request for information and documents dated 2 July 2009.

87. Quotations identical to those received by The Esplanade as stated in paragraph 85 were discovered by Alan Chua of Arisco at Arisco's office and handed over to CCS when he provided information of the bid-rigging arrangements.
88. Interview of Arisco's former personnel<sup>68</sup> - Anthony Tong said that Arisco was appointed by The Esplanade to provide LEW services for a period of 3 years from 1 July 2007 to 30 June 2010. As there was a requirement by EMA to conduct annual preventive maintenance on the high tension switchboard of buildings, Arisco made a recommendation to The Esplanade during the end of year 2007 to perform the servicing works in order to comply with EMA's requirement. The Esplanade agreed to Arisco's recommendation and called for a quotation. Arisco was invited to submit a quotation for the servicing works.<sup>69</sup>
89. Anthony Tong said that he recommended AVL to The Esplanade to participate in the quotation. He admitted that there was a coordination of quotation prices between Arisco and AVL before submitting the quotations to The Esplanade. He prepared the quotation for AVL by putting in a price that was higher than Arisco's price. Anthony Tong said that Victor Lee of AVL agreed to quote higher to help Arisco win the contract. After Victor Lee signed on the quotation, Anthony Tong sent out the quotation on AVL's behalf to The Esplanade by mail.<sup>70</sup>

*Q4. How did you coordinate the quotation prices between Arisco and AVL before submitting your quotations for the Esplanade project?*

*A: I help Victor of AVL to prepare the specifications of the project and the prices to quote for the Esplanade project and got Victor to sign on it. The prices that I prepared for AVL is on the basis that it would be much higher than Arisco (at least ten over thousand dollars) so that when Esplanade reviews the quotations, they will notice that Arisco's quotations are lower and therefore increasing Arisco's chances of being awarded the Esplanade project. I will then send out all the quotations by post to the Esplanade.*

90. Anthony Tong has known Jeffrey Low of Toplist for more than 20 years<sup>71</sup>. Anthony Tong said that he also recommended Toplist to Esplanade to

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<sup>68</sup> See Anthony Tong's Notes of Information/Explanation Provided on 7 May and 3 Sep 2009.

<sup>69</sup> See Answer to Question 1 of Anthony Tong's Notes of Information/Explanation provided on 3 Sep 2009.

<sup>70</sup> See Answer to Question 2 to 5 of Anthony Tong's Notes of Information/Explanation provided on 3 Sep 2009.

<sup>71</sup> See Answer to Question 9 of Anthony Tong's Notes of Information/Explanation Provided on 7 May 2009.

participate in the quotation. He admitted that there was a coordination of quotation prices between Arisco and Toplist before submitting the quotation to The Esplanade. He prepared the quotation for Toplist by putting a price that was higher than Arisco's price and signed it on behalf of Jeffrey Low. Anthony Tong said that Jeffrey Low of Toplist agreed to support Arisco's quote.<sup>72</sup>

*Q8. How did you coordinate the quotation prices between Arisco and Toplist for the Esplanade project?*

*A: I help Jeffrey of Toplist to prepare the specifications of the project and the prices to quote for the Esplanade project and signed it on his behalf. The prices that I prepared for Toplist is on the basis that it would be much higher than Arisco (at least ten over thousand dollars) so that when Esplanade reviews the quotations, they will notice Arisco's quotations are lower and therefore increasing Arisco's chances of being awarded the Esplanade project. I will then send out all the quotations by post to the Esplanade.*

*Q9. Did Jeffery Low of Toplist agree to support you by putting in a higher quotation price in the Esplanade project?*

*A: Yes, he agreed to support me. I have informed him about it verbally over the phone but he may have forgotten about it."*

91. When Arisco was awarded the project, Anthony Tong subcontracted some of the electrical works to Toplist.<sup>73</sup>

92. Interview of AVL's personnel<sup>74</sup> - Victor Lee said that The Esplanade invited AVL to submit quotation for the servicing of high tension and low tension switchgear and switchboard as he has done jobs for them previously. He had also gone down for a site visit before submitting his quotation to The Esplanade.<sup>75</sup>

93. Victor Lee said that Anthony Tong was the one who prepared the quotation and he only signed on the quotation. He was aware that AVL's quotation was prepared to support Anthony's company's bid for the servicing works at The Esplanade. He understood that AVL's quotation price would be

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<sup>72</sup> See Answer to Question 6 to 9 of Anthony Tong's Notes of Information/Explanation provided on 3 Sep 2009.

<sup>73</sup> See Answer to Question 20 of Anthony Tong's Notes of Information/Explanation provided on 3 Sep 2009.

<sup>74</sup> See Victor Lee's Notes of Information/Explanation Provided on 7 May 2009 and 7 Sep 2009.

<sup>75</sup> See Answer to Question 1 of Victor Lee's Notes of Information/Explanation provided on 7 Sep 2009.

- higher than Arisco's price so that Arisco would have a better chance of winning the project.<sup>76</sup> Victor Lee also revealed that Anthony Tong had on occasions requested AVL to put in supporting bids. The quotations were prepared by Anthony Tong and Victor Lee would just sign on them. Victor Lee was aware that the purpose of these quotations was to show that Arisco's quotes were more competitive to help Arisco secure projects.<sup>77</sup>
94. Interview of Toplist's personnel<sup>78</sup> - According to Jeffrey Low, Anthony Tong was his close friend whom he knew since 1994 and one of his sub-contractors<sup>79</sup>. Jeffrey Low said that he was aware that Anthony Tong had used Toplist's letterhead to create quotations to support Arisco's bid so that Arisco had a higher chance of winning the project that it was interested in. Jeffrey Low had allowed Anthony Tong to use Toplist's letterhead to create quotations to support Arisco's bid because Anthony Tong had been his friend for at least 15 years and he thought that this would not implicate his company. There were also times when Anthony Tong subcontracted part of his contracts to Toplist when he could not handle them. For the project at The Esplanade, Jeffrey Low was aware that Anthony Tong had used Toplist's letterhead to create a quotation on Toplist's behalf and submitted the quotation to support Arisco's bid.<sup>80</sup> Anthony Tong was able to do this as Jeffrey Low had previously left hardcopies of Toplist's letterhead with Anthony Tong.<sup>81</sup>
95. Jeffrey Low said that he did not go down for any site visit at The Esplanade. He added that as Anthony Tong was unable to supervise the entire project at The Esplanade, Anthony Tong had asked him to assist in supervising and managing the project. Jeffrey Low said that there was no need for Anthony Tong to check with him on the subcontract pricing before Anthony Tong submitted the quotation to The Esplanade as Anthony Tong was experienced enough to know the reasonable amount to pay Toplist. As Anthony Tong had worked with Toplist on a few projects before, they had a common understanding on the amount to pay Toplist for any subcontract work and it was usually at a profit margin of between 10% to 20%.<sup>82</sup>

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<sup>76</sup> See Answer to Question 2 of Victor Lee's Notes of Information/Explanation provided on 7 Sep 2009.

<sup>77</sup> See Answers to Questions 27 and 45 of Victor Lee's Notes of Information/Explanation provided on 7 May 2009.

<sup>78</sup> See Jeffrey Low's Notes of Information/Explanation Provided on 6 May 2009 and 23 Sep 2009.

<sup>79</sup> See Answers to Questions 44 and 52 of Jeffrey Low's Notes of Information/Explanation Provided on 6 May 2009.

<sup>80</sup> See Answer to Question 7 to 9 of Jeffrey Low's Notes of Information/Explanation Provided on 23 Sep 2009.

<sup>81</sup> See Answer to Question 1 of Jeffrey Low's Notes of Information/Explanation Provided on 23 Sep 2009.

<sup>82</sup> See Answer to Question 4 to 5 of Jeffrey Low's Notes of Information/Explanation Provided on 23 Sep 2009.

96. When Arisco was awarded the project, Anthony Tong subcontracted the testing part of the project to Toplist. Jeffrey Low said that Anthony Tong had offered him a price for the subcontract work and he accepted it.<sup>83</sup>

### **CCS' analysis of the evidence**

#### Arisco and AVL

97. Anthony Tong admitted that he had requested for a cover bid from Victor Lee for the servicing of high tension and low tension switchgear and switchboard at The Esplanade. He said that Victor Lee had agreed to provide a cover bid by signing on the quotation which he had prepared.
98. The information provided by Victor Lee corroborated what Anthony Tong said. Victor Lee admitted to receiving Anthony Tong's request for a cover bid and said that he responded positively to Anthony Tong by signing on the quotation that was prepared by Anthony Tong. CCS considers that AVL's quote of S\$164,750 for the servicing of high tension and low tension switchgear and switchboard, which was higher than Arisco's quote of S\$147,300 for the same, is consistent with an agreement between Arisco and AVL for the latter to provide a cover bid and collude in fixing prices.
99. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Arisco and AVL, who were competitors, shows that the conduct of Arisco and AVL was not unilateral and that any quotes submitted were subject to collusion. The conduct of Arisco and AVL infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Anthony Tong's conduct in seeking a cover bid and Victor Lee's conduct in agreeing to provide a cover bid that Arisco and AVL did not determine or intend to determine their quote prices independently. The conduct of Arisco and AVL in co-ordinating the prices for the purpose of submission to The Esplanade, had as its object the prevention, restriction or distortion of competition.

#### Arisco and Toplist

100. Anthony Tong admitted that he had requested for a cover bid from Jeffrey Low for the servicing of high tension and low tension switchgear and

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<sup>83</sup> See Answer to Question 13 to 15 of Jeffrey Low's Notes of Information/Explanation Provided on 23 Sep 2009.

switchboard at The Esplanade. He said that Jeffrey Low had agreed to provide a cover bid.

101. Jeffrey Low admitted that he had allowed Anthony Tong to use Toplist's letterhead to create Toplist's quotation to support Arisco's quote so that Arisco had a higher chance of winning any project which Arisco was interested in. Jeffrey Low was aware that Anthony Tong had used Toplist's letterhead to prepare and submit a quotation on Toplist's behalf to The Esplanade. CCS notes that Toplist had benefited from the agreement as Arisco had subcontracted part of the job to Toplist after it was awarded the job at The Esplanade.
102. CCS considers that Toplist's quote of S\$181,900 for the servicing of high tension and low tension switchgear and switchboard, which was higher than Arisco's quote of S\$147,300 for the same, is consistent with an agreement between Arisco and Toplist for the latter to provide a cover bid and collude in fixing prices.
103. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Arisco and Toplist, who were competitors, shows that the conduct of Arisco and Toplist was not unilateral and that any quotes submitted were subject to collusion. The conduct of Arisco and Toplist infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Anthony Tong's conduct in seeking a cover bid and Jeffrey Low's conduct in agreeing to provide a cover bid that Arisco and Toplist did not determine or intend to determine their quote prices independently. The conduct of Arisco and Toplist in co-ordinating the prices for the purpose of submission to The Esplanade, had as its object the prevention, restriction or distortion of competition.

### **CCS' conclusions on the infringement**

104. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 84 to 103 above, establishes that an agreement and/or concerted practice was in place between -
  - a) Arisco and AVL; and
  - b) Arisco and Toplist;which had the object of fixing the prices in relation to the quotes submitted for the servicing of high tension and low tension switchgear and switchboard at the Esplanade, in breach of the section 34 prohibition.

## ii) Azalea Park

### The facts and the evidence

105. Azalea Park (Management Corporation Strata Title Plan No. 2131), at Blk 2 Flora Road, #01-01, Azalea Park, Singapore 509725 (“Azalea Park”) engaged Aldale on 11 March 2009 to conduct an inspection and submit a survey report with recommendations on remedial proposals for any shortcoming found during the inspection. Aldale submitted the survey report on 19 March 2009 and recommended improvement works for the lightning protection system.
106. On 20 March 2009, Aldale submitted the scope of work for the improvement of the lightning protection system at Azalea Park. Thereafter, Azalea Park received quotations from MME, AVL and Ronnie Lim Electrical.
107. The quotations received by Azalea Park<sup>84</sup> in relation to the improvement works are:

Name of electrical contractor submitting quote	Total Quote Price	Date of Quote
Ronnie Lim Electrical	S\$16,445.00	20 March 2009
AVL	S\$18,021.00	24 March 2009
MME	S\$19,620.00	25 March 2009

108. The approval for improvement works was given during the Annual General Meeting of Azalea Park on 21 November 2009. But a decision has yet to be made for the awarding of the contract to any electrical contractor.<sup>85</sup>
109. During investigations, quotations identical to those received by Azalea Park as stated in paragraph 107 were produced to CCS by Anthony Tong during CCS’ inspection on Aldale’s premises under section 64 of the Act.<sup>86</sup>

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<sup>84</sup> See Quotations provided by Azalea Park, in their letter to CCS dated 6 March 2009 (*sic*) pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

<sup>85</sup> See Information provided by Azalea Park, in their email to CCS dated 28 December 2009, upon clarification in pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

<sup>86</sup> See documents marked AT-007, AT-093 and AT-094 obtained pursuant to an inspection under section 64 of the Act on 6 May 2009 at Aldale’s premises.

110. Interview of Aldale's personnel<sup>87</sup> – According to Anthony Tong, he would co-ordinate the quotations to be put in by Aldale, AVL, MME Services and Ronnie Lim Electrical. If Aldale was quoting, as it usually did for small projects which are less than \$10,000, Aldale's quote would be the lowest. If Aldale was not quoting, the quote of AVL, MME Services or Ronnie Lim Electrical would be the lowest, depending on who was interested in the project.<sup>88</sup> He would communicate with them on the quotations put in via phone calls and faxes and they were all agreeable to the arrangement.<sup>89</sup> While he did not get any reward for helping to coordinate the quotation prices when Aldale was not quoting, they would assist by putting in higher quotes when Aldale was quoting.<sup>90</sup>
111. Anthony Tong said that Aldale was engaged in February 2009 to check and report on the basic lightning protection system for Azalea Park for a fee of \$2,000. After completing the checks, Aldale submitted a report to Azalea Park recommending that improvement works be carried out. Anthony Tong followed up by submitting quotations for the recommended improvement works from MME, AVL and Ronnie Lim Electrical to Azalea Park.<sup>91</sup>
112. Anthony Tong said that he had an arrangement with Ronnie Lim of Ronnie Lim Electrical that he would prepare a quotation for the improvement works using Ronnie Lim Electrical's letterhead. Should Ronnie Lim Electrical be awarded the project, the work would be shared between Ronnie Lim Electrical and Aldale. Aldale would coordinate and supervise the work carried out by Ronnie Lim Electrical's workers and Anthony Tong will get a consultation fee of about S\$1,000 to S\$1,500, amounting to approximately 8% to 10% of the project fee. For this project, Anthony Tong had used Ronnie Lim Electrical to submit a quote as Aldale had made the recommendations for the improvements in its capacity as consultant and hence it was not appropriate for Aldale to submit a quotation<sup>92</sup>.
113. Anthony Tong clarified that for this project, the other two quotations from MME and AVL were coordinated in order to make the quotation by Ronnie Lim Electrical seem more attractive in comparison. This was done by

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<sup>87</sup> See Anthony Tong's Notes of Information/Explanation Provided on 6 May, 7 May and 3 Sep 2009.

<sup>88</sup> See Answer to Question 46 of Anthony Tong's Notes of Information/Explanation Provided on 6 May 2009.

<sup>89</sup> See Answer to Question 1 of Anthony Tong's Notes of Information/Explanation Provided on 7 May 2009.

<sup>90</sup> See Answer to Question 4 of Anthony Tong's Notes of Information/Explanation Provided on 7 May 2009.

<sup>91</sup> See Answer to Question 22 and 23 of Anthony Tong's Notes of Information/Explanation Provided on 3 September 2009.

<sup>92</sup> See Answer to Question 24 to 26 of Anthony Tong's Notes of Information/Explanation Provided on 3 September 2009.

ensuring that the prices submitted by MME and AVL were higher than that of Ronnie Lim Electrical.<sup>93</sup> Anthony Tong prepared the quotations for both MME and AVL. For MME, Anthony Tong had signed the quotation on behalf of Eddie Lim of MME. For AVL, Victor Lee had gone to Aldale's office to sign the quotation. Both Victor Lee of AVL and Eddie Lim of MME were aware that Anthony Tong used their companies to quote for the project at a higher price to support Anthony Tong in winning the project and both had consented to this arrangement.<sup>94</sup>

*“Q. 29 Did Victor Lee of AVL agree to support you by putting in a higher quotation price in the Azalea Park project?”*

*A: Yes, he signed on the quotation. He always supported my quotes by agreeing to put in a higher price.*

*Q. 30 Did Eddie Lim of MME agree to support you by putting in a higher quotation price in the Azalea Park project?”*

*A: Yes. I have called him to tell him about it and he agreed to support me.”*

114. Interview of Ronnie Lim Electrical's personnel<sup>95</sup> – According to Ronnie Lim, Anthony Tong is a good friend who would assist him if he had problems.<sup>96</sup> Anthony Tong had prepared quotations for Ronnie Lim Electrical for some projects<sup>97</sup> and Anthony Tong had the letterhead of Ronnie Lim Electrical for the purpose of printing out quotations.<sup>98</sup> Anthony Tong would then assist him in the work<sup>99</sup> and he would pay Anthony Tong for the work done as well as share with him some of the profit.<sup>100</sup> According to Ronnie Lim, there was no negotiation of the profit split as Anthony Tong was a very good friend and an electrical consultant.<sup>101</sup> In some instances, Anthony Tong would sign off on the quotations<sup>102</sup> and in a particular instance, claim to be the manager of Ronnie Lim Electrical.

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<sup>93</sup> See Answer to Question 27 of Anthony Tong's Notes of Information/Explanation Provided on 3 September 2009.

<sup>94</sup> See Answer to Question 28 to 30 of Anthony Tong's Notes of Information/Explanation Provided on 3 September 2009.

<sup>95</sup> See Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>96</sup> See Answer to Question 36 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>97</sup> See Answers to Questions 60 and 61 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>98</sup> See Answer to Question 82 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>99</sup> See Answer to Question 63 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>100</sup> See Answers to Questions 132 to 133 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>101</sup> See Answer to Question 134 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>102</sup> See Answers to Questions 103,108, 123 and 126 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

- Ronnie Lim did not see any issues with this as they were working on the project together.<sup>103</sup> Ronnie Lim also confirmed that the client had sent purchase orders to Ronnie Lim Electrical addressed to Anthony Tong.<sup>104</sup> For projects where Anthony Tong used Ronnie Lim's letterhead to submit a quotation, the payment will be made by the relevant MCST to Ronnie Lim even though the work has been carried out by Anthony Tong.<sup>105</sup>
115. Ronnie Lim confirmed his knowledge of the project for Azalea Park and said that Anthony Tong had told him that he would be preparing a quotation on behalf of Ronnie Lim Electrical. Ronnie Lim was aware that if he was awarded the project, it would be a co-operation between Anthony Tong and him<sup>106</sup>.
116. Interview of AVL's personnel<sup>107</sup> – Victor Lee said that Anthony Tong had on occasions requested AVL to put in supporting bids. The quotations were prepared by Anthony Tong and Victor Lee would just sign on them. Victor Lee was aware that the purpose of these quotations was to show that Arisco's quotes were more competitive to help Arisco secure projects.<sup>108</sup> When questioned specifically on the Azalea Park project, Victor Lee confirmed that Anthony Tong had prepared the quotation for AVL and asked him to sign on it. Victor Lee was aware that his AVL quotation would be higher in value to support Anthony Tong in having a better chance of being selected for the project.<sup>109</sup>
117. Interview of MME's personnel<sup>110</sup> – Eddie Lim got to know Anthony Tong when he was working as an estate manager in the 1990s and Anthony Tong was his supplier of licensed electrical workers<sup>111</sup>. After Eddie Lim set up MME in June 2007, Anthony Tong became his sub-contractor and they met up more frequently<sup>112</sup>. Eddie Lim said that Anthony Tong would use

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<sup>103</sup> See Answer to Question 138 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>104</sup> See Answer to Question 140 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>105</sup> See Answer to Question 157 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>106</sup> See Answer to Question 176 and 177 of Ronnie Lim's Notes of Information/Explanation Provided on 6 May 2009.

<sup>107</sup> See Victor Lee's Notes of Information/Explanation Provided on 7 May 2009 and 7 September 2009.

<sup>108</sup> See Answers to Questions 27 and 45 of Victor Lee's Notes of Information/Explanation provided on 7 May 2009.

<sup>109</sup> See Answer to Question 8 of Victor Lee's Notes of Information/Explanation Provided on 7 September 2009.

<sup>110</sup> See Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

<sup>111</sup> See Answer to Question 23 of Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

<sup>112</sup> See Answers to Questions 3 and 24 of Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

MME's letterhead to prepare quotations to submit to Anthony Tong's clients as supporting bids in order for Anthony Tong to get the project. As Anthony Tong's clients require a minimum of three quotations, Anthony Tong would prepare these quotations and would either sign them on his behalf or get Eddie Lim to sign on them. There were also quotations which Anthony Tong would put in on his behalf to secure electrical projects for MME. These projects would then be performed by Anthony Tong and he would receive about 10% of the project cost.<sup>113</sup>

118. When questioned specifically on the Azalea Park project, Eddie Lim said that he could not recall if Anthony Tong has mentioned the project to him but he was certain that MME's quotation was a supporting bid.<sup>114</sup>

### **CCS' analysis of the evidence**

#### Ronnie Lim Electrical and AVL

119. It is clear from Ronnie Lim's statement that he had an arrangement with Anthony Tong under which Anthony Tong was authorised to submit quotations on behalf of Ronnie Lim Electrical. It is also clear from Anthony Tong's statement that Ronnie Lim was agreeable to the arrangement under which Anthony Tong would coordinate the quotation prices even when Aldale was not putting in a quote. In this particular instance, Ronnie Lim had given consent to Anthony Tong to act on behalf of Ronnie Lim Electrical in submitting a quotation for the Azalea Park project. Anthony Tong also admitted that he had solicited the agreement of Victor Lee for AVL to put in a cover bid so that Ronnie Lim Electrical would win the bid. In the circumstances, it is clear that Anthony Tong, in co-ordinating with Victor Lee the quotation prices to be put in by Ronnie Lim Electrical and AVL, was merely carrying out an arrangement of which Ronnie Lim was aware and agreeable to.
120. The information provided by Victor Lee corroborated what Anthony Tong said. Victor Lee had signed on the quotation knowing that it was a cover bid to increase the chances of Anthony Tong winning the project.
121. CCS considers that AVL's quote of S\$18,021 to improve the lightning protection system, which was higher than Ronnie Lim Electrical's quote of S\$16,445, is consistent with an agreement between Ronnie Lim Electrical and AVL for the latter to provide a cover bid and collude in fixing prices.

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<sup>113</sup> See Answer to Questions 25 of Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

<sup>114</sup> See Answer to Questions 45 and 46 of Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

122. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Ronnie Lim Electrical and AVL, who were competitors, shows that the conduct of Ronnie Lim Electrical and AVL was not unilateral and that any quotes submitted were subject to collusion. The conduct of Ronnie Lim Electrical and AVL infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Anthony Tong's conduct in seeking a cover bid and Victor Lee's conduct in agreeing to provide a cover bid that Ronnie Lim Electrical and AVL did not determine or intend to determine their quote prices independently. The conduct of Ronnie Lim Electrical and AVL in co-ordinating the prices for the purpose of submission to Azalea Park, had as its object the prevention, restriction or distortion of competition.
123. As set out earlier in paragraphs 60 to 62, the fact that the customer decided not to proceed with the project and no contractor was appointed is irrelevant to the question of whether a concerted practice existed in relation to the tendering process: *Richard W Price (Roofing Contractors) Limited v OFT*<sup>115</sup>. This principle was also adopted by CCS in the Pest Control Case<sup>116</sup>, where the fact that the tender was voided did not affect CCS' decision on the existence of an anti-competitive agreement or concerted practice between the undertakings.
124. As such, the fact that the Azalea Park project was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Ronnie Lim Electrical and AVL to fix prices and for the latter to provide a cover bid for the Azalea Park project.

#### Ronnie Lim Electrical and MME

125. As mentioned earlier in paragraph 119, Anthony Tong acted on behalf of Ronnie Lim Electrical in submitting a quotation for the Azalea Park project and in co-ordinating the quotation prices for submission by AVL and MME. If the quotation put in by Ronnie Lim Electrical was successful, Aldale and Ronnie Lim Electrical would jointly perform the work. Anthony Tong admitted that he had, with Eddie Lim's agreement, prepared and submitted a higher-priced quotation by MME for the Azalea Park project so that Ronnie Lim Electrical would win the bid.

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<sup>115</sup> [2005] CAT 5 see paragraph 53.

<sup>116</sup> Pest Control Case, paragraph 119

126. The information provided by Eddie Lim corroborated what Anthony Tong said. Eddie Lim of MME was fully aware that there was a system of putting in cover bids and confirmed that MME's quotation to Azalea Park was one such instance.
127. CCS considers that MME's quote of S\$19,620 to improve the lightning protection system, which was higher than Ronnie Lim Electrical's quote of S\$16,445 to improve the lightning protection system, is consistent with an agreement between Ronnie Lim Electrical and MME for the latter to provide a cover bid and collude in fixing prices.
128. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Ronnie Lim Electrical and MME, who were competitors, shows that the conduct of Ronnie Lim Electrical and MME was not unilateral and that any quotes submitted were subject to collusion. The conduct of Ronnie Lim Electrical and MME infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Anthony Tong's conduct in seeking a cover bid and Eddie Lim's conduct in agreeing to provide a cover bid that Ronnie Lim Electrical and MME did not determine or intend to determine their quote prices independently. The conduct of Ronnie Lim Electrical and MME in co-ordinating the prices for the purpose of submission to Azalea Park, had as its object the prevention, restriction or distortion of competition.
129. As set out earlier, the fact that the Azalea Park project was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Ronnie Lim Electrical and MME to fix prices and for the latter to provide a cover bid for the Azalea Park project.

### **CCS' conclusions on the infringement**

130. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 105 to 129 above, establishes that an agreement and/or concerted practice was in place between –
  - a) Ronnie Lim Electrical and AVL; and
  - b) Ronnie Lim Electrical and MME;which had the object of fixing the prices in relation to the quotations submitted for the project for the improvement of the lightning protection system at Azalea Park, in breach of the section 34 prohibition.

### (iii) Pinewood Gardens

#### The facts and the evidence

131. Arisco was the appointed contractor in charge of the electrical installation at Pinewood Gardens (Management Corporation Strata Title Plan No. 1734) at 25 Balmoral Park, #01-01, Pinewood Gardens, Singapore 259854 (“Pinewood Gardens”) for the period from January 2007 to June 2009. After conducting electrical servicing at Pinewood Gardens on 5 September 2007, Arisco recommended to Pinewood Gardens to replace the existing fuses at the tapped-off units with circuit breakers and submitted its quotation for the proposed replacement works. In addition to the proposal submitted by Arisco, Pinewood Gardens invited two other contractors, AVL and MME to quote for the project. On 16 October 2007, both AVL and MME attended the site-visit at Pinewood Gardens.<sup>117</sup>
132. The quotations received by Pinewood Gardens<sup>118</sup> in relation to the replacement of electrical protection relays and tapped-off units fuses to breakers are:

Name of electrical worker submitting quote	Total Quote Price	Date of Quote
Arisco	S\$15,943.00	20 September 2007
AVL	S\$17,040.00	19 October 2007
MME	S\$18,740.00	22 October 2007

133. According to Pinewood Gardens, the project was eventually awarded to Arisco at a lower price of S\$14,900.<sup>119</sup>
134. Quotations identical to those received by Pinewood Gardens as stated in paragraph 132 were discovered by Alan Chua of Arisco at Arisco’s office and handed over to CCS when he provided CCS with information of the bid-rigging arrangements.

<sup>117</sup> See Information provided by Pinewood Gardens, in their letter to CCS dated 22 July 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

<sup>118</sup> See Quotations provided by Pinewood Gardens, in their letter to CCS dated 22 July 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

<sup>119</sup> See Information provided by Pinewood Gardens, in their letter to CCS dated 22 July 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

135. Interview of Arisco's former personnel<sup>120</sup> – Anthony Tong said that besides submitting its quotation for the Pinewood Gardens project, Arisco had also recommended AVL and MME to quote for the Pinewood Gardens project. Anthony Tong said that he had prepared the quotations for AVL and MME at a higher price so that Arisco would stand a better chance of winning the Pinewood Gardens project.<sup>121</sup>
136. Anthony Tong said that he had called Victor Lee of AVL to ask him to sign on the quotation that he had prepared for AVL and sent it to Pinewood Gardens. The price quoted by AVL was higher than Arisco's quoted price to support Arisco's quotation. Anthony Tong confirmed that Victor Lee had agreed to support him by putting in a higher quotation price in the Pinewood Gardens project.<sup>122</sup> Anthony Tong described a similar arrangement with Eddie Lim of MME. He had prepared the quotation for MME at a higher price than Arisco, after which he had signed the quotation on behalf of Eddie Lim and sent it to Pinewood Gardens. Anthony Tong said that he had called Eddie Lim and Eddie Lim had agreed to support him by putting in a higher quotation price in the Pinewood Gardens Project.<sup>123</sup>
137. Interview of AVL's personnel<sup>124</sup> - Victor Lee said that Anthony Tong had on occasions requested AVL to put in supporting bids. The quotations were prepared by Anthony Tong and Victor Lee would just sign on them. Victor Lee was aware that the purpose of these quotations was to show that Arisco's quotes were more competitive to help Arisco secure projects.<sup>125</sup>
138. When questioned specifically on the Pinewood Gardens project, Victor Lee confirmed that Anthony Tong had prepared the quotation for AVL and asked him to sign on it. Victor Lee was aware that his AVL quotation price would be higher than Arisco's price so that Arisco has a better chance of being selected for the project.<sup>126</sup>
139. Interview of MME's personnel<sup>127</sup> – Eddie Lim said that Anthony Tong would use MME's letterhead to prepare quotations to submit to Anthony

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<sup>120</sup> See Anthony Tong's Notes of Information/Explanation Provided on 3 Sep 2009.

<sup>121</sup> See Answers to Questions 43 to 46 of Anthony Tong's Notes of Information/Explanation Provided on 3 September 2009.

<sup>122</sup> See Answers to Questions 47 and 48 of Anthony Tong's Notes of Information/Explanation Provided on 3 September 2009.

<sup>123</sup> See Answer to Question 49 and 50 of Anthony Tong's Notes of Information/Explanation Provided on 3 September 2009.

<sup>124</sup> See Victor Lee's Notes of Information/Explanation Provided on 7 May 2009 and 7 September 2009.

<sup>125</sup> See Answer to Question 27 of Victor Lee's Notes of Information/Explanation provided on 7 May 2009.

<sup>126</sup> See Answer to Question 23 of Victor Lee's Notes of Information/Explanation Provided on 7 September 2009.

<sup>127</sup> See Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

Tong's clients as supporting bids in order for Anthony Tong to get the project. Anthony Tong would prepare these quotations and would either sign them on his behalf or get Eddie Lim to sign on them.<sup>128</sup>

140. Eddie Lim said that he could not recall if Anthony Tong has mentioned the Pinewood Gardens project to him but he was certain that MME's quotation must be a supporting bid.<sup>129</sup>

### **CCS' analysis of the evidence**

#### Arisco and AVL

141. Anthony Tong admitted that he had requested for a cover bid from Victor Lee for the replacement of electrical protection relays and tapped-off units fuses to breakers at Pinewood Gardens. He said that Victor Lee had agreed to provide a cover bid by signing on the quotation which he had prepared.
142. The information provided by Victor Lee corroborated what Anthony Tong said. Victor Lee admitted to receiving Anthony Tong's request for a cover bid and said that he responded positively to Anthony Tong by signing on the quotation that was prepared by Anthony Tong. Pinewood Gardens had also confirmed that Victor Lee has attended the site visit prior to the submission of AVL's quotation.
143. CCS considers that AVL's quote of S\$17,040 for the replacement of electrical protection relays and tapped-off units fuses to breakers, which was higher than Arisco's quote of S\$15,943, is consistent with an agreement between Arisco and AVL for the latter to provide a cover bid and collude in fixing prices.
144. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Arisco and AVL, who were competitors, shows that the conduct of Arisco and AVL was not unilateral and that any quotes submitted were subject to collusion. The conduct of Arisco and AVL infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Anthony Tong's conduct in seeking a cover bid and Victor Lee's conduct in agreeing to provide a cover bid that Arisco and AVL did not determine or intend to determine their quote prices independently. The

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<sup>128</sup> See Answer to Questions 25 of Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

<sup>129</sup> See Answer to Question 51 and 52 of Eddie Lim's Notes of Information/Explanation Provided on 28 May 2009.

conduct of Arisco and AVL in co-ordinating the prices for the purpose of submission to Pinewood Gardens, had as its object the prevention, restriction or distortion of competition.

#### Arisco and MME

145. Anthony Tong admitted that he had requested for a cover bid from Eddie Lim for the replacement of electrical protection relays and tapped-off units fuses to breakers at Pinewood Gardens. He said that Eddie Lim had agreed to provide a cover bid.
146. The information provided by Eddie Lim corroborated what Anthony Tong said. Eddie Lim of MME was fully aware that there was a system of putting in cover bids and confirmed that MME's quotation for the Pinewood Gardens project was one such cover bid. Pinewood Gardens had also confirmed that Eddie Lim had attended the site visit prior to the submission of MME's quotation.
147. CCS considers that MME's quote of S\$18,740 for the replacement of electrical protection relays and tapped-off units fuses to breakers, which was higher than Arisco's quote of S\$15,943, is consistent with an agreement between Arisco and MME for the latter to provide a cover bid and collude in fixing prices.
148. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Arisco and MME, who were competitors, shows that the conduct of Arisco and MME was not unilateral and that any quotes submitted were subject to collusion. The conduct of Arisco and MME infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Anthony Tong's conduct in seeking a cover bid and Eddie Lim's conduct in agreeing to provide a cover bid that Arisco and MME did not determine or intend to determine their quote prices independently. The conduct of Arisco and MME in co-ordinating the prices for the purpose of submission to Pinewood Gardens, had as its object the prevention, restriction or distortion of competition.

#### **CCS' conclusions on the infringement**

149. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 131 to 148 above, establishes that an agreement and/or concerted practice was in place between –

- a) Arisco and AVL; and
  - b) Arisco and MME;
- which had the object of fixing the prices in relation to the quotations submitted for the project for the replacement of electrical protection relays and tapped-off units fuses to breakers at Pinewood Gardens, in breach of the section 34 prohibition.

**iv) The Makena**

**The facts and the evidence**

150. Sometime in mid April 2009, The Makena (Management Corporation Strata Title Plan No. 2428), at 121 Meyer Road, #01-08, Singapore 437932 (“The Makena”) invited Aldale, AVL and one Katon Electrical Services (“Katon”) to submit quotes for the replacement of tennis court lightings.<sup>130</sup>
151. The quotations received by The Makena<sup>131</sup> in relation to the replacement of tennis court lightings are as follows:

Name of electrical contractor submitting quote	Total Quote price	Date on Quote
Aldale	S\$7,920 revised to S\$7,524 (less 5% discount)	20 April 2009
AVL	S\$ 9,416	18 April 2009
Katon	S\$ 8,660	16 April 2009

152. The quotations received were submitted to their Council for deliberation. However, the contract was not awarded to any party as the Council felt that the current lightings could still be used.<sup>132</sup>
153. During investigations, a quotation of AVL identical to the one received by The Makena, as stated in paragraph 151 was produced to CCS by Anthony Tong during CCS’ inspection on Aldale’s premises under section 64 of the Act. Aldale’s quotation for the same specifications at a lower price of S\$ 7,524 was also produced to CCS during the inspection.<sup>133</sup>

<sup>130</sup> See Information provided by The Makena in their letter to CCS dated 13 July 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

<sup>131</sup> See Quotations provided by The Makena in their letter to CCS dated 13 July 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

<sup>132</sup> See Information provided by The Makena in their letter to CCS dated 13 July 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 2 July 2009.

<sup>133</sup> See documents marked AT-005 and AT-023 obtained pursuant to an inspection under section 64 of the Act on 6 May 2009 at Aldale’s premises.

154. Interview of Aldale's personnel<sup>134</sup> - Anthony Tong said that The Makena had contacted him to go onsite to view the tennis court and draft the specifications for the replacement of the lightings. Aldale was also invited to put in a quotation by the Makena.<sup>135</sup> The Makena had contacted him as he had done some work for The Makena while he was working for Arisco. Anthony Tong found out that The Makena had also invited Victor Lee of AVL to quote for the replacement of tennis court lightings<sup>136</sup>.
155. Anthony Tong called Victor Lee and asked AVL to quote higher than the price that Aldale would be quoting for the replacement of tennis court lightings. Anthony Tong said that Victor Lee agreed to quote higher to help Aldale win the contract for the replacement of the tennis court lightings. Anthony Tong received a copy of AVL's quotation after Victor Lee submitted the quotation to The Makena.<sup>137</sup>
- "Q37. Did Victor Lee of AVL agree to support you by putting in a higher quotation price in the Makena project?"*
- A: Yes. He agreed to help me win the project by putting in a higher quotation price."*
156. When questioned about the involvement of Katon, Anthony Tong said that Katon was not involved in his coordination of bid prices and said that he did not seek the assistance of Katon to support Aldale by putting in a higher quotation price. He also said that he was not aware that The Makena also approached Katon for a quote<sup>138</sup>.
157. Interview of AVL's personnel<sup>139</sup> - Victor Lee said that AVL was a registered contractor of The Makena's managing agent, Property Facilities Services and was invited by them to submit a quotation for the replacement of tennis court lightings<sup>140</sup>.
158. Victor Lee said that he regularly discussed his potential projects with Anthony Tong and told him about the invitation by The Makena. Anthony

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<sup>134</sup> See Anthony Tong's Notes of Information/Explanation Provided on 3 Sep 2009.

<sup>135</sup> See Information and Documents provided by The Makena in their letter to CCS dated 13 July 2009 pursuant to CCS' section 63 notice to request for information and documents dated 2 July 2009.

<sup>136</sup> See Answer to Question 33 and 35 of Anthony Tong's Notes of Information/Explanation Provided on 3 Sep 2009.

<sup>137</sup> See Answers to Questions 36 and 37 of Anthony Tong's Notes of Information/Explanation Provided on 3 Sep 2009.

<sup>138</sup> See Answer to Question 40 and 41 of Anthony Tong's Notes of Information/Explanation Provided on 3 Sep 2009.

<sup>139</sup> See Victor Lee's Notes of Information/Explanation Provided on 7 Sep 2009.

<sup>140</sup> See Answer to Question 17 of Victor Lee's Notes of Information/Explanation Provided on 7 Sep 2009.

Tong requested him to submit a higher quotation to support Aldale as Anthony Tong was interested in doing the project for the replacement of tennis court lightings. As Victor Lee did not have the time to do this project, he agreed to put in a supporting quote. Anthony Tong informed him on the price that Aldale would be quoting and Victor Lee prepared AVL's quotation at a higher price. Victor Lee submitted the quotation directly to The Makena and gave a copy of AVL's quotation to Anthony Tong.<sup>141</sup>

159. Victor Lee said that he was not aware if Katon had supported Aldale by putting in a higher quotation price in The Makena Project.<sup>142</sup>

### **CCS' analysis of the evidence**

#### Aldale and AVL

160. Anthony Tong admitted that he had requested for a cover bid from Victor Lee for the replacement of tennis court lightings at The Makena. He said that Victor Lee had agreed to provide a cover bid by putting in a quotation price that is higher than Aldale.
161. The information provided by Victor Lee corroborated what Anthony Tong said. Victor Lee admitted to receiving Anthony Tong's request for a cover bid and said that he responded positively to Anthony Tong by submitting a quotation at a higher price and provided a copy of his quotation to Anthony Tong.
162. CCS considers that AVL's quote of S\$9,416 for the replacement of tennis court lightings, which was higher than Aldale's quote of S\$7,920 for the replacement of tennis court lightings, is consistent with an agreement between Aldale and AVL for the latter to provide a cover bid and collude in fixing prices.
163. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Aldale and AVL, who were competitors, shows that the conduct of Aldale and AVL was not unilateral and that any quotes submitted were subject to collusion. The conduct of Aldale and AVL infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Anthony Tong's conduct in seeking a cover bid and Victor Lee's

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<sup>141</sup> See Answer to Question 18 of Victor Lee's Notes of Information/Explanation Provided on 7 Sep 2009.

<sup>142</sup> See Answer to Question 21 of Victor Lee's Notes of Information/Explanation Provided on 7 Sep 2009.

conduct in agreeing to provide a cover bid that Aldale and AVL did not determine or intend to determine their quote prices independently. The conduct of Aldale and AVL in co-ordinating the prices for the purpose of submission to The Makena, had as its object the prevention, restriction or distortion of competition.

164. As set out earlier, the fact that The Makena project was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Aldale and AVL to fix prices and for the latter to provide a cover bid for The Makena project.

**CCS' conclusions on the infringement**

165. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 150 to 164 above, establishes that an agreement and/or concerted practice was in place between Aldale and AVL which had the object of fixing the prices in relation to the quotes submitted for the replacement of tennis court lightings at The Makena, in breach of the section 34 prohibition.

**v) Gloucester Mansions**

**The facts and the evidence**

166. Sometime in June 2007, Gloucester Mansions (Management Corporation Strata Title Plan No. 2458), at 10 Newton Road, #01-01, Singapore 307947 ("Gloucester Mansions"), awarded the servicing of its switchboard and electrical risers to Toplist. During the servicing, Toplist found that some of the parts need to be replaced and informed Gloucester Mansions. Thereafter, Gloucester Mansions, invited Toplist and Arisco to submit quotes for the electrical replacement work.<sup>143</sup>
167. The quotations received by Gloucester Mansions<sup>144</sup>, in relation to the electrical replacement work are as follows:

Name of electrical contractor submitting quote	Total Quote price	Date on Quote
Arisco	S\$5,778 (inclusive of GST)	17 September 2007
Toplist	S\$ 4,900 (no GST)	2 July 2007

<sup>143</sup> See Information and Quotation provided by Gloucester Mansions in their letter to CCS dated 20 July 2009 and email dated 5 February 2010 pursuant to CCS' section 63 notice to request for information and documents dated 2 July 2009.

<sup>144</sup> Ibid.

168. Gloucester Mansions submitted the quotations to their council for deliberation. The contract was subsequently awarded to Toplist at a lower negotiated price of \$4,300.<sup>145</sup>
169. A quotation of Toplist bearing the same price as that received by Gloucester Mansions as stated in paragraph 167 was discovered by Alan Chua at Arisco's office and he handed the quotations over to CCS when he provided information of the bid-rigging arrangements. On the Toplist quotation provided, there was a handwritten message: "*attn: anthony Tong*" as well as handwritten prices, which are set out below (denoted in bold italics):

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<u>Item</u>	<u>Description</u>	<u>Amount(S\$)</u>	
1.	To supply and replace 1 set ABB SPAJ 140C IDMTL overcurrent/earth fault protection relay at emergency supply switchboard, including testing after work completion.	3,400.00	<b><i>\$3800/-</i></b>
2.	To supply and replace 2 sets 4 modules OBO V25C lightning surge arrester at main and emergency supply switchboard @ S\$750.00 per set	1,500.00	<b><i>\$1600/-</i></b>
	<b><i>@800</i></b>	Total:	S\$4900.00

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170. Interview of Arisco's former personnel<sup>146</sup> - Anthony Tong said that Jeffrey Low of Toplist faxed over Toplist's quotation to him and asked Anthony Tong to help Toplist by providing a higher quote to support Toplist. Anthony Tong wrote on Toplist's quotation the higher amount that he would be quoting to support Toplist. Anthony Tong then asked his staff to prepare an AAT Electrical Engineering ("AAT") quotation and send it to Gloucester Mansions.<sup>147</sup> Anthony Tong said that when he was the managing director of Arisco, he asked Adam Chin, manager of Arisco to register a sole proprietorship, AAT, which would be used by Arisco to

<sup>145</sup> Ibid.

<sup>146</sup> See Anthony Tong's Notes of Information/Explanation provided on 6 May 2009, 14 May 2009 and 5 February 2010.

<sup>147</sup> See Answer to Question 30 and document marked AT-008 of Anthony Tong's Notes of Information/Explanation Provided on 14 May 2009.

- quote for smaller value projects.<sup>148</sup> Anthony Tong was the decision maker for the quotation price and specifications submitted by AAT.<sup>149</sup>
171. Anthony Tong confirmed that he was in charge of deciding on the prices to quote for Arisco as well.<sup>150</sup> Although Anthony Tong said that the Arisco quotation received by Gloucester Mansions was not prepared and signed by him, he agreed that the prices submitted in the Arisco quotation were identical to the higher prices that he had written on the Toplist quotation that he would be using to support Toplist.<sup>151</sup> Anthony Tong said that he had either used Arisco or AAT to support Toplist.<sup>152</sup>
172. Interview of Toplist's personnel<sup>153</sup> - Jeffery Low does not deny faxing over Toplist's quote to Anthony Tong but explained that it was to keep Anthony Tong informed of the defects and proposed work since Anthony Tong was the appointed contractor for the licensing of electrical installation for Gloucester Mansions. Jeffrey Low said that he was aware that Gloucester Mansions was likely to call Anthony Tong to provide a quote for the project. He further agreed that by faxing Toplist's quote to Anthony Tong, the latter would know his cost and he would expect Anthony Tong to quote higher in order for Toplist to be awarded the project so as not to complicate matters as the servicing contract carried with it a one-year warranty. He also confirmed that Anthony Tong informed him that Anthony Tong would put in a higher quote to support Toplist's quote.<sup>154</sup>

### **CCS' analysis of the evidence**

173. Jeffrey Low admitted that he faxed a copy of his quotation to Anthony Tong. He expected Anthony Tong to quote higher than his quotation to support Toplist. Anthony Tong admitted that he received the fax from Toplist and agreed to provide a cover bid by putting in a quotation price that is higher than Toplist's. However, he was unsure if he had used Arisco or AAT to put in the cover bid. Given that Arisco's quotation, rather than

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<sup>148</sup> See Answer to Question 1 of Anthony Tong's Notes of Information/Explanation Provided on 5 February 2010.

<sup>149</sup> See Answer to Question 2 of Anthony Tong's Notes of Information/Explanation Provided on 5 February 2010.

<sup>150</sup> See Answer to Question 39 of Anthony Tong's Notes of Information/Explanation Provided on 6 May 2009.

<sup>151</sup> See Answers to Questions 5, 7 and 8 of Anthony Tong's Notes of Information/Explanation Provided on 5 February 2010.

<sup>152</sup> See Answer to Question 9 of Anthony Tong's Notes of Information/Explanation Provided on 5 February 2010.

<sup>153</sup> See Jeffery Low's Notes of Information/Explanation Provided on 23 Sep 2009.

<sup>154</sup> See Answer to Questions 29 - 34 of Jeffery Low's Notes of Information/Explanation Provided on 23 Sep 2009.

AAT's quotation, was received by Gloucester Mansions, CCS is of the view that Anthony Tong had used Arisco to put in the cover bid.

174. Although Anthony Tong said that he did not prepare Arisco's quotation or sign on the quotation, CCS notes that the price reflected in the Arisco quotation was identical to the price that Anthony Tong wrote on the faxed Toplist quotation to support Toplist. Given the fact that Anthony Tong was the managing director of Arisco and in charge of deciding the prices to quote in Arisco, CCS is of the view that the Arisco quotation submitted to Gloucester Mansions is the cover bid which Anthony Tong agreed to put in to support Toplist.
175. CCS considers that Arisco's quote of S\$5,778 for the electrical replacement work, which was higher than Toplist's quote of S\$4,900 for the electrical replacement work, is consistent with an agreement between Toplist and Arisco for the latter to provide a cover bid and collude in fixing prices.
176. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Toplist and Arisco, who were competitors, shows that the conduct of Toplist and Arisco was not unilateral and that any quotes submitted were subject to collusion. As set out earlier in paragraphs 40 to 44, the condition of reciprocal contacts 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. Subject to proof to the contrary, 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. The conduct of Toplist and Arisco infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Jeffrey Low's conduct in faxing his quotation to Anthony Tong and Anthony Tong's conduct in submitting a cover bid that Toplist and Arisco did not determine or intend to determine their quote prices independently. The conduct of Toplist and Arisco in co-ordinating the prices for the purpose of submission to Gloucester Mansions, had as its object the prevention, restriction or distortion of competition.

### **CCS' conclusions on the infringement**

177. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 166 to 176 above, establishes that an agreement and/or concerted practice was in place between Toplist and Arisco which had the object of fixing the prices in relation to the quotes submitted for the

electrical replacement work at Gloucester Mansions, in breach of the section 34 prohibition.

## vi) Tiara

### The facts and the evidence

178. On 23 April 2008, HW Consultancy and Trading Pte Ltd, the appointed licensed electrical worker (“LEW”) of Tiara (Management Corporation Strata Title Plan No. 2167), at 1 Kim Seng Walk #B-01 Tiara, Singapore 239403 (“Tiara”) conducted a site inspection and subsequently recommended to Tiara to install a main equipotential bonding conductor between the main earth terminal in the customer’s main switchroom and the incoming main water pipe installed inside the water pump room which is located at the basement of the premises. The purpose of the main equipotential bonding conductor is intended to minimise the potential difference occurring in an electrical installation.<sup>155</sup> According to the LEW, this is a requirement under the Singapore Standard CP5: 1998.<sup>156</sup>
179. In the letter to Tiara dated 10 May 2008, the LEW of Tiara said that together with the electrical contractor, Tekyi Electrical Engineering (“Tekyi”) and Tiara’s maintenance officer, they jointly conducted a site inspection on 8 May 2008 and Tekyi would be submitting a quotation for the installation. Sometime in June 2008, Tiara also received quotations from Alpha & Omega and DAE.<sup>157</sup>
180. The quotations received by Tiara<sup>158</sup> in relation to the installation of a main equipotential bonding conductor are as follows:

Name of electrical contractor submitting quote	Total Quote price	Date on Quote
DAE	S\$2,100	19 June 2008
Alpha & Omega	S\$2,300	19 June 2008
Tekyi	S\$2,200	12 May 2008

<sup>155</sup> See Information provided by Tiara to CCS dated 25 September 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 27 August 2009.

<sup>156</sup> The Singapore Standard was prepared by the Technical Committee on the Code of Practice for Electrical Installations under the direction of the Electrical Industry Practice Committee of SPRING Singapore. The Code of Practice has been drawn up to ensure safety, especially from electric shock and fire in the use of electricity and relates principally to the design, selection, erection, inspection and testing of electrical installation. Compliance with The Singapore Standards does not exempt users from legal obligations.

<sup>157</sup> See Information provided by Tiara to CCS dated 25 September 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 27 August 2009.

<sup>158</sup> See Quotations provided by Tiara to CCS dated 25 September 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 27 August 2009.

181. According to Tiara, the contract was not awarded to any party as after discussion during their Council meeting, the abovementioned requirement under the Singapore Standard CP5:1998 was found not to be applicable to Tiara.<sup>159</sup>
182. A quotation of Tekyi<sup>160</sup> identical to the one received by Tiara, as stated in paragraph 180, was produced to CCS by Eric Lee during CCS' inspection on DAE's premises under section 64 of the Act. There was a handwritten message on the quotation of Tekyi, an extract of which is set out below:
- “Eric Lee - You can quote \$2.1k and I will support \$2.35k...”*
183. Interview of Alpha & Omega's personnel<sup>161</sup> - Lam Kien Choon said that Ngoo Mei Whei was the one who handled the running of the business at Alpha & Omega. Lam Kien Choon only took full control of the firm when Ngoo Mei Whei left in December 2008.<sup>162</sup> Lam Kien Choon revealed that Ngoo Mei Whei had informed him sometime in 2007/2008 about supporting quotes arrangement but did not provide him with full details.<sup>163</sup> When asked about the handwritten message on the quotations, Lam Kien Choon believed that Ngoo had asked Eric Lee to quote at \$2,100 and that Ngoo would help DAE to win the project by putting in a higher price of \$2,350 to support DAE's quote.<sup>164</sup>
184. Ngoo Mei Whei said that he knew Eric Lee, the proprietor of DAE Services, back in 2000 when he was working at Ngee Ann City and Eric Lee had come to certify the electrical installation at the tenants' premises. Ngoo Mei Whei said that he would usually contact Eric Lee for technical advice and to request for support quotes when his customers request for more quotations. Occasionally, he would also refer projects to Eric Lee if the scale of the project was too large for Alpha & Omega to handle. According to Ngoo Mei Whei, the support quote arrangement started at the beginning of 2008 and Eric Lee agreed to put in support quotes out of goodwill. In respect of co-ordination of prices, he would let Eric Lee know

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<sup>159</sup> See Information provided by Tiara to CCS dated 25 September 2009 pursuant to CCS' section 63 notice to request for information and documents dated 27 August 2009.

<sup>160</sup> See document marked CCS/500/001/09/EL009 obtained pursuant to an inspection under section 64 of the Act on 6 May 2009 at DAE's premises

<sup>161</sup> See Lam Kien Choon's Notes of Information/Explanation Provided on 17 August 2009 and Ngoo Mei Whei's Notes of Information/Explanation Provided on 17 August 2009.

<sup>162</sup> See Answer to Question 4 of Lam Kien Choon's Notes of Information/Explanation provided on 17 August 2009.

<sup>163</sup> See Answer to Question 47 of Lam Kien Choon's Notes of Information/Explanation provided on 17 August 2009.

<sup>164</sup> See Answer to Question 75 of Lam Kien Choon's Notes of Information/Explanation provided on 17 August 2009.

- the price which the customer had informally agreed to pay and either tell Eric Lee how much to quote or let Eric Lee decide how much to quote above his price. Ngoo Mei Whei said that he would inform Lam Kien Choon whenever he approached Eric Lee for a support quote and Lam Kien Choon was agreeable to such a support quote arrangement<sup>165</sup>.
185. Ngoo Mei Whei said that Tiara requested Alpha & Omega to put in a quotation for the installation of a main equipotential bonding conductor and he went down for a site visit at the premises. Ngoo Mei Whei quoted Tiara at about \$2,300. However Tiara requested Ngoo Mei Whei to quote lower and showed him a quotation from Tekyi at \$2,200. According to Ngoo Mei Whei, the margin was too low and Alpha & Omega could not do the project. As Tiara asked Ngoo Mei Whei to get another quote for them, he asked Eric Lee of DAE to quote and faxed him Tekyi's quotation for reference. Ngoo Mei Whei told Eric Lee that Tiara wanted a quotation lower than \$2,200 and Eric Lee proceeded to the site and quoted \$2,100. With respect to the handwritten message, Ngoo Mei Whei confirmed that he had asked Eric Lee to quote at \$2,100 and Alpha & Omega would quote at \$2,350 to support his quote. According to Ngoo Mei Whei, while Lam Kien Choon may not know the details, he was aware that Alpha & Omega would support DAE's quote for the project.<sup>166</sup>
186. Interview of DAE's personnel<sup>167</sup> - Eric Lee said that Ngoo Mei Whei called him to go down to Tiara for a site visit to look at the job scope. According to Eric Lee, Ngoo Mei Whei passed him a quotation from Tekyi and asked him to quote at \$2,100. Ngoo Mei Whei also told Eric Lee that he would support him by putting in a higher quote. Hence Eric submitted DAE's quotation directly to Tiara.<sup>168</sup>

### **CCS' analysis of the evidence**

#### **DAE and Alpha & Omega**

187. Eric Lee admitted that he had agreed to Ngoo Mei Whei's offer to provide a cover bid for the installation of a main equipotential bonding conductor at Tiara. He said that Ngoo Mei Whei had offered to provide a cover bid by submitting a quotation price that was higher than DAE's price.

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<sup>165</sup> See Answers to Questions 22 to 30 of Ngoo Mei Whei's Notes of Information/Explanation provided on 17 August 2009.

<sup>166</sup> See Answer to Question 45 to 51 of Ngoo Mei Whei's Notes of Information/Explanation provided on 17 August 2009.

<sup>167</sup> See Eric Lee's Notes of Information/Explanation Provided on 4 June 2009.

<sup>168</sup> See Answer to Question 51 and 54 of Eric Lee's Notes of Information/Explanation provided on 4 June 2009.

188. Ngoo Mei Whei admitted offering to provide a cover bid to Eric Lee and said that Eric Lee responded positively by submitting a price that was lower than Alpha & Omega's price.
189. CCS notes that the bid by Alpha & Omega received by Tiara was at \$2,300 which differed from the original plan for Alpha & Omega to put in a bid of \$2,350. This however did not detract from the fact that the bid of \$2,300 was nevertheless a cover bid to increase DAE's chances of winning the project. CCS considers that Alpha & Omega's quote of S\$2,300 for the installation of a main equipotential bonding conductor, which was higher than DAE's quote of S\$2,100 for the same at Tiara, is consistent with an agreement between DAE and Alpha & Omega for the latter to provide a cover bid and collude in fixing prices.
190. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between DAE and Alpha & Omega, who were competitors, shows that the conduct of DAE and Alpha & Omega was not unilateral and that any quotes submitted were subject to collusion. The conduct of DAE and Alpha & Omega infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Ngoo Mei Whei's conduct in offering and providing a cover bid and Eric Lee's conduct in agreeing to the same that DAE and Alpha & Omega did not determine or intend to determine their quote prices independently. The conduct of Alpha & Omega and DAE in co-ordinating the prices for the purpose of submission to Tiara, had as its object the prevention, restriction or distortion of competition.
191. As set out earlier, the fact that the Tiara project was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between DAE and Alpha & Omega to fix prices and for the latter to provide a cover bid for the Tiara project.

### **CCS' conclusions on the infringement**

192. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 178 to 191 above, establishes that an agreement and/or concerted practice was in place between DAE and Alpha & Omega which had the object of fixing the prices in relation to the quotes submitted for the installation of a main equipotential bonding conductor at Tiara, in breach of the section 34 prohibition.

## vii) Precision Magnetics

### The facts and the evidence

193. Sometime in August 2008, Precision Magnetics Singapore Pte Ltd (“Precision Magnetics”), at Block 1020 Tai Seng Avenue #07-3512, Tai Seng Industrial Estate, Singapore 534416, invited three vendors to quote for the upgrading, replacement and maintenance of air-conditioned system for clean room 2 and bonding area, which the management had placed on hold in June 2008. The three vendors invited were Lewe Engineering Pte Ltd (“Lewe”), Shelton (S) Pte Ltd (“Shelton”) and Integrated One.<sup>169</sup>
194. The quotations received by Precision Magnetics<sup>170</sup> in relation to the upgrading, replacement and maintenance of air-conditioned system for clean room 2 and bonding area are as follows:

Name of contractor submitting quote	Quote price			Date of Quote	
	Clean Room 2	Bonding Area	Total	Clean Room 2	Bonding Area
Shelton	S\$190,000	S\$65,500	S\$255,500	11 Sep 2008	11 Sep 2008
Integrated One	S\$222,680 S\$229,480 (Revised)	S\$76,950	S\$306,430	Both dated 23 Aug 2008	26 Aug 2008
Etora	S\$237,430	S\$82,340	S\$319,770	26 Aug 2008	26 Aug 2008
E-SP Integrated	S\$264,290	S\$94,695	S\$358,985	26 Aug 2008	26 Aug 2008

195. Precision Magnetics said that Lewe did not respond with a quote but instead they received uninvited quotations from Etora and E-SP Integrated. The project was subsequently called off by the management sometime in September 2008 due to the economy downturn; thus the project was not awarded to any of the contractors.<sup>171</sup>
196. During investigations, email correspondence from Goh Tong Meng to Richard Chua of Etora and Dennis of E-SP Integrated containing prepared

<sup>169</sup> See Information provided by Precision Magnetics to CCS dated 5 October 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 17 September 2009.

<sup>170</sup> See Quotations provided by Precision Magnetics to CCS dated 5 October 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 17 September 2009.

<sup>171</sup> See Information provided by Precision Magnetics to CCS dated 5 October 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 17 September 2009.

quotations for Etora and E-SP Integrated bearing identical quote prices for Clean Room 2 as those received by Precision Magnetics, as stated in paragraph 194 was produced to CCS by Goh Tong Meng during CCS' inspection on Integrated One's premises under section 64 of the Act.<sup>172</sup> Integrated One's quotation for the same specifications at a lower price of S\$ 229,480 was also produced to CCS during the inspection.<sup>173</sup>

197. Interview of Integrated One's personnel<sup>174</sup> - Goh Tong Meng said that he was invited by Precision Magnetics on 20 August 2008 to submit a quotation for the upgrading, replacement and maintenance of air-conditioned system for clean room 2 and bonding area. He prepared an initial quotation of \$222,680 for the clean room 2 but made revisions to increase it to S\$229,480 after realising that his initial quotation was incorrect during a site visit. For the bonding area, Goh Tong Meng submitted a quotation of \$76,950.<sup>175</sup>
198. Goh Tong Meng said that he called Richard Chua of Etora and Dennis Quek of E-SP Integrated, both friends of his for more than a decade, to provide support quotes for the upgrading, replacement and maintenance of air-conditioned system for clean room 2 and bonding area. He prepared quotations at higher prices, about 10% to 25% higher, than those of Integrated One and emailed them to Richard Chua and Dennis Quek to submit directly to Precision Magnetics. Goh Tong Meng told Precision Magnetics that he would be recommending his friends to submit quotations for the project.<sup>176</sup>
199. Goh Tong Meng said that both Richard Chua of Etora and Dennis Quek of E-SP Integrated agreed to support him by quoting at a higher price.<sup>177</sup>
200. Goh Tong Meng said that he had not heard of the company, Shelton. He also said that he did not obtain a supporting quote from Shelton.<sup>178</sup>

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<sup>172</sup> See documents marked YPL-013 and YPL-014 obtained pursuant to an inspection under section 64 of the Act on 5 August 2009 at Integrated One's premises

<sup>173</sup> See documents marked GTM-136 obtained pursuant to an inspection under section 64 of the Act on 5 August 2009 at Integrated One's premises

<sup>174</sup> See Goh Tong Meng's Notes of Information/Explanation provided on 7 September and 21 October 2009.

<sup>175</sup> See Answer to Questions 4 of Goh Tong Meng's Notes of Information/Explanation provided on 21 October 2009.

<sup>176</sup> See Answers to Questions 6, 7, 9 and 12 of Goh Tong Meng's Notes of Information/Explanation provided on 21 October 2009. See also Answers to Questions 64, 72, 110 to 112 and 116 to 118 of Goh Tong Meng's Notes of Information/Explanation provided on 7 September 2009.

<sup>177</sup> See Answers to Questions 10 and 13 of Goh Tong Meng's Notes of Information/Explanation provided on 21 October 2009. See also Answer to Question 114 of Goh Tong Meng's Notes of Information/Explanation provided on 7 September 2009.

201. Interview of Etora's personnel<sup>179</sup> - Richard Chua said Etora was not invited by Precision Magnetics to quote. Instead it was Goh Tong Meng of Integrated One who had called him to help Integrated One to win the project by submitting the higher quotation prices to Precision Magnetics. Richard Chua said that it was Goh Tong Meng who prepared the higher priced quotations and emailed them to him for submission to Precision Magnetics by using Etora's letterhead. Richard Chua agreed to help him and submitted the quotations to Precision Magnetics.<sup>180</sup>
202. Interview of E-SP Integrated's personnel<sup>181</sup> - Dennis Quek said that Goh Tong Meng of Integrated One had called him to help Integrated One win the project by submitting the higher quotes to Precision Magnetics. Dennis Quek said that it was Goh Tong Meng who prepared the higher quotes and emailed them to him for submission to Precision Magnetics on E-SP Integrated's letterhead. Dennis Quek agreed to help him and submitted the quotations to Precision Magnetics on E-SP Integrated's letterhead.<sup>182</sup>

### **CCS' analysis of the evidence**

#### Integrated One and Etora

203. Goh Tong Meng admitted requesting Etora to provide cover bids for the upgrading, replacement and maintenance of air-conditioned system in clean room 2 and bonding area at Precision Magnetics, a request to which Etora had agreed. He also admitted that he had prepared quotations at higher prices than that of Integrated One, and emailed them to Etora for submission directly to Precision Magnetics, on Etora's letterhead.
204. The information provided by Richard Chua corroborated what Goh Tong Meng said. Richard Chua admitted to receiving Goh Tong Meng's request for cover bids. Richard Chua agreed to his request and sent out the quotations prepared by Goh Tong Meng on Etora's letterhead to Precision Magnetics.
205. CCS considers that Etora's quotes amounting to S\$319,770 for the upgrading, replacement and maintenance of air-conditioned system in clean room 2 and bonding area, which was higher than Integrated One's quotes

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<sup>178</sup> See Answer to Questions 14 and 16 of Goh Tong Meng's Notes of Information/Explanation provided on 21 October 2009.

<sup>179</sup> See Richard Chua's Notes of Information/Explanation Provided on 27 October 2009.

<sup>180</sup> See Answers to Questions 35, 39 to 41 and 43 of Richard Chua's Notes of Information/Explanation provided on 27 October 2009.

<sup>181</sup> See Dennis Quek's Notes of Information/Explanation Provided on 27 October 2009.

<sup>182</sup> See Answers to Questions 35 to 39 of Dennis Quek's Notes of Information/Explanation provided on 27 October 2009.

- amounting to S\$306,430 for the upgrading, replacement and maintenance of air-conditioned system in clean room 2 and bonding area, is consistent with an agreement between Integrated One and Etora for the latter to provide a cover bid and collude in fixing prices.
206. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Integrated One and Etora, who were competitors, shows that the conduct of Integrated One and Etora was not unilateral and that any quotes submitted were subject to collusion. The conduct of Integrated One and Etora infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Goh Tong Meng's conduct in seeking a cover bid and Richard Chua's conduct in agreeing to provide a cover bid that Integrated One and Etora did not determine or intend to determine their quote prices independently. The conduct of Integrated One and Etora in co-ordinating the prices for the purpose of submission to Precision Magnetics, had as its object the prevention, restriction or distortion of competition.
207. As set out earlier, the fact that the Precision Magnetics project was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Integrated One and Etora to fix prices and for the latter to provide a cover bid for the Precision Magnetics project.

#### Integrated One and E-SP Integrated

208. Goh Tong Meng admitted requesting E-SP Integrated to provide cover bids for the upgrading, replacement and maintenance of air-conditioned system in clean room 2 and bonding area at Precision Magnetics, a request to which E-SP Integrated had agreed. He also admitted that he had prepared quotations at a higher price than that of Integrated One, and emailed them to E-SP Integrated for submission directly to Precision Magnetics, on E-SP Integrated's letterhead.
209. The information provided by Dennis Quek corroborated what Goh Tong Meng said. Dennis Quek admitted to receiving Goh Tong Meng's request for cover bids. Dennis Quek agreed to his request and sent out the quotations prepared by Goh Tong Meng on E-SP Integrated's letterhead to Precision Magnetics.
210. CCS considers that E-SP Integrated's quotes amounting to S\$358,985 for the upgrading, replacement and maintenance of air-conditioned system in clean room 2 and bonding area, which was higher than Integrated One's

quotes amounting to S\$306,430 for the upgrading, replacement and maintenance of air-conditioned system in clean room 2 and bonding area, is consistent with an agreement between Integrated One and E-SP Integrated for the latter to provide a cover bid and collude in fixing prices.

211. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Integrated One and E-SP Integrated, who were competitors, shows that the conduct of Integrated One and E-SP Integrated was not unilateral and that any quotes submitted were subject to collusion. The conduct of Integrated One and E-SP Integrated infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Goh Tong Meng's conduct in seeking a cover bid and Dennis Quek's conduct in agreeing to provide a cover bid that Integrated One and E-SP Integrated did not determine or intend to determine their quote prices independently. The conduct of Integrated One and E-SP Integrated in co-ordinating the prices for the purpose of submission to Precision Magnetics, had as its object the prevention, restriction or distortion of competition.
212. As set out earlier, the fact that the Precision Magnetics project was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Integrated One and E-SP Integrated to fix prices and for the latter to provide a cover bid for the Precision Magnetics project.

### **CCS' conclusions on the infringement**

213. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 193 to 212 above, establishes that an agreement and/or concerted practice was in place between
- (i) Integrated One and Etoro; and
  - (ii) Integrated One and E-SP Integrated;
- which had the object of fixing the prices in relation to the quotes submitted for the upgrading, replacement and maintenance of air-conditioned system in clean room 2 and bonding area at Precision Magnetics, in breach of the section 34 prohibition.

### **viii) Kaki Bukit Industrial Building (I)**

#### **The facts and the evidence**

214. Sometime in December 2008, Kaki Bukit Industrial Building (Management Corporation Strata Title Plan No. 2413), at 10 Kaki Bukit Road 1, #01-43,

- Singapore 416175 (“Kaki Bukit Industrial Building”), requested Lim Engineering Associates Pte Ltd, who was their appointed licensed electrical worker (“LEW”), to call for quotations for the shutdown and maintenance service of the licensed installation at Kaki Bukit Industrial Building. Lim Engineering Associates prepared the scope of work and invited Integrated One, Huang Soon, AVL and System Technic to quote for the project. The quotations were to be submitted to Kaki Bukit Industrial Building directly.<sup>183</sup>
215. According to Kaki Bukit Industrial Building, they received the quotations from Integrated One, Huang Soon, AVL and System Technic. However, Kaki Bukit Industrial Building was only able to locate the quotation from Integrated One and produce it to CCS. Kaki Bukit Industrial Building was not able to locate the quotations received from Huang Soon, AVL and System Technic and did not keep any records of the prices that Huang Soon, AVL and System Technic put in.<sup>184</sup>
216. After receiving the quotations, Kaki Bukit Industrial Building realised that the cost of the project was much higher than similar work conducted previously in 2002. Therefore, they told their LEW that they decided not to proceed with the work.<sup>185</sup>
217. During investigations, documents on quotation prices for the Kaki Bukit Industrial Building project (I) containing handwritten messages from Victor Lee of AVL, believed to be circulated to Goh Tong Meng of Integrated One, Poa Kim Bock of Huang Soon and William Teo of System Technic, were produced to CCS by Victor Lee during CCS’ inspection on AVL’s premises under section 64 of the Act. AVL’s quotation dated 15 December 2008 amounting to S\$28,491.96 for the Kaki Bukit Industrial Building project (I) was also produced to CCS during the inspection.<sup>186</sup> The handwritten messages are set out below:

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<sup>183</sup> See Answer to Question 5 and 6 of Zainal Samat’s Notes of Information/Explanation Provided on 14 October 2009.

<sup>184</sup> See Answer to Question 7 and 8 of Zainal Samat’s Notes of Information/Explanation Provided on 14 October 2009.

<sup>185</sup> See Answer to Question 12 of Zainal Samat’s Notes of Information/Explanation Provided on 14 October 2009.

<sup>186</sup> See documents marked VL-008 obtained pursuant to an inspection under section 64 of the Act on 6 May 2009 at AVL’s premises.

a) Handwritten message on a standard quotation format believed to be circulated to Goh Tong Meng of Integrated One by Victor Lee of AVL.

<b>Standard quotation format</b>	<b>Handwritten message at the side</b>
.....	<i>Godfather this is my price pls let me and Ah Poa know how much to put in.</i>
1 Carry out troubleshooting of existing building standby generator sets including replacement of 120AH lead acid batteries (maintenance free batteries) (exclude replacement of any spare parts). To inform Management and quotation will be provided to Management for any replacement of spare parts to existing standby building generator sets.	2,000
2 22kV switchboards (7 panels) & dry-type transformers (4 Nos)	11,600
3 415V main switchboards & emergency board (4 + 1)	10,600
4 Licensed Electrical Engineer HT switching attendance fee and submission of report to EMA/PG requirement	2000
5 Overtime payment to SP PowerGrid Engineer	428
Total Cost of Work quoted	26628
7% GST	1863
Grand total:	28,491

b) Handwritten message on a standard quotation format believed to be circulated to Poa Kim Bock of Huang Soon by Victor Lee of AVL. A typewritten copy of the price details listed below with a handwritten note “Poa” was also produced to CCS by Victor Lee during CCS’ inspection on AVL’s premises under section 64 of the Act.

Standard quotation format	Handwritten message at the side
.....	<i>Email Poa Can you put this price &amp; change item 1.</i>
1 Carry out troubleshooting of existing building standby generator sets including replacement of 120AH lead acid batteries (maintenance free batteries) (exclude replacement of any spare parts). To inform Management and quotation will be provided to Management for any replacement of spare parts to existing standby building generator sets.	3,500
2 22kV switchboards (7 panels) & dry-type transformers (4 Nos)	14,500
3 415V main switchboards & emergency board (4 + 1)	12,800
4 Licensed Electrical Engineer HT switching attendance fee and submission of report to EMA/PG requirement	2000
5 Overtime payment to SP PowerGrid Engineer	428.00 (type written)
Total Cost of Work quoted	33,228
7% GST	2325.96
Grand total:	35553.96

c) Handwritten message on a standard quotation format believed to be circulated to William Teo of System Technic by Victor Lee of AVL. A typewritten copy of the price details listed below with a handwritten message “William” was also produced to CCS by Victor Lee during CCS’ inspection on AVL’s premises under section 64 of the Act.

<b>Standard quotation format</b>	<b>Handwritten message at the side</b>
<p>.....</p> <p>1 Carry out troubleshooting of existing building standby generator sets including replacement of 120AH lead acid batteries (maintenance free batteries) (exclude replacement of any spare parts). To inform Management and quotation will be provided to Management for any replacement of spare parts to existing standby building generator sets.</p> <p>2 22kV switchboards (7 panels) &amp; dry-type transformers (4 Nos)</p> <p>3 415V main switchboards &amp; emergency board (4 + 1)</p> <p>4 Licensed Electrical Engineer HT switching attendance fee and submission of report to EMA/PG requirement</p> <p>5 Overtime payment to SP PowerGrid Engineer</p>	<p><i>Email</i>  <i>Hi William</i>  <i>Can u put this price tks.</i>  <i>From victor</i>  <i>&amp; pls change the item no 1</i></p> <p>2,500</p> <p>12,700</p> <p>12,000</p> <p>2000.00</p> <p>428.00 (type written)</p>
<p style="text-align: right;">Total Cost of Work quoted</p> <p style="text-align: right;">7% GST</p> <p style="text-align: right;">Grand total:</p>	<p>29,628</p> <p>2073.96</p> <p>31,701.96</p>

218. The discovery led to CCS’ inspections on the premises of Integrated One, Huang Soon and System Technic under section 64 of the Act. An email from Victor Lee of AVL to Huang Soon containing the quotation with the price prepared by Victor Lee as reflected in paragraph 217 b) and Huang Soon’s quotation dated 15 December 2008 amounting to S\$35,553.96 for the Kaki Bukit Industrial Building project (I) was produced to CCS during its inspection on Huang Soon’s premises.<sup>187</sup> An extract of the email is set out below:

“From: “AVL Electrical Engineering Pte Ltd”  
 <avlelectrical@singnet.com.sg>  
 To: <hseews@singnet.com.sg>  
 Sent: Sunday, December 14, 2008 3:36 PM  
 Attach: 10 Kaki Bukit-Lim Engineering-Poa’s Price.doc  
 Subject: Your Price

Dear Poa

Please find attached for your submission. This is your price – no need to change already.

Please feel free to contact me should you require any further clarifications.

Thanks & Regards  
 Victor Lee  
 AVL Electrical Engineering Pte Ltd”

219. Therefore, the quotations received by Kaki Bukit Industrial Building<sup>188</sup> in relation to the shutdown and maintenance service of licensed installation are as follows:

Name of electrical contractor submitting quote	Total Quote price	Date on Quote
AVL	S\$28,491.96	15 December 2008
Integrated One	S\$29,928	15 December 2008
Huang Soon	S\$35,553.96	15 December 2008
System Technic	Not available	Not available

<sup>187</sup> See documents marked LSC-008 obtained pursuant to an inspection under section 64 of the Act on 5 August 2009 at Huang Soon’s premises.

<sup>188</sup> See Quotations provided by Kaki Bukit Industrial Building to CCS dated 29 September 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 17 September 2009.

220. Interview of AVL personnel<sup>189</sup> - Victor Lee said that AVL, Huang Soon, Integrated One and System Technic were invited by Lim Engineering Associates to submit quotations for the shutdown and maintenance service of licensed installation at Kaki Bukit Industrial Building. AVL was interested in the project but Huang Soon, System Technic and Integrated One did not have the time to take on the project as it was the Christmas season. Hence Victor Lee told William Teo of System Technic and Poa Kim Bock of Huang Soon that he would be preparing the quotations for them and they only need to submit the quotations accordingly. Victor Lee said he worked out AVL's price with Goh Tong Meng's advice and he prepared the quotations for System Technic and Huang Soon. As Goh Tong Meng was aware of AVL's quotation price, he would proceed to submit a higher quotation price to support AVL.<sup>190</sup> . The quotation prices that Victor Lee prepared for System Technic and Huang Soon were S\$31,701.96, and S\$35,553.96 respectively, while AVL's quote was S\$28,491.96.<sup>191</sup>
221. Victor Lee sent the quotation which he had prepared to Huang Soon by email so that Huang Soon could submit the quotation directly to Lim Engineering Associates. Victor Lee said he should have also sent a similar email to System Technic.<sup>192</sup> Victor Lee said that William Teo of System Technic, Goh Tong Meng of Integrated One and Poa Kim Bock of Huang Soon did not object when he suggested for them to put in higher quotation prices to support AVL.<sup>193</sup>
222. Interview of Integrated One personnel<sup>194</sup> - Goh Tong Meng said that he met Victor Lee more than a decade ago through a mutual friend. Victor Lee was on friendly terms with him. Victor Lee addressed him as "godfather" and would consult him when doing electrical works.<sup>195</sup> Goh Tong Meng said that he was the electrical maintenance contractor for Kaki Bukit Industrial Building and was invited to put in a quotation for the shutdown and maintenance service of licensed installation. Victor Lee of AVL called him and asked him about the project. Goh Tong Meng told Victor Lee that he was not interested in the project and asked him to take up the project if

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<sup>189</sup> See Victor Lee's Notes of Information/Explanation Provided on 7 September 2009.

<sup>190</sup> See Answer to Question 29-30 of Victor Lee's Notes of Information/Explanation provided on 7 September 2009.

<sup>191</sup> See documents marked VL-008 obtained pursuant to an inspection under section 64 of the Act on 6 May 2009 at AVL's premises.

<sup>192</sup> See Answer to Question 33 of Victor Lee's Notes of Information/Explanation provided on 7 September 2009.

<sup>193</sup> See Answer to Question 37 of Victor Lee's Notes of Information/Explanation provided on 7 September 2009.

<sup>194</sup> See Goh Tong Meng's Notes of Information/Explanation Provided on 7 September 2009.

<sup>195</sup> See Answers to Questions 39 to 41 of Goh Tong Meng's Notes of Information/Explanation provided on 7 September 2009.

AVL was interested. Goh Tong Meng then told Victor Lee to give him AVL's price so that Integrated One could mark up the price in its quotation to Kaki Bukit Industrial Building to help AVL win the project. Goh Tong Meng then prepared a quotation with a higher price and faxed it directly to Kaki Bukit Industrial Building.<sup>196</sup> According to Goh Tong Meng, he liaised only with Victor Lee and did not discuss the matter with Huang Soon or System Technic.<sup>197</sup>

223. Interview of Huang Soon personnel<sup>198</sup> - Poa Kim Bock knew Victor Lee of AVL as AVL would subcontract work to Huang Soon. Poa Kim Bock had also advised Victor Lee on how to quote for some of his projects and assisted him on technical issues.<sup>199</sup> Lim Engineering Associates emailed Huang Soon on 3 December 2008 to invite him to quote for the project.<sup>200</sup> On 14 December 2008, Victor Lee sent him an email asking him to quote the price stated in the attachment of the email. Poa Kim Bock figured that Huang Soon's price would be higher than AVL's price in order to support AVL's quotation. Poa Kim Bock agreed to use the price given by Victor Lee because he wanted Victor Lee to have a higher chance of winning the project. Poa Kim Bock was not keen to win the project as he did not wish to take on a new project in the period leading up to Chinese New Year. As a result, he submitted Huang Soon's quotation using the price which Victor Lee had suggested in his email to him.<sup>201</sup>
224. Interview of System Technic personnel<sup>202</sup> - William Teo knew Victor Lee of AVL and Poa Kim Bock of Huang Soon from business dealings. Huang Soon and System Technic subcontract work to each other and System Technic had previously done work for AVL.<sup>203</sup> William Teo said that System Technic submitted a quotation for the shutdown and maintenance project to Kaki Bukit Industrial Building but he could not recall the

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<sup>196</sup> See Answers to Questions 78 and 79 of Goh Tong Meng's Notes of Information/Explanation provided on 7 September 2009.

<sup>197</sup> See Answer to Question 80 of Goh Tong Meng's Notes of Information/Explanation provided on 7 September 2009.

<sup>198</sup> See Poa Kim Bock's Notes of Information/Explanation Provided on 7 September 2009.

<sup>199</sup> See Answers to Questions 37 and 40 of Poa Kim Bock's Notes of Information/Explanation provided on 7 September 2009.

<sup>200</sup> See Answer to Questions 46 of Poa Kim Bock's Notes of Information/Explanation provided on 7 September 2009. Also see documents marked LSC-008 obtained pursuant to an inspection under section 64 of the Act on 5 August 2009 at Huang Soon's premises.

<sup>201</sup> See Answers to Questions 47 to 49 and 54 of Poa Kim Bock's Notes of Information/Explanation provided on 7 September 2009.

<sup>202</sup> See William Teo's Notes of Information/Explanation Provided on 7 September 2009.

<sup>203</sup> See Answers to Questions 36 to 39 of William Teo's Notes of Information/Explanation provided on 7 September 2009.

- quotation price submitted by System Technic. According to William Teo, he did not keep the quotation as System Technic did not get the project.<sup>204</sup>
225. When questioned if AVL, Huang Soon or Integrated had contacted him about the project, William Teo said that he could not recall. When further questioned if he received an email from Victor Lee asking him to put in a price of S\$31,701.96 for the project, he also said that he could not recall if he had received the email from Victor Lee.<sup>205</sup>

## **CCS' analysis of the evidence**

### AVL and Integrated One

226. Victor Lee admitted that he had suggested that Goh Tong Meng put in a cover bid for the shutdown and maintenance service of licensed installation at Kaki Bukit Industrial Building. He said that Goh Tong Meng had agreed to provide a cover bid by submitting a quotation price that was higher than AVL's price.
227. Goh Tong Meng admitted that he had agreed to submit a quotation price that was higher than AVL's price to help AVL win the project.
228. CCS considers that Integrated One's quote of S\$29,928 for the shutdown and maintenance service of licensed installation, which was higher than AVL's quote of S\$28,491.96, is consistent with an agreement between AVL and Integrated One for the latter to provide a cover bid and collude in fixing prices.
229. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between AVL and Integrated One, who were competitors, shows that the conduct of AVL and Integrated One was not unilateral and that any quotes submitted were subject to collusion. The conduct of AVL and Integrated One infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Victor Lee's conduct in seeking a cover bid and Goh Tong Meng's conduct in agreeing to provide a cover bid that AVL and Integrated One did not determine or intend to determine their quote prices independently. The conduct of AVL and Integrated One in co-ordinating

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<sup>204</sup> See Answer to Question 34, 35, and 52 of William Teo's Notes of Information/Explanation provided on 7 September 2009.

<sup>205</sup> See Answer to Question 56 and 58 of William Teo's Notes of Information/Explanation provided on 7 September 2009.

- the prices for the purpose of submission to Kaki Bukit Industrial Building, had as its object the prevention, restriction or distortion of competition.
230. As set out earlier, the fact that the Kaki Bukit Industrial Building project (I) was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between AVL and Integrated One to fix prices and for the latter to provide a cover bid for the Kaki Bukit Industrial Building project (I).

#### AVL and Huang Soon

231. Victor Lee admitted that he had requested for a cover bid from Poa Kim Bock for the shutdown and maintenance service of licensed installation at Kaki Bukit Industrial Building. He said that Poa Lim Bock did not object to the suggestion.
232. Poa Kim Bock admitted receiving Victor Lee's request for a cover bid and said that he responded positively by submitting a quotation using the price suggested by Victor Lee in his email.
233. CCS considers that Huang Soon's quote of S\$35,553.96 for the shutdown and maintenance service of licensed installation, which was higher than AVL's quote of S\$28,491.96, is consistent with an agreement between AVL and Huang Soon for the latter to provide a cover bid and collude in fixing prices.
234. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between AVL and Huang Soon, who were competitors, shows that the conduct of AVL and Huang Soon was not unilateral and that any quotes submitted were subject to collusion. The conduct of AVL and Huang Soon infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Victor Lee's conduct in seeking a cover bid and Poa Kim Bock's conduct in agreeing to provide a cover bid that AVL and Huang Soon did not determine or intend to determine their quote prices independently. The conduct of AVL and Huang Soon in co-ordinating the prices for the purpose of submission to Kaki Bukit Industrial Building, had as its object the prevention, restriction or distortion of competition.
235. As set out earlier, the fact that the Kaki Bukit Industrial Building project (I) was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice

### AVL and System Technic

236. Victor Lee admitted that he had requested for a cover bid from William Teo for the shutdown and maintenance service of licensed installation at Kaki Bukit Industrial Building. Victor Lee said that William Teo did not object to his request for System Technic to provide a cover bid and Victor Lee prepared a price that was higher than AVL for William Teo to submit to Kaki Bukit Industrial Building and emailed the same to System Technic.
237. CCS notes that William Teo claimed that he could not recall if he had received any email from Victor Lee requesting for System Technic to provide a cover bid of \$31,701.96 for the shutdown and maintenance service of licensed installation at Kaki Bukit Industrial Building. However, Victor Lee confirmed that he had told William Teo to assist him by putting in a cover bid which he would prepare for System Technic and William Teo did not object. CCS had also uncovered documents in AVL's premises indicating the quotation price that AVL had prepared for System Technic and handwritten instructions from Victor Lee to William Teo to submit this price. These documents support Victor Lee's evidence that he had obtained the agreement of System Technic to submit a cover bid to Kaki Bukit Industrial Building. In addition, Kaki Bukit Industrial Building also recalled receiving System Technic's quotation.
238. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between AVL and System Technic, who were competitors, shows that the conduct of AVL and System Technic was not unilateral and that any quotes submitted were subject to collusion. The conduct of AVL and System Technic infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Victor Lee's conduct in seeking a cover bid and William Teo's conduct in agreeing to provide a cover bid that AVL and System Technic did not determine or intend to determine their quote prices independently. The conduct of AVL and System Technic in co-ordinating the prices for the purpose of submission to Kaki Bukit Industrial Building, had as its object the prevention, restriction or distortion of competition.
239. As set out earlier, the fact that the Kaki Bukit Industrial Building project (I) was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice

between AVL and System Technic to fix prices and for the latter to provide a cover bid for the Kaki Bukit Industrial Building project (I).

### **CCS' conclusions on the infringement**

240. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 214 to 239 above, establishes that an agreement and/or concerted practice was in place between
- (i) AVL and Integrated One;
  - (ii) AVL and Huang Soon; and
  - (iii) AVL and System Technic;
- which had the object of fixing the prices in relation to the quotes submitted for the shutdown and maintenance service of licensed installation at Kaki Bukit Industrial Building, in breach of the section 34 prohibition.

### **ix) Kaki Bukit Industrial Building (II)**

#### **The facts and the evidence**

241. Sometime in Oct 2007, Kaki Bukit Industrial Building invited its term contractor, Integrated One, to submit quotes for the proposed lighting fitting and replacement work to 1<sup>st</sup> level tenant unit and ramp area at Kaki Bukit Industrial Building. This arose because Kaki Bukit Industrial Building was considering the use of fluorescent tube lights instead of spot lights to reduce the electricity consumption and the difficulty of getting replacement parts. After a site visit, Integrated One submitted a quotation dated 19 October 2007 with a price of S\$28,480 for conducting the project. Kaki Bukit Industrial Building felt that the price was too high and decided not to proceed with the proposed work and would only replace the light fittings when they were faulty.<sup>206</sup>
242. Sometime in Aug 2008, the Kaki Bukit Industrial Building approached Integrated One again to ask for an updated quotation, in anticipation that the material cost might have fallen during the intervening period. However, Integrated One informed Kaki Bukit Industrial Building that the quotation dated 19 Oct 2007 that was submitted earlier was still applicable. Kaki Bukit Industrial Building said that they neither asked Integrated One to recommend any other contractors nor approached any other contractors themselves. However they received quotations from AVL and Triple H in August 2008. Kaki Bukit Industrial Building believed that it should be

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<sup>206</sup> See Answer to Question 16 of Zainal Samat's Notes of Information/Explanation Provided on 14 October 2009.

Integrated One who informed AVL and Triple H about the proposed work.<sup>207</sup>

243. The quotations received by Kaki Bukit Industrial Building<sup>208</sup> in relation to the proposed lighting fitting and replacement work to 1<sup>st</sup> level tenant unit and ramp area are as follows:

Name of electrical contractor submitting quote	Total Quote price	Date on Quote
Integrated One	S\$28,480	19 October 2007
AVL	S\$32,500	13 August 2008
Triple H	S\$34,560	11 August 2008

244. Kaki Bukit Industrial Building did not award the project to any of the contractors as they felt that the prices were still very high.<sup>209</sup>
245. During investigations, email correspondence from Integrated One to AVL and Triple H containing prepared quotations for AVL and Triple H was produced to CCS by Goh Tong Meng during CCS' inspection on Integrated One's premises under section 64 of the Act.<sup>210</sup> The quotation price emailed to AVL is identical to the one received by Kaki Bukit Industrial Building as stated in paragraph 243 but the quotation price emailed to Triple H is different at S\$21,320.
246. Interview of Integrated One personnel<sup>211</sup> - Goh Tong Meng said that he was overall in charge of the operations at Integrated One. This included the preparation of quotations. Goh Tong Meng said that Kaki Bukit Industrial Building invited Integrated One to put in a quotation for the proposed work. He said that he told Kaki Bukit Industrial Building that he would be putting in a quotation and would also get some other quotations from other companies for comparison. Goh Tong Meng then prepared the quotation for AVL at a price of about 10% to 20% higher than Integrated One's. He then emailed Victor Lee of AVL to submit the quotation to Kaki Bukit Industrial Building directly. Goh Tong Meng said that before he sent Victor Lee the

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<sup>207</sup> See Answer to Question 19 of Zainal Samat's Notes of Information/Explanation Provided on 14 October 2009.

<sup>208</sup> See Quotations provided by Kaki Bukit Industrial Building to CCS dated 29 September 2009 pursuant to CCS' section 63 notice to request for information and documents dated 17 September 2009.

<sup>209</sup> See Answer to Question 20 of Zainal Samat's Notes of Information/Explanation Provided on 14 October 2009.

<sup>210</sup> See documents marked YPL-002 and YPL-003 obtained pursuant to an inspection under section 64 of the Act on 5 August 2009 at Integrated One's premises

<sup>211</sup> See Goh Tong Meng's Notes of Information/Explanation Provided on 7 September 2009.

email, he had told Victor Lee that he needed Victor Lee's assistance and Victor Lee agreed to help him by quoting at a higher price.<sup>212</sup>

247. Besides AVL, Goh Tong Meng had also called his brother, Goh Tong Hwa, of Triple H to assist in putting in a quotation at a higher price than Integrated One's by about 10% to 15%. Goh Tong Hwa agreed to support him by quoting higher and he emailed Goh Tong Hwa's assistant, Joanne Tiong on the price to quote for the project. Goh Tong Meng said that he had prepared the quotation for Triple H and he believed that the quotation was ultimately submitted by Triple H.<sup>213</sup>
248. Interview of AVL personnel<sup>214</sup> - Victor Lee said that Goh Tong Meng informed him about the project. He did not receive any official invitation to quote from Kaki Bukit Industrial Building. Goh Tong Meng said he was interested in doing the job and requested for Victor Lee's assistance to put in a support quote. Victor Lee said he understood that Goh Tong Meng would prepare the quotation and he would only need to submit the quotation accordingly to Kaki Bukit Industrial Building. After Goh Tong Meng prepared the quotation, he sent the quotation to Victor Lee via email and asked him to fill in a quotation reference before faxing the quotation to Kaki Bukit Industrial Building. Victor Lee duly did so. Victor Lee said he left it to Goh Tong Meng to put in a price which would increase Integrated One's chances of winning the project. He understood that AVL's quotes would be higher than Integrated One's.<sup>215</sup>
249. Interview of Triple H personnel<sup>216</sup> - Goh Tong Hwa manages the operations at Triple H and decides on the prices of quotations for projects.<sup>217</sup> He said that his elder brother, Goh Tong Meng asked him to help Integrated One to win the project by quoting at a price higher than Integrated One's. He agreed as Goh Tong Meng was his brother. Goh Tong Meng prepared the scope of work and price and Goh Tong Hwa asked his staff, Joanne Tiong, to sign on the quotation on his behalf and send the quotation to Kaki Bukit Industrial Building.<sup>218</sup> Goh Tong Hwa was not

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<sup>212</sup> See Answers to Questions 88 to 90 of Goh Tong Meng's Notes of Information/Explanation provided on 7 September 2009.

<sup>213</sup> See Answers to Questions 92, 93, 95, 96 and 100 of Goh Tong Meng's Notes of Information/Explanation provided on 7 September 2009.

<sup>214</sup> See Victor Lee's Notes of Information/Explanation Provided on 7 September 2009.

<sup>215</sup> See Answers to Questions 47 to 49 of Victor Lee's Notes of Information/Explanation provided on 7 September 2009.

<sup>216</sup> See Goh Tong Hwa's Notes of Information/Explanation Provided on 19 October 2009.

<sup>217</sup> See Answer to Question 4 of Goh Tong Hwa's Notes of Information/Explanation provided on 19 October 2009.

<sup>218</sup> See Answers to Questions 50 and 51 of Goh Tong Hwa's Notes of Information/Explanation provided on 19 October 2009.

- aware of the price that Integrated One quoted but he figured that Integrated One's price would be lower than Triple H's so that Integrated One has a better chance of winning the project. In the unlikely event of Triple H winning the project, he would subcontract the work to Integrated One.<sup>219</sup>
250. Goh Tong Hwa confirmed that the quotation price of S\$34,560 that he submitted to Kaki Bukit Industrial Building was provided by Goh Tong Meng. He was not sure why the figure that he submitted was different from the quotation emailed to Triple H by Integrated One but believed that the figure of S\$34,560 should also be provided by Integrated One through email or phone call. Goh Tong Hwa said that Triple H did not come up with these figures.<sup>220</sup>

### **CCS' analysis of the evidence**

#### Integrated One and AVL

251. Goh Tong Meng admitted that he had requested for a cover bid from Victor Lee for the proposed lighting fitting and replacement work to 1<sup>st</sup> level tenant unit and ramp area at Kaki Bukit Industrial Building. He said that Victor Lee had agreed to provide a cover bid by submitting a quotation price that was higher than Integrated One's price.
252. Victor Lee admitted that he received Goh Tong Meng's request for a cover bid and said that he responded positively by submitting a quotation price that was higher than Integrated One's price.
253. CCS considers that AVL's quote of S\$32,500 for the proposed lighting fitting and replacement work to 1<sup>st</sup> level tenant unit and ramp area, which was higher than Integrated One's quote of S\$28,480, is consistent with an agreement between Integrated One and AVL for the latter to provide a cover bid and collude in fixing prices.
254. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Integrated One and AVL, who were competitors, shows that the conduct of Integrated One and AVL was not unilateral and that any quotes submitted were subject to collusion. The conduct of Integrated One and AVL infringes the principle that each undertaking must determine independently the policy it intends to adopt in

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<sup>219</sup> See Answers to Questions 54, 55 and 58 of Goh Tong Hwa's Notes of Information/Explanation provided on 19 October 2009.

<sup>220</sup> See Answer to Question 63 of Goh Tong Hwa's Notes of Information/Explanation provided on 19 October 2009.

- a market. It is clear from Goh Tong Meng's conduct in seeking a cover bid and Victor Lee's conduct in agreeing to provide a cover bid that Integrated One and AVL did not determine or intend to determine their quote prices independently. The conduct of Integrated One and AVL in co-ordinating the prices for the purpose of submission to Kaki Bukit Industrial Building, had as its object the prevention, restriction or distortion of competition.
255. As set out earlier, the fact that the Kaki Bukit Industrial Building project (II) was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Integrated One and AVL to fix prices and for the latter to provide a cover bid for the Kaki Bukit Industrial Building project (II).

#### Integrated One and Triple H

256. Goh Tong Meng admitted that he had requested for a cover bid from Goh Tong Hwa for the proposed light fitting and replacement work at Kaki Bukit Industrial Building. He said that Goh Tong Hwa had agreed to provide a cover bid by submitting a quotation price that was higher than Integrated One's price.
257. Goh Tong Hwa admitted that he had agreed to Goh Tong Meng's request for a cover bid and subsequently submitted a quotation price provided by Goh Tong Meng.
258. CCS considers that Triple H's quote of S\$34,560 for the proposed lighting fitting and replacement work to 1<sup>st</sup> level tenant unit and ramp area, which was higher than Integrated One's quote of S\$28,480, is consistent with an agreement between Integrated One and Triple H for the latter to provide a cover bid and collude in fixing prices.
259. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Integrated One and Triple H, who were competitors, shows that the conduct of Integrated One and Triple H was not unilateral and that any quotes submitted were subject to collusion. The conduct of Integrated One and Triple H infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Goh Tong Meng's conduct in seeking a cover bid and Goh Tong Hwa's conduct in agreeing to provide a cover bid that Integrated One and Triple H did not determine or intend to determine their quote prices independently. The conduct of Integrated One and Triple H in co-ordinating the prices for the purpose of submission to Kaki Bukit

Industrial Building, had as its object the prevention, restriction or distortion of competition.

260. As set out earlier, the fact that the Kaki Bukit Industrial Building project (II) was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Integrated One and Triple H to fix prices and for the latter to provide a cover bid for the Kaki Bukit Industrial Building project (II).

### **CCS' conclusions on the infringement**

261. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 241 to 260 above, establishes that an agreement and/or concerted practice was in place between
- (i) Integrated One and AVL; and
  - (ii) Integrated One and Triple H;
- which had the object of fixing the prices in relation to the quotes submitted for the proposed lighting fitting and replacement work to 1<sup>st</sup> level tenant unit and ramp area of Kaki Bukit Industrial Building, in breach of the section 34 prohibition.

### **x) Orrick Investments Pte Ltd**

#### **The facts and the evidence**

262. On 6 March 2009, Orrick Investments Pte Ltd, at 438B Alexandra Road, #B1-01, Alexandra Technopark, Singapore 119968 ("Orrick Investments") requested their appointed licensed electrical worker, Quality Power Management Pte Ltd ("QPM") to attend to a power failure at Alexandra Technopark Block A. After resolving the fault, QPM recommended replacing the defective rubber buffers or changing the obsolete 3200A Ottermill Air Circuit Breaker ("ACB").<sup>221</sup>
263. On 7 April 2009, QPM submitted a quotation for the replacement of Ottermill ACB stop buffer and installation of earth fault relays on EMSB at Alexandra Technopark Block A to Orrick Investments. Upon receiving the quotation from QPM, the senior building supervisor of Alexandra Technopark Block A, Tan Cheng Kiat, called Huang Soon and sent a copy of QPM's quotation to Huang Soon to inform them to quote based on the scope of works. However, Tan Cheng Kiat had inadvertently left in QPM's

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<sup>221</sup> See paragraphs 2.2 to 2.5 of Information provided by Allen & Gledhill who acted for Orrick Investments, in their letter to CCS dated 16 October 2009 pursuant to CCS' section 63 notice to request for information and documents dated 17 September 2009.

quoted prices and details. During Tan Cheng Kiat’s telephone conversation with Huang Soon, Huang Soon recommended AVL to quote for the project. Tan Cheng Kiat does not recall if he had invited AVL to submit their quotation by telephone or if Huang Soon had contacted AVL directly. QPM, Huang Soon and AVL were asked to submit their quotations for the project by 11 May 2009.<sup>222</sup>

264. The quotations received by Orrick Investments<sup>223</sup> in relation to the replacement of Ottermill ACB stop buffer and installation of earth fault relays on EMSB at Alexandra Technopark Block A are as follows:

Name of electrical contractor submitting quote	Total Quote price	Date on Quote
QPM	\$7,700 (excludes GST)	7 May 2009
Huang Soon	\$6,848 (includes GST)	25 April 2009
AVL	\$7,276 (includes GST)	25 April 2009

265. The quotation from QPM dated 7 May 2009 was identical to the one dated 7 April 2009. According to Orrick Investments, there was no award made in relation to the project.<sup>224</sup>
266. During investigations, a quotation of AVL bearing an identical quote price as that received by Orrick Investments, as stated in paragraph 264 was produced to CCS by Poa Kim Bock during CCS’ inspection on Huang Soon’s premises under section 64 of the Act. A handwritten document containing identical quotation information and price was found attached to the AVL quotation.<sup>225</sup> An extract of the handwritten document is as follows:

*“M/s AVL Mr Victory  
M/s Orrick Investments Pte Ltd  
Elect works at ATP Blk A Roof-Top.  
MSB & EMSB (Support Quote).....”*

<sup>222</sup> See paragraphs 2.6 and 2.8 to 2.10 of Information provided by Allen & Gledhill who acted for Orrick Investments, in their letter to CCS dated 16 October 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 17 September 2009.

<sup>223</sup> See Quotations provided by Allen & Gledhill who acted for Orrick Investments, in their letter to CCS dated 16 October 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 17 September 2009.

<sup>224</sup> See paragraph 3.8 of Information provided by Allen & Gledhill who acted for Orrick Investments, in their letter to CCS dated 16 October 2009 pursuant to CCS’ section 63 notice to request for information and documents dated 17 September 2009.

<sup>225</sup> See documents marked LSC-013 obtained pursuant to an inspection under section 64 of the Act on 5 August 2009 at Huang Soon’s premises.

267. Interview of Huang Soon's personnel<sup>226</sup> – Poa Kim Bock confirmed that Orrick Investments had invited him to quote for the job and had faxed a quotation from QPM to him. He said that Orrick Investments had asked him whether he could omit any items and quote lower than QPM as they were facing budgetary constraints. Poa Kim Bock stated that he had gone down to a site visit before submitting a lower quote of S\$6,848. Poa Kim Bock said that Orrick Investments had asked for his recommendation for another contractor who can perform the electrical works for the project. In response, he prepared another quotation on behalf of AVL for submission to Orrick Investments.<sup>227</sup>

*“Q. 62 Copies of these documents were taken from your office during our inspection of your premises on 5 August 2009. Could you let us know why you have a copy of AVL’s quotation for the same project dated 25 April 2008?”*

*A: .....Orrick Investment Pte Ltd also asked me to recommend another contractor that can do the job. Hence I prepared another quotation price that was higher than my quotation price and asked my staff to sign on behalf of Victor Lee of AVL before submitting the quotation by hand to Orrick Investments Pte Ltd in AVL’s letterhead. I did that because I wanted to get the job.....”*

268. Interview of AVL's personnel<sup>228</sup> - Victor Lee acknowledged that the letterhead on the quotation for the project at Alexandra Technopark Block A was that of AVL but said that the signature on the quotation was not his<sup>229</sup>.

269. However, Victor Lee said that he was aware of this project and had agreed to let Poa Kim Bock put in a quote using his company name.<sup>230</sup>

*“Q.40 Are you aware of this project?”*

*A. Poa of Huang Soon has told me about it but not in details. I did not receive any official invitation to quote from Alexandra Technopark.*

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<sup>226</sup> See Notes of Information/Explanation Provided by Poa Kim Bock on 7 September 2009.

<sup>227</sup> See Answer to Question 62 of Notes of Information/Explanation Provided by Poa Kim Bock on 7 September 2009.

<sup>228</sup> See Notes of Information/Explanation Provided by Victor Lee on 7 September 2009

<sup>229</sup> See Answer to Question 39 of Notes of Information/Explanation Provided by Victor Lee on 7 September 2009

<sup>230</sup> See Answer to Question 41 of Notes of Information/Explanation Provided by Victor Lee on 7 September 2009

*Q. 41 So what did Poa tell you?*

*A. Poa told me that he was interested in the project but he needed another company to support his quote. So he suggested that he would put in a quote using my company name and I agreed.*

.....

*“Q.43 Did you agree to support Huang Soon by putting in a higher quotation price in the Alexandra Technopark project?”*

*A. I left it to Poa to put in whatever amount to increase his company’s chances of winning the project, but I understand that my quotes will be higher than his in order to increase his company’s chances of winning the project.”*

## **CCS’ analysis of the evidence**

### Huang Soon and AVL

270. Poa Kim Bock has admitted that he had prepared and submitted a higher quotation on AVL’s letterhead in order to win the bid for the project. Victor Lee had indicated that he had agreed to Poa Kim Bock’s request to use his letterhead in order to provide a support quote and that he understood that the quoted prices would be higher relative to Huang Soon’s quoted prices.
271. CCS considers that AVL’s quote of S\$7,276 for the replacement of Ottermill ACB stop buffer and installation of earth fault relays on EMSB, which was higher than Huang Soon’s quote of S\$6,848, is consistent with an agreement between Huang Soon and AVL for the latter to provide a cover bid and collude in fixing prices.
272. CCS considers that the evidence above makes out the elements of an agreement, or at the very least, a concerted practice in breach of the section 34 prohibition. The agreement between Huang Soon and AVL, who were competitors, shows that the conduct of Huang Soon and AVL was not unilateral and that any quotes submitted were subject to collusion. The conduct of Huang Soon and AVL infringes the principle that each undertaking must determine independently the policy it intends to adopt in a market. It is clear from Poa Kim Bock’s conduct in seeking a cover bid and Victor Lee’s conduct in agreeing to provide a cover bid that Huang Soon and AVL did not determine or intend to determine their quote prices independently. The conduct of Huang Soon and AVL in co-ordinating the

prices for the purpose of submission to Orrick Investments, had as its object the prevention, restriction or distortion of competition.

273. As set out earlier, the fact that the Orrick Investments project was not awarded does not affect CCS' conclusion that the evidence demonstrates the existence of an agreement and/or concerted practice between Huang Soon and AVL to fix prices and for the latter to provide a cover bid for the Orrick Investments project.

### **CCS' conclusions on the infringement**

274. CCS concludes that the totality of the evidence, as set out and analysed at paragraphs 262 to 273 above, establishes that an agreement and/or concerted practice was in place between Huang Soon and AVL which had the object of fixing the prices in relation to the quotes submitted for the replacement of Ottermill ACB stop buffer and installation of earth fault relays on EMSB at Alexandra Technopark Block A, in breach of the section 34 prohibition.

### **SECTION III: DECISION OF INFRINGEMENT**

275. CCS is satisfied that there is sufficient evidence in paragraphs 78 to 274 above to find that the Parties listed at paragraph 1 above, infringed the section 34 prohibition by entering into agreements and/or concerted practices to fix prices through collusive tendering or bid-rigging in respect of the separate projects listed in paragraphs 84 to 274 above. On 11 March 2010, CCS issued its proposed infringement decision to the Parties listed at paragraph 1 above. The Parties were informed that if they wished to make representations for CCS' consideration, they should do so by 23 April 2010. The representations received from the Parties did not challenge CCS' decision on the infringements in respect of the separate projects listed in paragraphs 84 to 274 above. CCS therefore finds that the Parties have infringed the section 34 prohibition by participating in collusive tendering or bid-rigging arrangements for the projects as specified in paragraphs 84 to 274.
276. On the basis of the evidence set out at paragraphs 78 to 274 above, CCS has considered the relevant duration for each of the infringements. CCS considers that the duration of infringements of this nature is at least from the date of initial contact between the Parties, with one party alerting the others to a project, stating his interest in winning the project and requesting the help of the others in ensuring that they would not win the project, to the date when the final bid was received for the respective project. The nature of the initial contacts, some of which were oral, coupled with the fact that

tender documentation was not always retained beyond the end of the tender process mean that CCS does not always have precise information as to the dates of each infringement. In relation to any of the infringements particularised in Section II of this Decision, CCS is not aware of any evidence that suggests that the period between initial contact and submission of tender bids, and correspondingly the duration of infringement, was greater than one year.

277. Having said that, CCS is mindful that the effects of the infringements were not restricted to the actual, usually very short, period during which the collusion took place. Once a project had been awarded following an anti-competitive tender, the anti-competitive effect was irreversible in relation to that tender and the infringements may have a potential continuing impact on further tendering processes by the same bidders in that a contractor who wins the tender pursuant to collusion gains the advantage of incumbency<sup>231</sup>.

#### **SECTION IV: CCS' ACTION**

278. This section sets out CCS' action and its reasons.

##### **A. Directions**

279. 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 infringements have already ended, it is not necessary to issue any directions for the parties to terminate the agreements.

##### **B. Financial penalties - general points**

280. 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.
281. Before exercising the power to impose a financial penalty, CCS must be satisfied, as a threshold condition, that the infringement has been committed intentionally or negligently<sup>232</sup>. This is similar to the position in the EC and the UK. In this respect, CCS notes that in determining whether

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<sup>231</sup> See paragraph 278 of *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4.

<sup>232</sup> See section 69(3) of the Act and paragraphs 4.3 to 4.11 of the CCS Guidelines on Enforcement.

this threshold condition is met, both the European Commission and the OFT are not required to decide whether the infringement was committed intentionally or negligently, so long as they are satisfied that the infringement was either intentional or negligent: see *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid (SPO) and Others v Commission of the European Communities*<sup>233</sup> and *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading*<sup>234</sup>.

282. As established in the *Pest Control Case*<sup>235</sup> and *Express Bus Operators Case*<sup>236</sup>, 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 action will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or
  - c) the undertaking could not have been unaware that its agreement or conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.

CCS is of the view that 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 competition<sup>237</sup>.

283. CCS considers that collusive tendering or bid-rigging arrangements, as in this case, are serious infringements of the section 34 prohibition, which have as their object the restriction of competition, and are likely to have been, by their very nature, committed intentionally.
284. Further, CCS considers that the Parties would, in all likelihood, have submitted tender proposals or quotes before those projects specified at paragraphs 84 to 274 of this Decision and either would have, or ought to have known that the purpose of conducting tenders is to ensure competition in the award of projects.
285. CCS considers that, by reason of the very nature of the agreements and/or concerted practices involving collusive tendering or bid-rigging, each of the

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<sup>233</sup> (Case C-137/95P) [1996] ECR I-1611.

<sup>234</sup> See [2002] CAT 1, [2002] Comp AR 13, at paragraphs 452 to 458.

<sup>235</sup> See 600/008/06, paragraph 355

<sup>236</sup> See 500/003/08, paragraph 442

<sup>237</sup> See paragraphs 4.7 to 4.10 of the CCS Guidelines on Enforcement.

Parties must have been aware that the agreements and/or concerted practices in which they participated had the object of preventing, restricting or distorting competition. CCS is therefore satisfied that each of the Parties intentionally or negligently infringed the section 34 prohibition.

286. CCS imposes a penalty on the Parties listed at paragraph 1 above in relation to the infringements considered at paragraphs 84 to 274 above in respect of which each Party is found to have participated in collusive tendering arrangements. The representations received from the Parties did not challenge the legality of CCS' decision to impose the penalty but rather plead for lower penalties or for stern warnings to be issued. The representations received by the Parties would be elaborated further when computing their penalties.
287. The CCS Guidelines provides that CCS will grant an undertaking the benefit of total immunity from financial penalties if all of the following 2 conditions are satisfied<sup>238</sup>:
- a) The undertaking is the first to provide the CCS with evidence of the cartel activity before an investigation has already commenced, provided that the CCS does not already have sufficient information to establish the existence of the alleged cartel activity;
  - b) The undertaking:
    - Provides the CCS with all the information, documents and evidence available to it regarding the cartel activity;
    - Maintains continuous and complete co-operation throughout the investigation and until the conclusion of any action by the CCS arising as a result of the investigation;
    - Refrains from further participation in the cartel activity from the time of disclosure of the cartel activity to the CCS (except as may be directed by the CCS);
    - Must not have been the one to initiate the cartel; and
    - Must not have taken any steps to coerce another undertaking to take part in the cartel activity.

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<sup>238</sup> See paragraph 2.2 of CCS Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity Cases

288. In relation to the condition that the undertaking coming forward must not have been the initiator of the cartel, the practice in other jurisdictions which implement similar programs of leniency to cartel participants is instructive.
289. The United States Department of Justice (“US DOJ”) applies similar conditions in relation to the granting of leniency to applicants. Specifically, the Corporate Leniency Policy issued by the US DOJ provides as a condition that “The corporation did not coerce another party to participate in the illegal activity and clearly was not the leader in, or originator of, the activity.”<sup>239</sup> In meeting this condition, the US DOJ has stated in its Policy that the burden of meeting this condition will be low where the corporation comes forward before the DOJ has commenced any investigation into the illegal activity. In referring to “the” leader and “the” originator of the activity rather than “a” leader or “an” originator, the US DOJ has taken the position that in situations where the corporate conspirators are viewed as coequals or where there are two or more corporations that are viewed as leaders or originators, any of the corporate participants will satisfy this condition.
290. A similar condition used to exist in the United Kingdom where the immunity applicant must not have acted as the instigator or played the leading role in that cartel. In this regard, the Competition Appeal Tribunal in *Argos Limited & Littlewoods Limited v the Office of Fair Trading* [2005] CAT 13 made it quite clear that “an” instigator or an undertaking which played “a” leading role in the cartel was nevertheless entitled to full leniency so long as it was not “the” instigator or played “the” leading role in the cartel.
291. As regards the last condition in paragraph 287.b), the OFT in its guidance on Leniency in Cartel Cases<sup>240</sup>, has a similar condition that the undertaking coming forth with information must have not have taken steps to coerce another business to take part in the cartel. In the OFT’s guidance note on the handling of applications for leniency and no-action letters, the OFT has taken the view that “the bar is high in relation to both the type of behaviour which will be regarded as coercive and the evidence necessary to prove that behaviour.”<sup>241</sup>
292. Conduct which the OFT will deem to amount to coercion include<sup>242</sup>:

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<sup>239</sup> Corporate Leniency Policy issued by US DOJ, see Condition A6, page 2.

<sup>240</sup> Office of Fair Trading, *Leniency in Cartel Cases: a guide to the leniency programme for cartels*, 2005

<sup>241</sup> Document OFT 803, Leniency and no-action, OFT’s guidance note on the handling of applications dated December 2008.

<sup>242</sup> Ibid. paragraph 6.5

- actual physical violence or proven threats of violence which would have a realistic prospect of being carried out, or blackmail, or
  - strong economic pressure as to make market exit a real risk.
293. In situations where there is a mere agreed enforcement or punishment mechanisms to enforce an operation of a cartel, the OFT takes the view that there will not be a coercer issue.<sup>243</sup>
294. Arisco, having met the conditions of CCS' leniency programme, was granted total immunity from financial penalties.
295. AVL submitted in its representations that Anthony Tong of Arisco initiated the whole bid-rigging arrangement and collusion amongst all the Parties and coerced Victor Lee of AVL into participating in the collusive tenders. Therefore, Arisco should be denied the benefit of total immunity. CCS is of the view that the bar would be high to prove that an immunity applicant was the one to initiate the cartel or took steps to coerce another undertaking to take part in the cartel. In AVL's representations, no elaboration was given on how the cartel was initiated or how AVL was coerced to take part in the cartel. In particular, CCS notes that Arisco was not always the one initiating contact with its competitors and other Parties like AVL, Huang Soon, Integrated One and Toplist also requested for cover bids. In any event, CCS is unable to see how the issue of whether Arisco should be granted total immunity or just a reduction in penalties has any bearing on the level of penalties on AVL. After all, Arisco was in a quite different position than AVL. Arisco was the first undertaking to voluntarily come forward to provide CCS with evidence of an infringement of section 34, evidence which enabled CCS to commence an investigation under the Act and ultimately to prove serious infringements of the Act.

### **C. Calculation of penalties**

296. The *CCS Guidelines on the Appropriate Amount of Penalty* provides that in calculating the amount of penalty to be imposed, CCS will take into consideration the seriousness of the infringement, the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement ("the relevant turnover") in the undertaking's last business year, the duration of the infringement, other relevant factors such as deterrent value, and any aggravating and mitigating factors.

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<sup>243</sup> Ibid. paragraph 6.6

297. As set out in the *Pest Control Case* and the *Express Bus Operators Case*, the European Commission and the OFT adopt similar methodologies in the calculation of penalties. The starting point is a base figure, which is worked out by taking a percentage or proportion of the relevant sales or turnover. A multiplier is applied for the duration of infringement and that figure is then adjusted to take into account factors such as deterrence and aggravating and mitigating considerations. CCS adopted this approach in the *Pest Control Case and Express Bus Operators Case* and proposes to similarly adopt this approach for the present case.

**(i) Seriousness of the Infringements and Relevant Turnover**

298. CCS 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 relevant turnover in this case would be the turnover for electrical rectification and improvement works for commercial/industrial buildings and MCSTs, and/or the turnover for installation and maintenance of air-conditioning works for commercial/industrial buildings and MCSTs. Where a party is unable or unwilling to provide CCS with information to determine its relevant turnover, CCS will consider the turnover of the other Parties in considering the appropriate penalty to be imposed.

299. In assessing the seriousness of the infringement, CCS 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 consideration<sup>244</sup>.

300. The relevant turnover in the last business year will be considered when CCS assesses the impact and effect of the infringement on the market<sup>245</sup>. The “last business year” is the business year preceding the date on which the decision of the CCS is taken, or if figures are not available for that business year, the one immediately preceding it<sup>246</sup>.

301. The seriousness of the infringement may also depend on the nature of the infringement. CCS considers that the collusive tendering or bid-rigging

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<sup>244</sup> See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.3.

<sup>245</sup> See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.4.

<sup>246</sup> See Competition (Financial Penalties) Order 2007, paragraph 3 and CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.5.

arrangements in this case, set out at paragraphs 84 to 274 above, are serious infringements.

302. Nature of the product - The contracts referred to in this Decision can be categorised into two focal products namely (a) electrical rectification and improvement works for commercial/industrial buildings and MCSTs, and (b) installation and maintenance of air-conditioning works for commercial/industrial buildings and MCSTs. The relevant geographic market for these two focal products is Singapore.
303. The value of the projects listed in paragraphs 84 to 274 above, the subject matter of this Decision, range from approximately S\$2,100 to S\$358,985. The size of a project can be a relevant factor when assessing the seriousness of the infringement. Two of the three projects awarded to the Parties, were the subject of further negotiations between the customer and the winner of the tender, leading to a reduction of the initial proposed sums<sup>247</sup>. The total value of the projects awarded amounted S\$176,811.
304. Structure of the market and market share of the Parties - The electrical and building works industry is made up of a large number of players in the market. Market players consist of sole-proprietorships with one-man operations as well as larger companies with more organised structures. However, CCS notes that the customers in the market do not openly solicit for contractors to perform the electrical rectification and improvement works or installation and maintenance of air-conditioning works and would only invite selected contractors (e.g. their appointed licensed electrical worker or contractors that they had worked with before) to place their bids. At times, these selected contractors would recommend their friends to place bids as well.
305. CCS is of the view that entry barriers are low as players in the market are generally not required to apply for permits for electrical rectification and improvement works from EMA or for installation and maintenance of air-conditioning works from BCA so long as they have workers who are skilled in these areas.
306. In light of the above, CCS is of the view that none of the Parties has a major market share in the market for electrical rectification and improvement works or installation and maintenance of air-conditioning works in Singapore.

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<sup>247</sup> See Pinewood Gardens and Gloucester Mansions projects at paragraphs 133 and 168.

307. Effect on customers, competitors and third parties - It is not possible for CCS to quantify the amount of any loss caused to customers because of the collusive tendering. However, CCS considers that the Parties' infringements gave customers the impression that there was more competition in the tender process relating to a specific project than there actually was<sup>248</sup>. As a result, it was not possible for those customers to ascertain whether the tenders received were based on competitive prices or other factors. It also meant that customers were deprived of the possibility of replacing those companies that did not wish to win the project with other third-party companies that might have been keen to submit a genuinely-competitive bid.
308. Having regard to the nature of the product, the size of the projects, the structure of the market, the market shares of the Parties, the effect of the infringements on customers, competitors and third parties and that collusive tendering/bid-rigging is one of the more serious infringements of the Competition Act, CCS considers it will be appropriate to fix the starting point at [...] % of relevant turnover for each of the Parties.

#### **(ii) Duration of the Infringements**

309. CCS considers it appropriate, at this stage, after calculating a base penalty sum, to see if this sum should be adjusted to take into account the duration of the infringement. As noted at paragraph 276 above, CCS has concluded that the duration of each of the infringements in this Decision was not greater than one year. Even though the actual collusive tendering or bid-rigging arrangements lasted for significantly less than one year, the anti-competitive effects are irreversible in respect of that tender and may affect future tendering processes by the same bidders if an infringing party wins and gains the advantage of incumbency<sup>249</sup>. CCS considers that there should be no adjustments for duration in this case to any penalties to be imposed.

#### **(iii) Aggravating and Mitigating Factors**

310. At this next stage, CCS will consider the presence of aggravating or mitigating factors and make adjustments when assessing the amount of financial penalty<sup>250</sup>, 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.

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<sup>248</sup> See the view of the CAT in *Apex*, at paragraph 250.

<sup>249</sup> See the view of the CAT in *Apex*, at paragraph 278.

<sup>250</sup> See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.10.

311. CCS considers the involvement of directors or senior management as an aggravating factor<sup>251</sup>. 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.
312. CCS considers repeated infringements to be an aggravating factor<sup>252</sup>. The amount of the penalty will be adjusted upwards to reflect the number of infringements for each Party. In deciding on the appropriate increase in amount for multiple infringements, CCS is mindful that any adjustment should be fair and proportionate as between all participants.
313. In the *Pest Control Case*, CCS considers that it is appropriate to increase the penalties by multiples of 10% where a Party has committed 2 or more infringements, as set out in the table below. In this respect, CCS notes that the OFT adopted a similar approach in a series of collusive tendering cases where there were similar discrete collusive tendering or bid-rigging infringements to fix prices<sup>253</sup>. CCS proposes to similarly adopt this methodology for the present case.

Number of infringements	Increase in Penalties
1	None
2	10%
3	20%
4	30%
5	40%
6	50%
7	60%
8	70%
9	80%
10	90%
11	100%
12, etc	110%, etc

#### iv) Other Relevant Factors

314. Moving on to consider other relevant factors, the penalty may be adjusted as appropriate to achieve policy objectives, particularly to deter

<sup>251</sup> See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11.

<sup>252</sup> See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.11.

<sup>253</sup> CA98/01/2006 (Joined Cases CE/3123-03 and CE/3645-03), CA 98/01/2005 (Case CE/1925-02), CA98/02/2005 (Case CE/1777-02), CA98/04/2005 (Case CE/3344-03), CA98/1/2004 (Case CP/0001-02).

undertakings (including non-infringing undertakings) from engaging in anti-competitive practices, such as collusive tendering.

315. CCS considers that collusive tendering is one of the most serious infringements of the Act, a cartel activity<sup>254</sup>. Accordingly, it is necessary to effectively deter undertakings from engaging in collusive tendering by imposing an adequately-deterrent penalty that will send the appropriate message. Where the financial penalty imposed on any of the Parties after the adjustment for duration and other factors has been taken into account is insufficient to meet the objectives of deterrence, CCS will adjust the penalty to meet the objectives of deterrence.
316. While the financial position of the Parties is a relevant consideration in determining whether the penalty imposed will be sufficiently deterrent, CCS is of the view that cartelists should generally not rely on their economic difficulties and those of the market in seeking a reduction of the penalties imposed: *Tokai Carbon Ltd and others v European Commission*<sup>255</sup>. The mere finding of an adverse or loss-making financial situation does not necessarily merit a reduction in the financial penalty: *Achilles Paper Group Limited v OFT*<sup>256</sup>. A party seeking more lenient treatment because of its financial position must provide the regulator with all information and documentation it wishes to have taken into account: *Sepia Logistics Limited (formerly known as Double Quick Supplyline Limited) and Precision Concepts Limited v OFT*<sup>257</sup>.

#### **D. Penalty for Aldale**

317. Starting point: Aldale was involved in one infringement:
- a) collusive tendering or bid-rigging in connection with The Makena project, which CCS considers came to an end in April 2009.
318. Aldale's financial year is 1 January to 31 December. However, Aldale has only been incorporated in October 2008 and was not able to produce a full set of accounts from 1 January to 31 December 2009. Therefore, using the period from October 2008 to September 2009, Aldale's relevant turnover figures for services involving electrical rectification and improvement works for commercial/industrial buildings and MCSTs was S\$[...] <sup>258</sup>.

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<sup>254</sup> See the CCS Guidelines on the Appropriate Amount of Penalty, paragraph 1.7.

<sup>255</sup> [2004] ECR II-1181, [2004] 5 CMLR 28.

<sup>256</sup> [2006] CAT 24 see paragraph 56

<sup>257</sup> [2007] CAT 13.

<sup>258</sup> Information provided by Aldale on 17 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

319. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Aldale at [...] % of relevant turnover. The starting point for Aldale is therefore S\$[...].
320. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
321. Adjustment for aggravating and mitigating factors: As stated in paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Aldale was involved in collusive tendering or bid-rigging in connection with only one infringement, CCS will not increase the penalty for Aldale.
322. CCS considers the involvement on the part of the Director of Aldale, Anthony Tong, in the infringement to be an aggravating factor and increases the penalty by [...] % In consideration of these aggravating factors, there is an upward adjustment of [...] %.
323. CCS considers that Aldale was cooperative in replying to CCS' section 63 requests and during the inspections and interviews. During CCS' interview of Anthony Tong pursuant to a section 63 notice, he admitted to his involvement in the infringement in connection to The Makena project. He was upfront about soliciting support quotes and the involvement of AVL in respect of The Makena project. He also provided the quotation that he had prepared for AVL in respect of the Makena project. CCS considers that Anthony Tong has been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...] % for co-operation.
324. As a result of the consideration of the aggravating and mitigating factors, the penalty has been adjusted downwards by [...] % to S\$[...].
325. Adjustment for other factors: As Aldale had only been incorporated in October 2008, it was unable to provide figures on profitability. Nevertheless, CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to Aldale to act as an effective deterrent to Aldale and to other undertakings which may consider engaging in collusive tendering. As stated above at paragraph 315, CCS will adjust the penalty at this stage to S\$[...].
326. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$5,000.00.

327. Representations by Aldale in respect of penalty: Aldale did not make any representations.
328. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$5,000.00 on Aldale.

#### **E. Penalty for Alpha & Omega**

329. Starting point: Alpha & Omega was involved in one infringement:  
a) collusive tendering or bid-rigging in connection with the Tiara project, which CCS considers came to an end in June 2008.
330. Alpha & Omega's financial year is 1 January to 31 December. Alpha & Omega's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 was S\$[...]<sup>259</sup>.
331. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Alpha & Omega at [...] % of relevant turnover. The starting point for Alpha & Omega is therefore S\$[...].
332. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
333. Adjustment for aggravating and mitigating factors: As stated in paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Alpha & Omega was involved in collusive tendering or bid-rigging in connection with only one infringement, CCS will not increase the penalty for Alpha & Omega.
334. CCS considers the involvement on the part of the sole proprietor of Alpha & Omega and Ngoo Mei Whei in the infringements to be an aggravating factor and increases the penalty by [...] %. In consideration of these aggravating factors, there is an upward adjustment of [...] %.
335. CCS considers that Alpha & Omega was cooperative in replying to CCS' section 63 requests and during the interviews. During CCS' interviews of Lam Kien Choon and Ngoo Mei Whei pursuant to section 63 notices, they had admitted to their involvement in the infringement in connection to the Tiara project. Ngoo Mei Whei was upfront about DAE's involvement in the support quote arrangement for the Tiara project. CCS considers that Lam

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<sup>259</sup> Information provided by Alpha Omega on 18 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

Kien Choon and Ngoo Mei Whei have been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...] % for co-operation.

336. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [...] % to S\$[...].
337. Adjustment for other factors: CCS notes that Alpha & Omega made a [...] <sup>260</sup> for the financial year ended 31 December 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to Alpha & Omega to act as an effective deterrent to Alpha & Omega and to other undertakings which may consider engaging in collusive tendering. As stated above at paragraph 315, CCS will adjust the penalty at this stage to S\$[...].
338. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$5,000.00.
339. Representations by Alpha & Omega in respect of penalty: Alpha & Omega did not make any representations.
340. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$5,000.00 on Alpha & Omega.

## **F. Arisco**

341. Starting point: Arisco was involved in three infringements:
- a) collusive tendering or bid-rigging in connection with the Esplanade project, which CCS considers came to an end in March 2008;
  - b) collusive tendering or bid-rigging in connection with the Pinewood Gardens, which CCS considers came to an end in October 2007; and
  - c) collusive tendering or bid-rigging in connection with the Gloucester Mansions project, which CCS considers came to an end in September 2007.
342. Arisco's financial year is 1 April to 31 March. However, Arisco has only provided total turnover figures for financial year ending 31 March 2005

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<sup>260</sup> Ibid

- citing reasons that company accounts were not filed by the former managing director, Anthony Tong.<sup>261</sup>
343. Arisco was also unable to provide CCS with relevant turnover figures for services involving electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 March 2005. Therefore, CCS calculated the proportion of total turnover that was made up by the relevant turnover for the other Parties that provided CCS with relevant turnover figures for commercial/industrial buildings and MCSTs (see **Annex 1**). CCS then calculated that on average [...]% of a Party's total turnover is made up by its relevant turnover and applied this percentage to Arisco's estimated total turnover to work out its relevant turnover as S\$[...].
344. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Arisco at [...]% of relevant turnover. The starting point for Arisco is therefore S\$[...].
345. Adjustment for duration: In accordance with paragraph 309 above, CCS does not make any adjustment for duration.
346. Adjustment for aggravating and mitigating factors: As stated in paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Arisco was involved in collusive tendering or bid-rigging in connection with three infringements, CCS increases the penalty by 20%.
347. CCS considers the involvement on the part of the then managing director of Arisco in the infringement as an aggravating factor and increases the penalty by [...]%. In consideration of these aggravating factors, there is an upward adjustment of [...]%.
348. CCS considers that Arisco co-operated with CCS during the course of the investigations. However, this was a condition of its being granted leniency and so no extra mitigation was given for the same.
349. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
350. Adjustment for other factors: CCS notes that Arisco was not able to produce information on profitability for the last business year and had [...]

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<sup>261</sup> Information provided by Arisco on 18 December 2009 and 4 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

for financial year ending 31 March 2005<sup>262</sup>. However, CCS notes that Arisco was awarded two of the projects: Esplanade<sup>263</sup> and Pinewood Gardens<sup>264</sup>, as a result of its collusive actions. The total value of these two projects was S\$172,511. The value of these projects had not been included in the relevant as well as total turnover of Arisco and was not taken into account in arriving at the starting point.

351. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. On balance, CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Arisco and other undertakings which may consider engaging in collusive tendering and will not be making any adjustments to the penalty.
352. Adjustment to prevent maximum penalty being exceeded: The financial penalty as at this stage, i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...].
353. Adjustment for leniency: Arisco was granted total immunity from financial penalties as part of the CCS' leniency programme. Arisco's financial penalty is therefore reduced to nil. Arisco did not make any representations.

## **G. Penalty for AVL**

354. Starting point: AVL was involved in seven infringements:
- a) collusive tendering or bid-rigging in connection with the Esplanade project, which CCS considers came to an end in March 2008;
  - b) collusive tendering or bid-rigging in connection with the Azalea Park project, which CCS considers came to an end in March 2009;
  - c) collusive tendering or bid-rigging in connection with the Pinewood Gardens project, which CCS considers came to an end in October 2007;
  - d) collusive tendering or bid-rigging in connection with The Makena project, which CCS considers came to an end in April 2009;
  - e) collusive tendering or bid-rigging in connection with the Kaki Bukit Industrial Building I project, which CCS considers came to an end in December 2008;
  - f) collusive tendering or bid-rigging in connection with the Kaki Bukit Industrial Building II project, which CCS considers came to an end in August 2008; and

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<sup>262</sup> Ibid

<sup>263</sup> The Esplanade project was awarded to Arisco at \$157,611 (as per Arisco's quotation).

<sup>264</sup> The Pinewood Gardens project was awarded to Arisco at \$14,900 (reduced from the sum of \$15,943 quoted by Arisco after further negotiations).

- g) collusive tendering or bid-rigging in connection with the Orrick Investments project, which CCS considers came to an end in April 2009.
355. AVL's financial year is 1 July to 30 June. AVL's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 30 June 2009 was S\$[...].<sup>265</sup>
356. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for AVL at [...] % of relevant turnover. The starting point for AVL is therefore S\$[...].
357. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
358. Adjustment for aggravating and mitigating factors: As stated in paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As AVL was involved in collusive tendering or bid-rigging in connection with seven infringements, CCS increases the penalty by 60%.
359. CCS considers the involvement on the part of a Director of AVL in the infringements as an aggravating factor and increases the penalty by [...] %. In consideration of these aggravating factors, there is an upward adjustment of [...] %.
360. CCS considers that AVL was cooperative in replying to CCS' section 63 requests and during the inspections and interviews. During CCS' interviews of Victor Lee pursuant to section 63 notices, he admitted to his involvement in the infringements in connection to all the above projects stated in paragraph 354. Victor Lee was upfront about the other Parties' involvement in providing or receiving support quotes in those projects as well. He had also provided the quotations that he had prepared for Huang Soon and System Technic in respect of the Kaki Bukit Industrial Building I project. CCS considers that Victor Lee has been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...] % for co-operation.
361. After taking into consideration the aggravating and mitigating factors, the penalty has been adjusted upwards by [...] % to S\$[...].

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<sup>265</sup> Information provided by AVL via letter dated 17 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

362. Adjustment for other factors: CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS notes that AVL made [...] <sup>266</sup>. However, CCS also notes that AVL has [...] <sup>267</sup>. In the circumstances, CCS does not consider that AVL's financial position warrants a reduction of the penalty at this stage, having regard to the seriousness of the infringement and the need for deterrence.
363. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$36,904.91.
364. Representations by AVL in respect of penalty <sup>268</sup>: AVL sought a reduction in the penalty to be imposed on the following grounds:
- a) AVL's bid-rigging activities were not a serious breach of the Act because there was no serious effect on the industry due to the following reasons:
    - (i) Unlike the Pest Control or Express Bus Agencies Association cases where the infringing parties had large market shares in the relevant market, the parties involved in the present case are small players in the electrical and building works industry with less than [...] market share;
    - (ii) The affected customers only selected a few contractors to put in bids and were not interested in selecting any other interested party that may be keen to submit a genuinely competitive bid; and
    - (iii) The tender process is not binding as customers could also bargain with any of the parties who tendered for the job to negotiate for a lower price.
  - b) In the computation of penalties, the increase by 60% due to multiple infringements was unfair as:
    - (i) The main culprit and beneficiary of the bid-rigging activity was Anthony Tong and AVL did not benefit from the infringements;
    - (ii) Anthony Tong is Victor Lee's maternal uncle as well as his mentor. As he was beholden to Anthony Tong for giving him the skills and knowledge that he possesses today, Victor Lee felt obliged to help Anthony Tong;
    - (iii) AVL was not aware of the Competition Act and did not know

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<sup>266</sup> Ibid

<sup>267</sup> Ibid

<sup>268</sup> Written representations by Acies Law Corporation, which acted on behalf of AVL, dated 20 April 2010.

- that his actions were illegal; and
- (iv) According to Victor Lee's statement, Anthony Tong had prepared and signed on AVL's quotations without Victor Lee's knowledge or consent on two occasions.
- c) The involvement of Victor Lee as Director of AVL should not be considered as an aggravating factor as AVL had no employees other than Victor Lee's wife who holds a full-time job of her own and merely assists him in administrative work;
  - d) AVL had given its utmost cooperation to CCS during the investigation and had volunteered documents which implicated additional parties in the Kaki Bukit Industrial Project I; and
  - e) The accounts that CCS relied upon were prior to the bad publicity suffered by AVL as a result of CCS' press release. As some of AVL's clients had stopped giving AVL jobs or terminated their existing jobs, CCS should take this into account to reduce the penalty.
365. As set out in paragraphs 306 and 308, the small market shares of the infringing parties have been taken into account in arriving at the starting point. Although the affected customers only selected a few contractors to participate in the bidding exercise, this does not necessarily mean that they will condone any collusive tendering or bid-rigging activities on the part of these select contractors. There is no evidence that the affected customers were aware of the cover pricing having taken place. Instead, they were deceived into thinking that they had received genuine bids when in fact the bids were affected by illegal contact between the contractors. Even if the price of the winning bid was subject to negotiation post-tender, an impact on the price could not be discounted. If the winning tender price was inflated as a result of cover pricing, then the impact would be carried across to the subsequent negotiations, as they would have commenced at an inflated rate. Further, any such negotiations would inevitably be informed by the customers' perception of competition and pricing in the market, which the practice of cover pricing will tend to distort. As set out in paragraph 315, CCS considers that collusive tendering is one of the most serious infringements of the Act, a cartel activity. Reducing the starting point to [...] as suggested by AVL, would not result in a financial penalty that is adequately deterrent.
366. With regard to the representations made at paragraph 364b), CCS notes that AVL was involved in seven infringements. Besides placing covers bids to assist the other Parties, AVL had also requested for cover bids from three

other Parties for the Kaki Bukit Industrial Building I project. In addition, three of the infringements did not involve Anthony Tong. The uplift of 60% was an adjustment to reflect AVL's involvement in multiple infringements. The lack of any financial benefit from the infringements does not diminish the seriousness of the infringements or constitute a mitigating factor. As set out in paragraph 282, ignorance or mistake of the law is no bar to a finding of intentional infringement under the Act. CCS is of the view that Victor Lee of AVL was well aware of the cover bids and understood that these were meant to help Anthony Tong to secure projects.<sup>269</sup> As regards the quotations Victor Lee alleged were prepared and signed by Anthony Tong without his consent, these did not pertain to the projects specified in this Decision.

367. With regard to the representations made at paragraph 364c), the intent of recognising as an aggravating factor, the participation of directors or senior management, is to accord harsher punishment where management (who makes the key decisions of a company) is involved in the infringement. This is contrasted with the situation where an undertaking may be found to be infringing as a result of acts carried out by rogue employees in defiance of corporate compliance programmes. This aggravating factor is applied equally to small companies and multi-national companies alike and in the present case, applied to parties including sole-proprietorship firms. Increasing the penalties for the involvement of senior management being an aggravating factor provides an additional deterrence against senior management engaging in anti-competitive activities.
368. As for the representations made at paragraph 364d), the cooperation rendered by AVL had already been considered at paragraph 360, resulting in a reduction of penalty by [...]%. As for the argument that CCS was relying on the financial accounts prior to CCS' press release, CCS is only required to consider the turnover of AVL's business in Singapore for the relevant market affected by the infringement in the last business year preceding CCS' decision for penalties computation<sup>270</sup>. The losses suffered by AVL as a result of CCS' press release are not a relevant factor for the purposes of calculating penalties. This is in line with the approach taken by the OFT in its recent decision on *Bid Rigging in the Construction Industry in England* where a few parties argued that press statements made by the OFT following the issue of a statement of objections had substantially

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<sup>269</sup> See answer to question 27 of Victor Lee's notes of information dated 7 May 2009.

<sup>270</sup> See CCS Guidelines on the Appropriate Amount of Penalty, paragraph 2.1 read with paragraphs 2.4 and 2.5

damaged their business and that this loss should be taken into account in setting penalties. The OFT rejected this argument<sup>271</sup>.

369. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$36,904.91 on AVL.

## **H. Penalty for DAE**

370. Starting point: DAE was involved in one infringement:  
a) collusive tendering or bid-rigging in connection with the Tiara project, which CCS considers came to an end in June 2008.
371. DAE's financial year is 1 January to 31 December. DAE's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 was S\$[...]<sup>272</sup>.
372. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for DAE at [...] % of relevant turnover. The starting point for DAE is therefore S\$[...].
373. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
374. Adjustment for aggravating and mitigating factors: As stated in paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As DAE was involved in collusive tendering or bid-rigging in connection with only one infringement, CCS will not increase the penalty for DAE.
375. CCS considers the involvement on the part of the sole-proprietor of DAE in the infringements as an aggravating factor and increases the penalty by [...] %. In consideration of these aggravating factors, there is an upward adjustment of [...] %.
376. CCS considers that DAE was cooperative in replying to CCS' section 63 requests and during the interviews. During CCS' interviews of Eric Lee pursuant to section 63 notice, he admitted to his involvement in the infringement in connection to the Tiara project. Eric Lee was also upfront about Alpha & Omega's involvement in providing a support quote to DAE

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<sup>271</sup> See VI. 134

<sup>272</sup> Information provided by DAE on 20 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

- for the Tiara project. He had also provided the quotation that Alpha & Omega had faxed over to him in respect of the Tiara project. CCS considers that Eric Lee has been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...] % for co-operation.
377. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [...] % to S\$[...].
378. Adjustment for other factors: CCS notes that DAE made [...] <sup>273</sup> for the financial year ended 31 December 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors has to act as an effective deterrent, not just to DAE and but also to other undertakings which may consider engaging in collusive tendering. Based on the circumstances and as stated above at paragraph 315, CCS finds it appropriate to adjust the penalty at this stage to S\$[...].
379. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$5,000.00.
380. Representations by DAE in respect of penalty: DAE did not make any representations.
381. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$5,000.00 on DAE.

### **I. E-SP Integrated**

382. Starting point: E-SP Integrated was involved in one infringement:
- a) collusive tendering or bid-rigging in connection with the Precision Magnetics project, which CCS considers came to an end in July 2007.
383. E-SP Integrated's financial year is 1 April to 31 March. <sup>274</sup> E-SP Integrated's relevant turnover figures for the installation and maintenance of air-conditioning works for commercial/industrial buildings and MCSTs for the financial year ending 31 March 2009 was S\$[...]. <sup>275</sup>

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<sup>273</sup> Ibid

<sup>274</sup> Information provided by E-SP Integrated via letter dated 16 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>275</sup> Ibid

384. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for E-SP Integrated at [...] % of relevant turnover. The starting point for E-SP Integrated is therefore S\$[...].
385. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
386. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As E-SP Integrated was involved in collusive tendering or bid-rigging in connection with only one infringement, CCS will not increase the penalty for E-SP Integrated.
387. CCS considers the involvement on the part of a Director of E-SP Integrated in the infringements as an aggravating factor and increases the penalty by [...] %. In consideration of these aggravating factors, there is an upward adjustment of [...] %.
388. CCS considers that E-SP Integrated was cooperative in replying to CCS' section 63 requests and during the interviews. During CCS' interviews of Dennis Quek pursuant to a section 63 notice, he admitted to his involvement in the infringement in connection to the Precision Magnetics projects. Dennis Quek was also upfront about Integrated One's involvement in requesting for his assistance in providing support quotes for the Precision Magnetics project. CCS considers that Dennis Quek has been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...] % for co-operation.
389. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [...] % to S\$[...].
390. Adjustment for other factors: CCS notes that E-SP Integrated made [...] <sup>276</sup> for the financial year ended 31 March 2009. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to E-SP Integrated and to other undertakings which may consider engaging in collusive tendering and will not be making adjustments to the penalty at this stage.
391. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS

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<sup>276</sup> Ibid

can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of stage is S\$14,595.26.

392. Representations by E-SP Integrated in respect of penalty<sup>277</sup>: E-SP Integrated sought a reduction in the penalty to be imposed on the grounds that it is a first time offender with involvement in only one infringement and that the infringement was committed because Dennis Quek was helping his friend in Integrated One without receiving any benefits. The fact that E-SP Integrated One was only involved in one infringement had been considered and taken into account in paragraph 386. While repeated infringements would constitute an aggravating factor under paragraph 2.11 of CCS Guidelines on the Appropriate Amount of Penalty, the fact that E-SP Integrated was a first time offender is not a basis for reducing its penalties further. Although E-SP Integrated only assisted Integrated One by placing a cover bid, its actions nevertheless ensured the success of an activity which infringed the Act. The fact that E-SP Integrated did not benefit from the arrangement did not diminish the seriousness of the infringement.
393. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$14,595.26 on E-SP Integrated.

## **J. Penalty for Etora**

394. Starting point: Etora was involved in one infringement:
- a) collusive tendering or bid-rigging in connection with the Precision Magnetics project, which CCS considers came to an end in July 2007.
395. Etora's financial year is 1 January to 31 December.<sup>278</sup> Etora's relevant turnover figures for the installation and maintenance of air-conditioning works for commercial/industrial buildings and MCSTs for the financial year ending 31 March 2009 was S\$[...].<sup>279</sup>
396. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Etora at [...] % of relevant turnover. The starting point for Etora is therefore S\$[...].

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<sup>277</sup> Written representations by E-SP Integrated dated 7 April 2010.

<sup>278</sup> Information provided by Etora via letter dated 4 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>279</sup> Ibid

397. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
398. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Etora was involved in collusive tendering or bid-rigging in connection with only one infringement, CCS will not increase the penalty for Etora.
399. CCS considers the involvement on the part of a Director of Etora in the infringements as an aggravating factor and increases the penalty by [...]%. In consideration of these aggravating factors, there is an upward adjustment of [...]%.
400. CCS considers that Etora was cooperative in replying to CCS' section 63 requests and during the interviews. During CCS' interview of Richard Chua pursuant to a section 63 notice, he admitted to his involvement in the infringement in connection to the Precision Magnetics projects. Richard Chua was also upfront about Integrated One's involvement in requesting for his assistance in providing support quotes for the Precision Magnetics project. CCS considers that Richard Chua has been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...]% for co-operation.
401. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [...]% to S\$[...].
402. Adjustment for other factors: CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS notes that Etora made [...] <sup>280</sup> for the financial year ended 31 March 2009. However, CCS also notes that Etora has [...] <sup>281</sup>. In the circumstances, CCS does not consider that Etora's financial position warrants a reduction of the penalty at this stage, having regard to the seriousness of the infringement and the need for deterrence.
403. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$31,023.58.

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<sup>280</sup> Ibid

<sup>281</sup> Information provided by Etora on 4 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

404. Representations by Etora in respect of penalty<sup>282</sup>: Etora did not contest the findings on liability or the penalties but appealed for payment of penalties to be in instalments.
405. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$31,023.58 on Etora.

### **K. Penalty for Huang Soon**

406. Starting point: Huang Soon was involved in two infringements:
- a) collusive tendering or bid-rigging in connection with the Kaki Bukit Industrial Building I project, which CCS considers came to an end in December 2008; and
  - b) collusive tendering or bid-rigging in connection with the Orrick Investments project, which CCS considers came to an end in April 2009.
407. Huang Soon's financial year is 1 January to 31 December.<sup>283</sup> Huang Soon's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 was S\$[...].<sup>284</sup>
408. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Huang Soon at [...] % of relevant turnover. The starting point for Huang Soon is therefore S\$[...].
409. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
410. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Huang Soon was involved in collusive tendering or bid-rigging in connection with two infringements, CCS increases the penalty by 10%.
411. CCS considers the involvement on the part of the sole-proprietor of Huang Soon in the infringements as an aggravating factor and increases the penalty by [...] %. In consideration of these aggravating factors, there is an upward adjustment of [...] %.

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<sup>282</sup> Written representations by E-SP Integrated dated 7 April 2010.

<sup>283</sup> Information provided by Huang Soon via letter dated 17 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>284</sup> Ibid

412. CCS considers that Huang Soon was cooperative in replying to CCS' section 63 requests and during the inspections and interviews. During CCS' interviews of Poa Kim Bock pursuant to section 63 notice, he admitted to his involvement in the infringements in connection to the Kaki Bukit Industrial Building I and Orrick Investments projects. Although Poa Kim Bock was upfront about AVL's involvement in requesting for his assistance in providing a support quote for the Kaki Bukit Industrial Building I project, he was not as forthcoming in the Orrick Investments project on the involvement of AVL in supporting Huang Soon. Accordingly, CCS reduces the penalty by [...] % for co-operation.
413. After taking into consideration the aggravating and mitigating factors, the penalty at the end of this stage is S\$[...].
414. Adjustment for other factors: CCS notes that Huang Soon made [...] <sup>285</sup> for the financial year ended 31 December 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Huang Soon and to other undertakings which may consider engaging in collusive tendering and will not be making adjustments to the penalty at this stage.
415. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$14,547.40.
416. Representations by Huang Soon in respect of penalty <sup>286</sup>: Huang Soon sought a reduction in the penalty to be imposed on the ground that it is facing financial difficulties but did not provide any evidence of its financial position. As set out earlier in paragraph 316, CCS is of the view that cartelists should generally not rely on their economic difficulties in seeking a reduction of penalties imposed. In addition, the onus is on Huang Soon to provide information sufficient for CCS to make a proper assessment of its financial hardship. It is not CCS' responsibility to search for this information or to make additional enquiries of Huang Soon.
417. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$14,547.40 on Huang Soon.

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<sup>285</sup> Ibid

<sup>286</sup> Written representations by Huang Soon dated 17 April 2010.

## L. Penalty for Integrated One

418. Starting point: Integrated One was involved in three infringements:
- a) collusive tendering or bid-rigging in connection with the Precision Magnetics project, which CCS considers came to an end in July 2007;
  - b) collusive tendering or bid-rigging in connection with the Kaki Bukit Industrial Building I project, which CCS considers came to an end in December 2008; and
  - c) collusive tendering or bid-rigging in connection with the Kaki Bukit Industrial Building II project, which CCS considers came to an end in August 2008.
419. Integrated One's financial year is 1 January to 31 December.<sup>287</sup> Integrated One's relevant turnover figures for a) electrical rectification and improvement works for commercial/industrial buildings and MCSTs; and b) installation and maintenance of air-conditioning works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 were S\$[...] and S\$[...] respectively.<sup>288</sup>
420. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Integrated One at [...] % of relevant turnover. The starting point for Integrated One is therefore:

a) Electrical rectification and improvement works	b) Installation and maintenance of air-conditioning works.
S\$[...]	S\$[...]

421. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
422. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Integrated One was involved in collusive tendering or bid-rigging in connection with two infringements for electrical rectification and improvement works and one infringement for installation and maintenance of air-conditioning works, CCS will adjust the penalties as set out below:

<sup>287</sup> Information provided by Integrated One on 23 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>288</sup> Ibid

a) Electrical rectification and improvement works	b) Installation and maintenance of air-conditioning works.
Increase 10%	No adjustment

423. CCS considers the involvement on the part of a Director of Integrated One in all the infringements as an aggravating factor and increases the penalty by [...] % each for electrical rectification and improvement works and installation and maintenance of air-conditioning works.

424. In consideration of these aggravating factors, CCS will adjust the penalties as set out below:

a) Electrical rectification and improvement works	b) Installation and maintenance of air-conditioning works.
increase [...] %	increase [...] %

425. CCS considers that Integrated One was cooperative in replying to CCS' section 63 requests and during the inspections and interviews. During CCS' interviews of Goh Tong Meng pursuant to a section 63 notice, he admitted to his involvement in the infringement in connection to the projects reflected in paragraph 418. Goh Tong Meng was also upfront about the other Parties' involvement in providing and requesting support quotes in these projects as well. CCS also notes that Integrated One had produced emails pertaining to his communication with AVL, Triple H, Etoro and E-SP Integrated on the support quotes for the Precision Magnetics project and Kaki Bukit Industrial Building II project during the section 64 inspection on Integrated One's premises. CCS considers that Goh Tong Meng has been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...] % each for co-operation for electrical rectification and improvement works and installation and maintenance of air-conditioning works.

426. After taking into account the aggravating and mitigating factors, the penalties have been adjusted as set out below to a combined total of S\$[...]:

a) Electrical rectification and improvement works	b) Installation and maintenance of air-conditioning works.
reduce [...] %	reduce [...] %
S\$[...]	S\$[...]

427. Adjustment for other factors: CCS notes that Integrated One made [...] <sup>289</sup> for the financial year ended 31 March 2009. CCS is mindful that the

<sup>289</sup> Ibid

- financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Integrated One and to other undertakings which may consider engaging in collusive tendering and will not be making adjustments to the penalty at this stage.
428. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$44,889.05.
429. Representations by Integrated One in respect of penalty: Integrated One did not make any representations.
430. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$44,889.05 on Integrated One.

#### **M. Penalty for MME**

431. Starting point: MME was involved in two infringements:
- a) collusive tendering or bid-rigging in connection with the Azalea Park project, which CCS considers came to an end in March 2009; and
  - b) collusive tendering or bid-rigging in connection with the Pinewood Gardens, which CCS considers came to an end in October 2007
432. MME's financial year is 1 January to 31 December. MME's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 was S\$[...]<sup>290</sup>
433. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for MME at [...] % of relevant turnover. The starting point for MME is therefore S\$[...].
434. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
435. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating

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<sup>290</sup> Information provided by MME on 17 December 2009 and 21 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

- factor. As MME was involved in collusive tendering or bid-rigging in connection with two infringements, CCS increases the penalty by 10%.
436. CCS considers the involvement on the part of the sole-proprietor of MME in the infringement as an aggravating factor and increases the penalty by [...]%. In consideration of these aggravating factors, there is an upward adjustment of [...]%.
437. CCS considers that MME was cooperative in replying to CCS' section 63 requests and during their interviews. However, CCS notes that MME was less than forthcoming on MME's involvement in bid-rigging. Eddie Lim admitted to providing supporting bids to Anthony Tong in general but claimed that he was unable to recall if Anthony Tong had mentioned about the Azalea Park and Pinewood Gardens projects to him. Accordingly, CCS reduces the penalty by [...]% for co-operation.
438. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
439. Adjustment for other factors: CCS notes that MME made [...] <sup>291</sup> for the financial year ended 31 December 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors is not a significant sum in relation to MME to act as an effective deterrent to MME and to other undertakings which may consider engaging in collusive tendering. As stated above at paragraph 315, CCS will adjust the penalty at this stage to S\$[...].
440. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$5,000.00.
441. Representations by MME in respect of penalty <sup>292</sup>: MME sought a stern warning to be issued in lieu of penalty on the following grounds:
- a) That it did not receive any financial gains;
  - b) That the negative publicity of MME's involvement in this cartel and the anxieties faced during the investigation process would be sufficient deterrence for MME;
  - c) Anthony Tong's company, Aldale, which requested for MME's support was also penalised with a financial penalty of S\$5,000. Given Anthony

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<sup>291</sup> Ibid

<sup>292</sup> Written representations by MME dated 7 April 2010.

- Tong's active role in the bid-rigging arrangements in both Arisco and Aldale, MME's penalty should be less than \$5,000;
- d) MME's income was mainly derived from property management services, rather than from electrical and building works;
  - e) MME fully cooperated with CCS during the investigations; and
  - f) MME is intending to wind down its business.
442. With regard to the representations made at paragraph 441.a), CCS is of the view that the absence of financial gain would not absolve MME from having to pay a financial penalty. As set out earlier at paragraph 392, the lack of any financial benefit from the infringements does not diminish the seriousness of the infringements or constitute a mitigating factor.
443. As regards the representations made at paragraph 441.b), CCS notes that similar arguments were made in the OFT's recent decision on *Bid Rigging in the Construction Industry in England* that the widespread publicity following the issue of the statement of objections which affected the undertakings' reputation and the considerable legal expenses and management time spent in defending the OFT's allegations would serve as sufficient deterrent. The OFT rejected this argument. In its view, deterrence was not only about the particular addressees of a decision but also other companies<sup>293</sup>. In the present case, CCS is of the view that the negative impact of CCS' press release on MME and the stresses of being the subject of investigations would not be sufficient deterrence to MME or to other undertakings contemplating anti-competitive behaviour.
444. With regard to the representations made at paragraph 441.c), CCS is of the view that although MME did not request for cover bids and only assisted Arisco and Aldale to place cover bids, MME's actions still had the object of preventing, restricting or distorting competition. CCS considers that collusive tendering is one of the most serious infringements of the Act and it is necessary to effectively deter undertakings from engaging in collusive tendering by imposing financial penalties. Issuing only a stern warning to MME would not meet the objectives of deterring undertakings from engaging in collusive tendering. The case team notes that a similar argument was put forth in the OFT's recent decision on *Bid Rigging in the Construction Industry in England*. Some parties had argued that their starting point or overall penalty should be lower because they had only provided cover prices and had not sought to instigate the cover pricing arrangements. In rejecting this argument, the OFT found it irrelevant that the parties did not seek cover prices. By providing cover prices to their competitors, they participated in and ensured the success of an activity

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<sup>293</sup> See VI. 201 to VI. 202

- which infringed the Chapter I prohibition (our section 34 prohibition equivalent) and allowed the party requesting the cover price to submit an inflated bid and to deceive the client into thinking that it had received more genuine bids than it had in fact received.
445. In respect of MME's representation that its income was mainly derived from property management services, CCS notes that only the relevant turnover from electrical works, and not the income from its property management services, was used to compute MME's penalty. CCS also notes that for financial year ended 31 December 2008, MME [...], which is well above the amount of financial penalty imposed. The cooperation rendered by MME had already been considered by CCS while computing penalty. Its intention to exit the market is not a relevant factor in the calculation of penalty.
446. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$5,000.00 on MME.

#### **N. Penalty for Ronnie Lim Electrical**

447. Starting point: Ronnie Lim Electrical was involved in one infringement  
a) collusive tendering or bid-rigging in connection with the Azalea Park project, which CCS considers came to an end in March 2009.
448. Ronnie Lim Electrical's financial year is 1 January to 31 December. Ronnie Lim Electrical's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 was S\$[...]<sup>294</sup>
449. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Ronnie Lim Electrical at [...] % of relevant turnover. The starting point for Ronnie Lim Electrical is therefore S\$[...].
450. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
451. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Ronnie Lim Electrical was involved in collusive tendering or bid-rigging in connection with one infringement, CCS will not increase the penalty at this stage.

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<sup>294</sup> Information provided by Ronnie Lim Electrical on 17 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

452. CCS considers the involvement on the part of the sole-proprietor of Ronnie Lim Electrical in the infringement as an aggravating factor and increases the penalty by [...]%. In consideration of these aggravating factors, there is an upward adjustment of [...]%.
453. Although Ronnie Lim Electrical replied to CCS' section 63 requests and produced documents during CCS' inspection, CCS considers that Ronnie Lim Electrical had not been upfront in CCS' investigation. Ronnie Lim was not forthcoming on Ronnie Lim Electrical's involvement in the support quote arrangements between Anthony Tong who acted on behalf of Ronnie Lim Electrical, and AVL and MME for the Azalea Park project despite being implicated by Anthony Tong. Accordingly, CCS will not make any adjustment for co-operation.
454. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...]% to S\$[...].
455. Adjustment for other factors: CCS notes that Ronnie Lim Electrical made [...] <sup>295</sup> for the financial year ended 31 December 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors has to act as an effective deterrent, not just to Ronnie Lim Electrical and but also to other undertakings which may consider engaging in collusive tendering. Based on the circumstances and as stated above at paragraph 315, CCS finds it appropriate to adjust the penalty at this stage to S\$[...].
456. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$5,000.00.
457. Representations by Ronnie Lim Electrical in respect of penalty: Ronnie Lim Electrical did not make any representations on penalty.
458. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$5,000.00 on Ronnie Lim Electrical.

## **O. Penalty for System Technic**

459. Starting point: System Technic was involved in one infringement:

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<sup>295</sup> Ibid

- a) collusive tendering or bid-rigging in connection with the Kaki Bukit Industrial Building I project, which CCS considers came to an end in December 2008.
460. System Technic's financial year is 1 January to 31 December. System Technic's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 was S\$[...]<sup>296</sup>
461. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for System Technic at [...] % of relevant turnover. The starting point for System Technic is therefore S\$[...].
462. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
463. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As System Technic was involved in collusive tendering or bid-rigging in connection with one infringement, CCS will not increase the penalty at this stage.
464. CCS considers the involvement on the part of a director of System Technic in the infringement as an aggravating factor and increases the penalty by [...] %. In consideration of these aggravating factors, there is an upward adjustment of [...] %.
465. Although System Technic replied to CCS' section 63 requests and produced documents during CCS' inspection, CCS considers that System Technic had not been upfront in CCS' investigation. System Technic was unable to produce any of its electrical work quotations during CCS' inspections. CCS also notes that William Teo was not forthcoming on System Technic's involvement in providing a support quote to AVL for the Kaki Bukit Industrial Building I project despite being implicated by documents produced by Victor Lee of AVL. Accordingly, CCS will not make any adjustment for co-operation.
466. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...] % to S\$[...].

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<sup>296</sup> Information provided by System Technic on 4 January 2010 and 11 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

467. Adjustment for other factors: CCS notes that System Technic made [...] <sup>297</sup> for the financial year ended 31 December 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS is of the view that the figure reached after adjustment for aggravating and mitigating factors has to act as an effective deterrent, not just to System Technic and but also to other undertakings which may consider engaging in collusive tendering. Based on the circumstances and as stated above at paragraph 315, CCS finds it appropriate to adjust the penalty at this stage to S\$[...].
468. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$5,000.00
469. Representations by System Technic in respect of penalty: System Technic did not make any representations.
470. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$5,000.00 on System Technic.

## **P. Penalty for Toplist**

471. Starting point: Toplist was involved in two infringements:
- a) collusive tendering or bid-rigging in connection with the Esplanade project, which CCS considers came to an end in March 2008; and
  - b) collusive tendering or bid-rigging in connection with the Gloucester Mansions project, which CCS considers came to an end in July 2007.
472. Toplist's financial year is 1 January to 31 December. Toplist made representations to correct the turnover figures provided to CCS before the proposed infringement decision was issued. After reviewing the representations and supporting documents provided, CCS considers that Toplist's relevant turnover figures for electrical rectification and improvement works for commercial/industrial buildings and MCSTs for the financial year ending 31 December 2008 was S\$[...] <sup>298</sup>
473. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the

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<sup>297</sup> Ibid

<sup>298</sup> Information provided by Toplist on 15 December 2009 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

- starting point for Toplist at [...] % of relevant turnover. The starting point for Toplist is therefore S\$[...].
474. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
475. Adjustment for aggravating and mitigating factors: As stated at paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Toplist was involved in collusive tendering or bid-rigging in connection with two infringements, CCS increases the penalty by 10%.
476. CCS considers the involvement on the part of the sole-proprietor of Toplist in the infringement as an aggravating factor and increases the penalty by [...]%. In consideration of these aggravating factors, there is an upward adjustment of [...] %.
477. Although CCS considers that Toplist was cooperative in replying to CCS' section 63 requests and during their inspections and interviews, CCS notes that Jeffrey Low was less than forthcoming on Toplist's involvement in the infringements. Jeffrey Low had initially said that he did not provide any support quote to Anthony Tong of Arisco and only admitted involvement when presented with evidence during a subsequent interview. Accordingly, CCS reduces the penalty by [...] % for co-operation.
478. After taking into account the aggravating and mitigating factors, the penalty has been adjusted upwards by [...] % to S\$[...].
479. Adjustment for other factors: CCS notes that Toplist made [...] <sup>299</sup> for the financial year ended 31 December 2008. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS considers that the figure of S\$[...] is sufficient to act as an effective deterrent to Toplist and other undertakings which may consider engaging in collusive tendering and will not be making any adjustments to the penalty at this stage.
480. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$10,632.74.
481. Representations by Toplist in respect of penalty <sup>300</sup>: Toplist sought a stern warning to be issued in lieu of a penalty on the grounds that it was not a

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<sup>299</sup> Ibid

<sup>300</sup> Written representations by Toplist dated 16 April 2010.

key party and did not play any significant role in the cartel. With the recent press release on Toplist's involvement in the cartel, Toplist felt that it had already been heavily penalised as clients stopped engaging it due to the negative publicity. Toplist also highlighted that it is a small business with little resources and will face a higher financial burden compared to the other Parties. Toplist also argued that it has a negligible market share, therefore it was impossible for its actions to have a substantial effect in preventing, restricting or distorting competition in the market.

482. CCS is of the view that it is irrelevant that a party only provided and did not seek cover prices. In addition, CCS notes that Toplist had requested for a cover bid from Arisco for the Gloucester Mansions project and was successful in winning this project as well. Toplist also benefited from assisting Arisco in placing a cover bid for the Esplanade project as Arisco won the project and subcontracted part of the job to Toplist. As set out in paragraphs 442 to 443, issuing a stern warning would not meet CCS' objectives of deterring undertakings from engaging in collusive tendering. The negative impact of CCS' press release on the parties is not a relevant factor for the purposes of calculating penalties.
483. The small market share of Toplist and the structure of the electrical and building works market have been taken into account in arriving at the starting point. Given that Toplist was involved in two infringements (in respect of the Esplanade project and the Gloucester Mansions project), both of which involve the acceptance of bids tainted by collusion, CCS finds it hard to accept Toplist's argument that its infringing activities did not have the effect of preventing, restricting or distorting competition in the market.
484. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$10,632.74 on Toplist.

#### **Q. Penalty for Triple H**

485. Starting point: Triple H was involved in one infringement:
- a) collusive tendering or bid-rigging in connection with the Kaki Bukit Industrial Building II project, which CCS considers came to an end in August 2008.
486. Triple H's financial year is 1 April to 31 March. Triple H's relevant turnover figures for electrical rectification and improvement works for

- commercial/industrial buildings and MCSTs for the financial year ending 31 March 2009 was S\$[...]<sup>301</sup>.
487. CCS has analysed its findings regarding the seriousness of this infringement in accordance with paragraphs 298 to 308 above and fixed the starting point for Triple H at [...] % of relevant turnover. The starting point for Triple H is therefore S\$[...].
488. Adjustment for duration: In view of paragraph 309 above, CCS does not make any adjustment for duration.
489. Adjustment for aggravating and mitigating factors: As stated in paragraphs 312 to 313 above, CCS will treat multiple infringements as an aggravating factor. As Triple H was involved in collusive tendering or bid-rigging in connection with only one infringement, CCS will not increase the penalty for Triple H.
490. CCS considers the involvement on the part of the manager of Triple H in the infringements as an aggravating factor and increases the penalty by [...] %. In consideration of these aggravating factors, there is an upward adjustment of [...] %.
491. CCS considers that Triple H was cooperative in replying to CCS' section 63 requests and during the interviews. During CCS' interviews of Goh Tong Hwa pursuant to a section 63 notice, he admitted to his involvement in the infringement in connection to the Kaki Bukit Industrial Building II project. Goh Tong Hwa was also upfront about Integrated One's involvement in requesting for a support quote in the Kaki Bukit Industrial Building II project. CCS considers that Goh Tong Hwa has been forthcoming in providing information. Accordingly, CCS reduces the penalty by [...] % for co-operation.
492. After taking into account the aggravating and mitigating factors, the penalty has been adjusted downwards by [...] % to S\$[...].
493. Adjustment for other factors: CCS notes that Triple H made [...] <sup>302</sup> for the financial year ended 31 March 2009. CCS is mindful that the financial penalty to be imposed should be commensurate with the financial position of the undertaking. CCS is of the view that the figure reached after adjustment for duration is not a significant sum in relation to Triple H to act as an effective deterrent to Triple H and to other undertakings which may

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<sup>301</sup> Information provided by Triple H on 16 December 2009 and 8 January 2010 pursuant to the section 63 Notice issued by CCS dated 4 December 2009.

<sup>302</sup> Ibid

- consider engaging in collusive tendering. As stated above at paragraph 315, CCS will adjust the penalty at this stage to S\$[...].
494. Adjustment to prevent maximum penalty being exceeded: The financial penalty i.e. S\$[...] does not exceed the maximum financial penalty that CCS can impose in accordance with the section 69(2) of the Act, i.e. S\$[...]. The financial penalty at the end of this stage is S\$5,000.00.
495. Representations by Triple H in respect of penalty<sup>303</sup>: Triple H sought a reduction in the penalty to be imposed on the grounds that it is a small company with very limited funds and was helping his brother in Integrated One with no financial gain or rewards in mind. Triple H did not provide any evidence of its financial position. As set out earlier in paragraph 316, CCS is of the view that cartelists should generally not rely on their economic difficulties in seeking a reduction of penalties imposed. In addition, the onus is on Triple H to provide information sufficient for CCS to make a proper assessment of its financial hardship. It is not CCS' responsibility to search for this information or to make additional enquiries of Triple H. Although Triple H only assisted Integrated One by placing a cover bid, its actions nevertheless ensured the success of an activity which infringed the Act. The fact that Triple H did not benefit from the arrangement did not diminish the seriousness of the infringement.
496. Accordingly, CCS does not consider any further reduction appropriate in the circumstances and imposes a financial penalty of S\$5,000.00 on Triple H.

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<sup>303</sup> Written representations by Triple H dated 16 April 2010.

## R. Conclusion on penalties

497. In conclusion, CCS has, pursuant to section 69(2)(d) of the Act, imposed the following financial penalties on the Parties as summarised in the table below:

<b>Party</b>	<b>Financial Penalty</b>
Aldale Electrical Services Pte Ltd	S\$5,000.00
Alpha & Omega Engineering Services	S\$5,000.00
Arisco Engineering & Maintenance Services Pte Ltd	S\$0
AVL Electrical Engineering Pte Ltd	S\$36,904.91
DAE Services	S\$5,000.00
E-SP Integrated Services Pte Ltd	S\$14,595.26
Etora United Engineering (S) Pte Ltd	S\$31,023.58
Huang Soon Electrical Engineering Works	S\$14,547.40
Integrated One Construction Pte Ltd	S\$44,889.05
MME Services	S\$5,000.00
Ronnie Lim Electrical and Plumbing Contractor	S\$5,000.00
System Technic Engineering Pte Ltd	S\$5,000.00
Toplist Mechanical and Electrical Services	S\$10,632.74
Triple H Technology Pte Ltd	S\$5,000.00
<b>Total</b>	<b>S\$187,592.94</b>

498. All Parties must pay their respective penalties to CCS by no later than 5 p.m. on 4 August 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

## Annex 1

Name of Undertaking	Total Turnover	Total Relevant Turnover from electrical rectification and improvement works	% of Total Relevant Turnover from electrical rectification and improvement works/ Total Turnover
Aldale Electrical Services Pte Ltd <sup>304</sup>	S\$[...]	S\$[...]	[...]%
Alpha and Omega Engineering Services <sup>305</sup>	S\$[...]	S\$[...]	[...]%
AVL Electrical Engineering Pte Ltd <sup>306</sup>	S\$[...]	S\$[...]	[...]%
DAE Services <sup>307</sup>	S\$[...]	S\$[...]	[...]%
Huang Soon Electrical Engineering Works <sup>308</sup>	S\$[...]	S\$[...]	[...]%
Integrated One Construction Pte Ltd <sup>309</sup>	S\$[...]	S\$[...]	[...]%
MME <sup>310</sup>	S\$[...]	S\$[...]	[...]%
Ronnie Lim Electrical and Plumbing Contractor <sup>311</sup>	S\$[...]	S\$[...]	[...]%
System Technic Engineering Pte Ltd <sup>312</sup>	S\$[...]	S\$[...]	[...]%
Toplist Mechanical and Electrical Services <sup>313</sup>	S\$[...]	S\$[...]	[...]%
Triple H Technology Pte Ltd <sup>314</sup>	S\$[...]	S\$[...]	[...]%
<b>Average</b>			<b>[...]%</b>

<sup>304</sup> Financial year ending 31 Dec 2009 figures.

<sup>305</sup> Financial year ending 31 Dec 2008 figures

<sup>306</sup> Financial year ending 30 June 2009 figures

<sup>307</sup> Financial year ending 31 Dec 2008 figures

<sup>308</sup> Financial year ending 31 Dec 2008 figures

<sup>309</sup> Financial year ending 31 Dec 2008 figures

<sup>310</sup> Financial year ending 31 Dec 2008 figures

<sup>311</sup> Financial year ending 31 Dec 2008 figures

<sup>312</sup> Financial year ending 31 Dec 2008 figures

<sup>313</sup> Financial year ending 31 Dec 2008 figures

<sup>314</sup> Financial year ending 31 Mar 2009 figures