IN THE COMPETITION APPEAL BOARD OF THE REPUBLIC OF SINGAPORE

Appeal No. 2 of 2012

In the matter of Case No. CCS 500/002/09 - Notice of Infringement Decision issued by the Competition Commission of Singapore on Price-Fixing in Modelling Services on 23 November 2011:

Between

1. **Bees Work Casting Pte Ltd**
2. **Diva Models (S) Pte Ltd**
3. **Impact Models Studio**
4. **Looque Models Singapore Pte Ltd**

... Appellants

And

The Competition Commission of Singapore

... Respondent

DECISION

Dated this 10th day of April 2013

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I. INTRODUCTION

1. On 23 November 2011, the Competition Commission of Singapore ("**CCS**"), having conducted investigations on the operations of certain modelling agencies in Singapore and their association, Association of Modelling Industry Professionals ("**AMIP**"), issued and handed down its infringement decision (the "**ID**") holding that 11 modelling agencies had infringed section 34 of the Competition Act (Cap. 50B, 2006 Rev Ed) (the "**Act**") by engaging in price-fixing of the rates of modelling services in Singapore.

2. In the ID, the CCS found that the 11 modelling agencies, under the front of the AMIP, met, discussed and agreed to a price-fixing agreement on the rates for providing modelling services for the period from 2005 to 17 July 2009.

3. The CCS imposed penalties on each of the 10 modelling agencies (save for Mannequin Studio Pte Ltd who was entitled to rely on the Competition (Transitional Provisions for Section 34 Prohibition) Regulations, as it ceased to be a member of the AMIP on 2 June 2006). The CCS did not issue an order or direction to the modelling agencies to terminate the price-fixing arrangements, as that had already ceased.

4. With respect to the Appellants abovenamed (the "**Appellants**"), the penalties imposed on them are as follows:

Party	**Period of Infringement**	**Financial Penalty (S$)**
Bees Work Casting Pte Ltd ("**Bees Work**")	1 January 2006 to 17 July 2009	44,112
Diva Models (S) Pte Ltd ("**Diva**")	1 January 2006 to 17 July 2009	72,891
Impact Models Studio ("**Impact**")	1 January 2006 to 17 July 2009	10,508

Looque Models Singapore Pte Ltd ("**Looque**")	1 January 2006 to 17 July 2009	31,241

5. Against the ID, the Appellants appealed to the Competition Appeal Board (the "**Board**") under section 71 of the Act. In this appeal, the Appellants appeal against only the quantum of financial penalty imposed on them respectively. Similarly, in a separate appeal filed by another modelling agency, Ave Management Pte Ltd ("**Ave**"), Ave also appeals against only the quantum of financial penalty imposed. The other 6 modelling agencies did not file any appeal against the ID.

II. RELEVANT BACKGROUND FACTS

6. The Appellants are modelling agencies, and were all members of the AMIP from the AMIP's inception.

7. Bees Work is a limited exempt private company in the business of advertising and an agent for artistes, athletes and models. Its director and shareholder, Ty Gaik Neo ("**Christine Ty**") assumed the office of treasurer of the AMIP on 19 January 2005.

8. Diva is a limited private company and an agent for artistes, athletes, models and other performers. Its director and shareholder, Rowena Foo Chew Ling ("**Rowena Foo**") assumed the office of entertainment executive of the AMIP on 19 January 2005.

9. Impact is a sole proprietorship in the business of music and dance schools and photographic activities. It is represented by Tan Mui Chen, the elder sister of its owner, Tan Thiam Poh, at the AMIP's meetings.

10. Looque is a limited private company in the business of organising exhibitions and an agent for artistes, athletes, models and other performers. Its director and

shareholder, Calvin Cheng Ern Li ("**Calvin Cheng**"), was the President of the AMIP from its inception.

11. As early as 16 December 2004, the modelling agencies started discussions on the rates for modelling services. This led to the meeting on 26 January 2005 where the modelling agencies agreed to form the AMIP and discussed and agreed on the commission rates for models. After further discussions, the modelling agencies also agreed on the rates for fashion shows for normal, lingerie, swimwear, principal, trunk, hair shows, ushering, mingling, outfits changes, fitting and show casting rates. At the meeting held on 26 January 2005, the modelling agencies (including the Appellants) discussed and agreed on the name of the association and also discussed and agreed on commission rates for models. Subsequently, the AMIP members acted on the agreed rates and caused some unhappiness among some clients: ID at [62]-[66].

12. On 23 February 2005, the AMIP's President, Calvin Cheng, told members to recommend a smaller increase in rates so that the market can accept the increase and clients will not lodge a price-fixing complaint against the AMIP under the Act: ID at [67]. Further discussions on the rates to be implemented ensued, and Calvin Cheng informed the AMIP members that the AMIP would not send a joint letter to members' clients informing them of the rates but advised each of them to send out an individual letter to the clients informing them of the rates: ID at [68]-[73].

13. At a 9 March 2005 meeting of AMIP members, it was agreed that the modelling agencies will charge the same rates for the Singapore Fashion Festival show and to charge a higher rate ($400) for all fashion shows from 1 May 2005. It was also recorded in the minutes that the talent and modelling agencies were taking steps to finalise model and talent rates for print advertisements and television commercials, and to introduce these rates guidelines from 1 May 2005: ID at [74].

14. The modelling agencies continued their discussion via email correspondence on rates for other modelling services, including whether to give package discounts for shows, minimal rates for international fashion shows, wedding shows and normal editorials: ID at [75]-[78]. A letter was subsequently sent to editors of 59 magazines advising them of AMIP's recommended editorial rates from 1 May 2005: ID at [79]-[81].

15. At another meeting on 27 April 2005, the AMIP members agreed on the rates for specified modelling services, including print advertorials, and these rates were informed to the clients and posted on AMIP's website. On 12 May 2005, the AMIP members reached an agreement on the talent rate for normal fashion shows: ID at [84]. There were also discussions to agree on rates for talents and models, rates applicable to local magazine publishers for modelling services and rates for specific events. The AMIP members prepared comprehensive confidential rates (such as the "Child and Talent Rate Sheet") which were not published on the AMIP website, and provided price guidelines for advertorials, events, product launches and loading fee rates for different media, for adult and child models and talents: ID at [82] - [100].

16. Even after the section 34 prohibition of the Act came into force on 1 January 2006, the AMIP members continued with their discussions and agreement on rates until 17 July 2009 when the CCS commenced investigations: ID at [101]-[111].

17. The interviews with the various representatives from the AMIP members also reveal that the AMIP was set up to standardise rates, prevent price undercutting, and to raise and fix model rates offered to the clients so that the AMIP members would be in a better bargaining position vis-a-vis the clients, and that there was a general understanding between AMIP members to follow the AMIP's rates: ID at [112], [120]-[124], [132], [135], [138], [146], [148]-[151], [162], [168], [171]. The interviews further show that AMIP members were advised to substitute the AMIP

logos on the AMIP rate sheets with their own logos to prevent accusations of price-fixing: ID at [153].

18. Calvin Cheng was also interviewed, and he said that AMIP members agreed on the AMIP rates for transparency reasons, and that all the AMIP members were involved in the making of the rates. Calvin Cheng said that AMIP members were not price-fixing but had agreed to ask clients to pay AMIP rates, and succeeded in getting clients to pay more for specified modelling services : ID at [170]-[172]. According to one of the AMIP's members' personnel, Calvin Cheng had informed AMIP members about the Act coming into force and that they should not be price-fixing but should use words like "recommended rates" and "guidelines", and that the decision to increase rates was led by Calvin Cheng: ID at [192]-[193].

III. DECISION OF THE CCS

19. The CCS found that on the evidence, there was a single continuous agreement or concerted practice to fix the rates for the entire range of modelling services between the modelling agencies from early 2005 to 17 July 2009, which has the object of restricting, preventing or distorting competition in the Singapore market in breach of section 34 of the Act.

20. The CCS found that discussion on raising the rates for modelling services among the modelling agencies started from 2004. The CCS found that the common objective of the parties to raise the modelling rates together was formed from about 17 December 2004 and to have the agreement on the rates coming into effect on 1 January 2005. The AMIP was later formally set up on 3 February 2005. The intent among the modelling agencies was to collectively raise the rates gradually over time, instead of an immediate drastic increase, so as not to attract too much attention or complaints. The rates for most if not all types of modelling services was agreed upon from 2005 to 17 July 2009: ID at [203]-[205].

21. According to the CCS, the meetings, correspondence and contacts between the parties from 2004 to about 17 July 2009 continued to further the overall plan to agree upon the rates for most, if not all, types of modelling services. The infringing conduct started with an agreement to hold rates firm, and the modelling agencies then agreed to adhere to a minimum fee or rate schedule, and to eliminate or reduce discounts. There was also a later agreement to adhere to price discounts in specific circumstances: ID at [206]. The CCS considers this as a single infringement which manifested itself in a series of anti-competitive activities throughout the period of operation of the cartel: ID at [207].

22. The CCS further found that the evidence shows that the infringing anti-competitive conduct was one of price-fixing and not of price recommendations, contrary to the assertions by some of the parties, and that price-fixing can involve either fixing the price or components of a price such as a discount or setting of a minimum price. The underlying motivation of forming the AMIP was to agree upon rates to be charged for modelling services, and these agreed rates were compiled and circulated among the AMIP members, and kept secret from non-AMIP members. Such conduct serves to eliminate any uncertainty on their competitors' pricing and stem undercutting. There was clear implementation, discussion on enforcement and some initial degree of enforcement of the agreement: ID at [210]. The further actions initiated by Calvin Cheng (not to use AMIP rates documents but to "individualise" the quotation) after the Act was in force were found by the CCS to be attempts to mask the fact that the infringing conduct was in reality one of price-fixing: ID at [211]. Calvin Cheng was held to have played a central role in coordinating the actions of AMIP members, including speaking to non-AMIP member about undercutting and directing the individual AMIP members to use their own letterheads and tailor rate sheets to make it look like their own rates when quoted to the clients: ID at [213(h)].

23. CCS found that the AMIP did not play a separate or significant role in facilitating and administering the agreement, and was essentially a front for its individual members to coordinate on and collectively raise rates for modelling services. Consequently, the CCS does not find the AMIP to be a party to the infringing conduct: ID at [224].

24. Once it is shown that the AMIP's members' agreement or concerted practice has as its object of preventing, restricting or distorting competition, it is unnecessary for CCS to show what the actual effect was (ID at [227]). Nonetheless, the CCS found that there is evidence that the agreement had an effect on non-AMIP members who had to charge fees that converge around those agreed rates, and that Calvin Cheng had sought assurances from non-AMIP members that they would not undercut AMIP rates: ID at [228]-[229].

25. Calvin Cheng had claimed that AMIP members had less than [XX%] of the market shares for modelling services, but the CCS' investigations reveal that the estimated market share of the 11 modelling agencies is about [XX%] which is higher than the 20% market share threshold levels mentioned in paragraph 2.19 of the CCS Guidelines on the section 34 prohibition.

26. In any case, price-fixing agreements will have an appreciable adverse effect on competition, even if the market share of the parties to the infringing agreement is below the threshold level and even if the parties to such agreements are small and medium enterprises: see [2.20] of CCS Guidelines on the section 34 prohibition: ID at [231].

27. The CCS's conclusions on its findings are set out in [233] to [235] of the ID as follows:

"233 CCS is satisfied that there is sufficient evidence in paragraphs 62-201 to find that the Parties listed in paragraph 1, infringed the section 34 prohibition by entering into an agreement to fix prices, manifesting in the different unlawful agreements and unlawful concerted practices from at least mid-2005 to 17 July 2009.

234 CCS therefore makes a decision that the Parties have infringed the section 34 prohibition, and imposes penalties on the Parties, for the duration that they were parties to the agreement / concerted practice.

235 The section 34 prohibition came into force on 1 January 2006. Although the agreement was made before 31 July 2005, CCS' analysis of the evidence (above) shows that the agreement continued in operation ***after*** *1 July 2006, in other words after the expiry of the transitional period provided for under the Competition (transitional Provisions for Section 34 Prohibition) Regulations. Therefore CCS does not consider that the said Regulations apply for the Parties for whom CCS intends to impose a financial penalty."*

IV. PENALTIES

28. As the 11 modelling agencies infringed the section 34 prohibition by entering into an agreement or concerted practice to fix prices of modelling services from 2005 to 17 July 2009, the CCS decided to impose penalties for the duration of the infringement. The CCS finds the periods of infringement committed by the Appellants as follows:

The Parties	**Period of Infringement**
Bees Work Pte Ltd	1 January 2006 to 17 July 2009
Diva Models (S) Pte Ltd	1 January 2006 to 17 July 2009
Impact Models Studio	1 January 2006 to 17 July 2009
Looque Models Singapore Pte Ltd	1 January 2006 to 17 July 2009

29. As the single continuous agreement has been terminated on 17 July 2009 and the AMIP has largely been disbanded, the CCS did not issue any directions in relation to the single continuous agreement: ID at [239].

30. In imposing a financial penalty, the CCS considers sections 69(2)(d) and 69(3) of the Act. Under section 69(2)(d) of the Act, among other things, where the decision of the CCS is that an agreement has infringed the section 34 prohibition, the decision of the CCS may include a direction to pay to the CCS such financial penalty in respect of the infringement as the CCS may determine. Under section 69(3), for the purpose of section 69(2)(d), i.e. in considering the imposition of a penalty, the CCS may impose a financial penalty "*only if it is satisfied that the infringement has been committed intentionally or negligently*". As established in the *Re Certain Pest Control Operators in Singapore* [2008] SGCCS 1 at [355], the *Express Bus Operators Case* [2009] SGCCS 2 at [445], and the *Electrical Works Case* [2010] SGCCS 4 at [282], the circumstances in which CCS might find that an infringement has been committed intentionally include the following: ID at [242]:

a. the agreement has as its object the restriction of competition;
b. the undertaking in question is aware that its actions will be, or are reasonably likely to be, restrictive of competition but still wants, or is prepared, to carry them out; or
c. the undertaking could not have been unaware that its agreement or conduct would have the effect of restricting competition, even if it did not know that it would infringe the section 34 prohibition.

31. The CCS further holds that ignorance or a mistake of law is no bar to a finding of intentional infringement under the Act. The 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. The CCS takes the view that price-fixing arrangements 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: ID at [243]-[246].

Calculations of Penalties

32. The CCS refers to its Guidelines on the Appropriate Amount of Penalty ("**Penalty Guidelines**"). Paragraph 2.1 of the Penalty Guidelines lists the factors to take into account in calculating the amount of financial penalty to be imposed. At [249]-[250] of the ID, the CCS says that it will take into consideration the following:

a. the seriousness of the infringement;
b. the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year;
c. the duration of the infringement;
d. other relevant factors, for e.g., deterrent value; and
e. any further aggravating and mitigating factors.

These are also the factors taken into account by the EC and the Office of Fair Trading ("**OFT**")

33. The approach taken by the CCS is to start with a base figure, which is calculated by taking a percentage or proportion of the relevant sales or turnover, applying a multiplier for the duration of infringement and then adjusting that figure to take into account other relevant factors such as deterrence and aggravating and mitigating considerations: ID at [251].

(i) Seriousness of the infringement

34. The CCS considers that cartel cases involving, among others, price-fixing are especially serious infringements and should normally attract a percentage of the relevant turnover that is on the higher end. However, the actual percentage that the CCS will assign varies depending on the circumstances of each case: ID at [252].

35. Here, it involves price-fixing of the modelling services provided by the modelling agencies. The higher the combined market share of the infringing parties, the greater the potential to cause damage to the affected market. Further, a high market share figure generally indicates a more stable agreement or concerted practice as third parties find it more difficult to undercut and possibly undermine the incumbents. These factors affect the base amount: ID at [253]-[254].

36. In calculating the market share of the infringing parties, the CCS had sent section 63 notices to various undertakings. Thereafter, adjustments were made based on the responses received, the CCS assesses the market share of the 10 modelling agencies that had infringed section 34 of the Act to be [XX%]: ID at [255].

37. The CCS also considered the effect of the price-fixing agreement on clients, competitors and third parties, and found that this prevented the modelling agencies from passing on to clients any benefits resulting from competition. In fact, the price of modelling services for a fashion show increased by 60% from 2005 to 2009 as a result of the price-fixing agreement: ID at [256]-[260].

38. Having regard to all the circumstances, including the seriousness of the infringement, the nature of the product, the structure of the market, the market share of the infringing parties, and the effect of the infringements on clients, competitors and third parties, the CCS applies a starting point percentage of [XX%] of the relevant turnover for each of the Parties: ID at [261]-[265]. Initially in the Preliminary Infringement Decision ("**PID**") issued in May 2011 by the CCS pursuant to Regulation 7 of the Competition Regulations 2007, the CCS proposed a

starting percentage of [XX%]. Subsequently, after taking into consideration the circumstances of the case, including the nature of the industry and the representations made by the Appellants in response to the PID about the nature of the industry, the CCS reduced the starting percentage to [XX%].

(ii) Relevant turnover

39. As stated above, in determining the penalty, the base figure adopted is a percentage of the turnover of the business of the undertaking for the relevant product in the relevant geographical markets affected by the infringement. The CCS determines that the relevant product is the supply of the whole range of modeling services, without differentiation between various types of modeling services or assignments, and the relevant geographical market is Singapore. Hence for the purpose of assessing the penalty, the relevant product and geographical markets are the sale and provision of modelling services in Singapore: ID at [267].

40. The relevant turnover for the purpose of determining the penalty is the turnover in the last business year, and 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: ID at [266]. The term "Business Year" means the period of more than 6 months in respect of which an undertaking publishes accounts or, if no such accounts have been published for the period, prepares account: see [3] of the Penalty Guidelines.

41. In determining this issue, CCS considered the legal and economic relationships between the modelling agency, the models and the mother agency (if any) as well as the relationships between the agency and its clients, to determine the crux of the transaction for the relevant product market. The CCS found that the modelling agency looks to its clients for payment for services rendered, and bears the risk of non-payment. There is no contractual relationship between the model and the client.

The modelling agencies source and build their own portfolio of models and talents, and offer this portfolio in order to secure bookings and jobs. The agency bears the risk of signing up a model/talent that is unable to fulfill bookings and jobs secured by the agency. The risks are higher where foreign models are involved, as the agency will fly the model over, house him/her and pay him/her an allowance: ID at [273].

42. The agencies are also involved and responsible for the management and development of its models. Where the agency was the mother agency for the model, the agency invests more resources in grooming the model and planning his/her career. Hence, the costs of sourcing and signing up a model or talent, whether locally-based or from overseas, are business costs that the agency has to incur in order to provide the services to its clients: ID at [274].

43. Thus, the CCS took the view that the modelling agencies are the central actors in the provision of modelling services in Singapore. Clients who are looking for modelling services would contract with the modelling agencies, and hold the agencies responsible for providing the services contracted for. The modelling agencies are not acting as mere intermediaries for the models or mother agents, unlike the recruitment agencies. For these reasons, the CCS determines that relevant turnover should not exclude amounts received by the modelling agencies for the model or the model's foreign mother agent: ID at [276].

(iii) Duration of the infringement

44. With regard to the duration of an infringement, the Penalty Guidelines provide that the amount of financial penalty to be imposed will depend on the duration of the infringement. After calculating the base penalty sum, the CCS considers whether this sum should be adjusted to take into account the duration of the infringement: ID at [277]. In the view of the CCS, the duration to which the Parties infringed the

section 34 prohibition will depend on when they became a party to the single continuous price-fixing agreement and when they ceased being a party to the same agreement.

45. The CCS considers that where an infringement that lasted for more than 1 year, the penalty be multiplied by the number of years of the infringement. Although under [2.7] of the Penalty Guidelines an infringement over a part of a year may be treated as a full year for the purpose of calculating the duration of an infringement, the CCS has decided, in this case, to round down the relevant periods to the nearest month: ID at [277]-[279].

46. Under section 69(4) of the Act, the final amount of the financial penalty imposed on each party shall not exceed 10% of the total turnover of the business of such party in Singapore for each year of infringement, up to a maximum of 3 years: ID at [280].

(iv) Aggravating and mitigating factors

47. The CCS will consider the presence of aggravating or mitigating factors and make adjustments when assessing the amount of financial penalties: ID at [282]. Penalty Guidelines at [2.10]-[2.13]. Generally, the involvement of directors or senior management is an aggravating factor, so is the role of an undertaking as a leader / instigator. The CCS does not consider that a merely passive or follower role in an infringement is not sufficient to justify a reduction in penalty. However, the CCS does consider that cooperation which enables the enforcement process to be concluded more effectively and speedily as a mitigating factor: ID at [283]-[285].

(v) Other relevant factors

48. The CCS may also adjust the penalty to achieve policy objectives, such as deterrence against price-fixing: ID at [286]-[287].

49. Where a party is unable or unwilling to provide CCS with information to determine its relevant turnover, CCS will consider the turnover of other parties in considering the appropriate penalty to impose: ID at [289].

50. While the financial position of the parties and their ability to pay is a relevant consideration in the assessment of financial penalties on a case by case basis, the CCS considers that cartelists should generally not rely on their economic difficulties and those of the market in seeking a reduction of the penalties imposed: ID at [290].

51. Relying on a series of appeal cases in the United Kingdom concerning the construction industry where the United Kingdom Competition Appeal Tribunal ("**CAT**") gave regard to the high turnover but low margins of the construction industry and overall proportionality in determining the adjustment of penalties, the Appellants had submitted in their written representations that the modelling industry in Singapore was a "high turnover but low profit" industry, and that this characteristic should be considered in the determination of appropriate penalties: ID at [291].

52. The CCS notes that the mere finding of an adverse financial situation is not sufficient reason to justify a reduction in financial penalties since the recognition of such an obligation would have the effect of conferring an unfair competitive advantage on the undertakings well adapted to the conditions of the market: ID at [292].

53. Here, the CCS notes that it was not evident that the businesses of the infringing parties are entirely unprofitable, as all the parties recorded positive gross profit. The CCS also notes that most if not all of the shareholders are also directors, or alternatively sole proprietors or partners of the relevant infringing party, and

therefore there may not be a strong incentive for the undertaking to declare profits and dividends on profits for external shareholders: ID at [294].

V. PENALTIES IMPOSED ON APPELLANTS

Penalty on Bees Work

54. Bees Work's relevant turnover for the financial year ending 31 December 2009 was [$XXX]. The CCS acknowledged that voice-overs, casting of animals and locations are non-modelling services, and duly adjusted the relevant turnover to exclude fees received for voice-overs, casting of animals and locations: ID at [316]. Bees Work argued in its written representations that the relevant turnover should exclude amounts received by Bees Work for and on behalf of the model. This was rejected by the CCS: ID at [316].

55. The percentage of [XX%] of the relevant turnover was applied, giving a starting point of [$XXX]: ID at [310]-[31].

56. As Bees Work was involved in the infringements from early 2005 to 17 July 2009, upon applying the multiplier of 3.5, the financial penalty of [$XXX] was arrived at: ID at [312].

57. The CCS increased the penalty by [XX%] on account of the involvement of Bees Work's shareholder and director, Christine Ty, but reduced the penalty by [XX%] for cooperation during the investigation. As a result, the penalty was reduced by [XX%] to $44,112 after taking into account these aggravating and mitigating factors: ID at [313].

58. CCS is mindful that the financial penalty should be commensurate with the financial position of the undertaking, and is of the view that the figure reached is a significant

sum to act as an effective deterrent and will not make any further adjustments: ID at [314].

59. The financial penalty also does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. [$XXX]: ID at [315].

60. After the adjustments, the CCS imposed on Bees Work a penalty in the sum of $44,112: ID at [318].

Penalty on Diva

61. Diva's relevant turnover for the financial year ended June 2009 was [$XXX]. Diva argued in its written representations that the relevant turnover should exclude amounts received by Diva for and on behalf of the model. This was rejected by CCS: ID at [333].

62. The percentage of [XX%] of the relevant turnover was applied, giving a starting point of [$XXX]: ID at [327]-[328].

63. As Diva was involved in the infringements from early 2005 to 17 July 2009, upon applying the multiplier of 3.5, the financial penalty of [$XXX] was arrived at: ID at [329].

64. The CCS increased the penalty by [XX%] on account of the involvement of Diva's shareholder and director, Rowena Foo, but reduced the penalty by [XX%] for cooperation during the investigation. As a result, the penalty was reduced by [XX%] to $72,891 after taking into account these aggravating and mitigating factors: ID at [330].

65. The CCS is mindful that the financial penalty should be commensurate with the financial position of the undertaking, and is of the view that the figure reached is a

significant sum to act as an effective deterrent and will not make any further adjustments: ID at [331].

66. The financial penalty also does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. [$XXX]: ID at [332].

67. After the adjustments by CCS, the penalty imposed on Diva was $72,891: ID at [334].

Penalty on Impact

68. Impact's relevant turnover is [$XXX]. The CCS acknowledged that event sales are non-modelling services, and duly adjusted the relevant turnover to exclude fees received for event sales: ID at [355]. Impact argued in its written representations that the relevant turnover should exclude amounts received by Impact for and on behalf of the model. This was rejected by CCS: ID at [354].

69. The percentage of [XX%] of the relevant turnover was applied, giving a starting point of [$XXX]: ID at [348]-[349].

70. As Impact was involved in the infringements from early 2005 to 17 July 2009, upon applying the multiplier of 3.5, the financial penalty of [$XXX] was arrived at: ID at [350].

71. The CCS increased the penalty by [XX%] on account of the involvement of Impact's manager and sole proprietor, Tan Mui Chen and Tan Thiam Poh, but reduced the penalty by [XX%] for cooperation during the investigation. As a result, the penalty was reduced by [XX%] to $10,508 after taking into account these aggravating and mitigating factors: ID at [352].

72. CCS is mindful that the financial penalty be should commensurate with the financial position of the undertaking, and is of the view that the figure reached is a significant sum to act as an effective deterrent and will not make any further adjustments: ID at [351].

73. The financial penalty also does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. [$XXX]: ID at [353].

74. After the adjustments by CCS, the penalty imposed on Impact was $10,508: ID at [356].

Penalty on Looque

75. Looque's relevant turnover is [$XXX]. Looque argued in its written representations that the relevant turnover should exclude amounts received by Looque for and on behalf of the models. This was rejected by CCS: ID at [374].

76. The percentage of [XX%] of the relevant turnover was applied, giving a starting point of [$XXX]: ID at [368]-[369].

77. As Looque was involved in the infringements from early 2005 to 17 July 2009, upon applying the multiplier of 3.5, the financial penalty of [$XXX] was arrived at: ID at [370].

78. The CCS increased the penalty by [XX%] on account of the involvement of Looque's director and shareholder, Calvin Cheng, as a central figure in the infringing activities of the parties. Looque had argued that it was unfair to characterise Calvin Cheng as one of two "central figures" and playing a "central role" and that such characterisation would be damaging to his reputation and credibility as a nominated member of parliament. This argument was rejected by the CCS who found that Calvin Cheng played a central role in coordinating the

infringing conduct, and had given instructions to the infringing parties on how to mask the fact that this was a collective action on the part of the infringing parties to raise the rates so as to avoid attracting attention and complaints. Calvin Cheng was an active President of the AMIP, and the other modelling agencies looked to him for advice and direction: ID at [375]-[376].

79. The CCS however reduced the penalty by [XX%] for cooperation during the investigation. This reduction of [XX%] set off the increase of [XX%] and as a result, the penalty remains $31,241, after taking into account these aggravating and mitigating factors: ID at [371].

80. CCS is mindful that the financial penalty should be commensurate with the financial position of the undertaking, and is of the view that the figure reached is a significant sum to act as an effective deterrent and will not make any further adjustments: ID at [372].

81. The financial penalty also does not exceed the maximum financial penalty that CCS can impose in accordance with section 69(4) of the Act, i.e. [$XXX]: ID at [373].

82. After the adjustments by CCS, the penalty imposed on Looque is $31,241: ID at [377].

VI. THE APPELLANTS' CONTENTIONS ON APPEAL

83. The Appellants do not challenge the CCS's decision on liability. They challenge only the CCS's determination on the financial penalties imposed and seek an order to reduce the financial penalties. By the Notice of Appeal, the Appellants raise the following grounds of appeal:

(A) that the CCS failed to give proper consideration to all the relevant circumstances in deciding the seriousness of the infringement and in

particular, (i) the relevant factors for determining the true market share and (ii) other relevant factors for determining whether the infringement had an appreciable adverse effect on competition in Singapore;

(B) that the CCS failed to give due regard to the principle that, whilst profitability does not replace turnover for the purpose of determining the appropriate penalty, it would be wrong not to give consideration to such profit information as is available, along with other factors;

(C) that the CCS erred in finding that the Appellants had an incentive not to declare profits and dividends on profits for external shareholders when there is no factual basis for the finding;

(D) that the CCS erred in increasing the penalty on Looque by an additional [XX%] for reasons that ought not to be attributed to Looque; and

(E) that the CCS erred in finding that Bees Work's financial information did not reflect any fees received for casting of locations.

VII. ISSUE (A): Whether the CCS failed to give proper consideration to all the relevant circumstances

The Appellants' Contentions on Issue (A)

84. The Appellants contend that the CCS failed to give proper consideration to all the relevant circumstances when deciding the seriousness of the infringement. In particular, it is contended that the CCS omitted two relevant factors: (i) the true market share of the Appellants; and (ii) whether the infringing conduct of the Parties had an appreciable adverse effect on competition in Singapore. In this regard, the Appellants identify two factors which they complain that the CCS omitted: (i) market share and (ii) appreciable adverse effect on competition.

(i) Market Share

85. The CCS initially in the PID found that the market share of the infringing parties was [XX%], and suggested rounding this percentage down to [XX%] and this adjustment was made for one undertaking, which had not responded with its financial information and for certain undertakings' financial information that might not have been captured.

86. After the CCS had issued its PID, it was notified by the infringing parties of other modelling agencies, which it had failed to consider. The CCS followed up on this information by the issue of section 63 Notices to those agencies. It did not receive any reply from only 3 of the agencies.

87. However, the CCS considered the relevant financial information that was furnished and reduced the market share of the infringing parties by [XX%] to [XX%]. The Appellants complain that the CCS failed to follow up with 1 of these agencies and failed to wait for the responses from 2 other agencies, who were unable to submit their financial statements in time. It is further said that the CCS also did not make any further effort to ascertain if there were any other agencies which it had missed out. The Appellants argue that the CCS should have carried out further investigations to ascertain the respective market share of these agencies rather than just simply providing an estimate.

88. It is contended that the CCS should not simply have applied an arbitrary reduction of a further [XX%] to arrive at the figure of [XX%] as the market share of the Parties. Accordingly, the CCS failed to exercise its discretion properly by failing to take into consideration all the relevant information.

(ii) Appreciable Adverse Effect On Competition

89. Next, the Appellants contend that the penalty to be imposed must be commensurate with the fact whether the infringing conduct had an appreciable adverse effect on competition in Singapore. In this regard, the Appellants argue that the CCS wrongly

relied on unverified comments in two newspaper articles to support the view that the infringement had an adverse effect on the relevant market. The CCS ought to have considered:

a. the evidence of clients of the Appellants that the AMIP rates were unlikely to have a significant effect on the market;
b. the fact that some non-AMIP modelling agencies were under-cutting the price guidelines, and that the price guidelines were hardly followed; and
c. the positive effect that the infringing conduct had on the industry by improving the quality of models in Singapore.

The CCS's Contentions on Issue (A)

90. The CCS contends that it has properly considered all the relevant factors in determining the seriousness of the infringement and the starting percentage for the calculation of penalties. In particular, the CCS has taken into consideration the two important factors contended by the Appellants: (i) the market share of the modelling agencies; and (ii) the appreciable adverse effect the price fixing agreement has on competition.

(i) Market Share

91. On the issue of the calculation of market share, the CCS submits that it had exercised its discretion properly in computing the market share of the Appellants. The CCS relies on the following:

a. After it had issued the PID, the Appellants made representations to the CCS on market share, informing that certain specific companies should be included in the market share computations. As a result, the CCS proceeded to issue section 63 Notices to those companies and to other companies raised by all the Parties in their representations.

b. A number of the companies responded to state that they were not modelling agencies (see for example the response from TSB Productions Pte Ltd), and 3 of them, despite several reminders, failed to respond or were unable to submit their financial statements in time. In the result, the CCS in exercise of its discretion decided to conclude the enquiries, finalise and issue the ID.

c. The methodology adopted by the CCS for determining the market share shows that the CCS based its computations on various sources and also allowed a margin of error for smaller players that may emerge. The CCS has taken into account the lack of data from one company, Urban Modelz, by rounding down the market share by a larger margin than the adjustment made in the PID to err on the side of caution, and eventually made an adjustment of the market share by [XX%], which is about the size of an undertaking such as Impact. Together with this adjustment the market share of the AMIP members was further adjusted from [XX]% to [XX]%. The CCS contends that given the circumstances, it had exercised its discretion properly in calculating the market share of the parties.

92. In any case, the market share of the modelling agencies is just one of the factors which the CCS looks at, when assessing the seriousness of the infringement which is used to derive the starting percentage and the base figures for the penalty. Price-fixing, being a serious infringement of the section 34 prohibition, should rightfully attract a higher starting percentage. The CCS' reduction of the starting percentage from [XX%] as indicated in the PID to [XX%] in the ID was significant, and shows that the CCS had taken into account the representations made by the Appellants on (amongst other things) the nature of the modelling industry.

(ii) Appreciable Adverse Effect On Competition

93. The CCS contends that the Appellants' argument that the CCS had failed to consider whether the infringing parties' conduct had any appreciable adverse effect on

competition in Singapore is misconceived. The CCS refers to [2.20] of the CCS Guidelines on the section 34 prohibition which provides, among others, that price fixing agreements "*will always have an appreciable adverse effect on competition*". Given that the Appellants are not appealing against the CCS's finding that they had engaged in such a price-fixing agreement, it is not necessary to establish the actual appreciable effects of the infringement in this case.

94. In any case, the CCS has set out in the ID various instances which demonstrate that the infringing conduct of the Appellants has had an appreciable adverse effect on competition and the CCS contends that the following are the instances:

(i) that the AMIP was initially formed for the purposes of raising modelling rates;

(ii) that in a March 2006 email, one of the infringing parties stated that the rates for fashion shows and editorials are very stable now;

(iii) that in an October 2006 email, one of the infringing parties stated that the industry is quite comfortable with our revised rates now;

(iv) that there was an understanding among the infringing parties not to undercut each other;

(v) that there were media reports on a 60% increase in rates for fashion shows and editorials; and

(vi) that concerns were expressed that a price war may occur once AMIP's rates were removed.

The Board's Decision on Issue (A)

95. The Appellants raise two questions for consideration: (i) whether the CCS has made proper investigation in ascertaining the market share of the Appellants, and (ii) whether the CCS has considered the relevant evidence in ascertaining whether infringing conduct of the Appellants had an appreciable adverse effect of on competition.

(a) Investigation on Market Share

96. Upon conclusion of its investigation, the CCS issued its PID. Following that, the Appellants made representations to the CCS on, among other things, the market shares of the Appellants and pointed out that specific companies should be included in the market share computations. On receipt of these representations, the CCS sent out section 63 notices to these companies and other companies raised by the Appellants. A number of these companies responded and informed the CCS that they are not modelling agencies. Three of them failed to respond after several reminders. For companies that failed to respond, the CCS exercised its discretion to conclude its enquiries and make the relevant adjustments.

97. The methodology for computing the market shares of the parties is explained by the CCS in Annex F of the ID. There, the CCS gave a list of the modelling agencies, comprising those who were AMIP members and those who were not, and allocate a market share to each, with the exception of three of them who failed to respond to the section 63 notices. The CCS says that its computations of market shares were derived from various sources and allowed a margin for error for smaller companies that may not have appeared in on the list. In Annex F, the CCS explained its methodology as follows:

> "*CCS' market share estimate for 2009 is based on responses to section 63 notices requesting for modelling services turnover from the Parties as well as 18 other non-AMIP modelling agencies. The list of non-AMIP modelling agencies in the industry was compiled bases on various sources, including newspaper reports on modelling agencies, online searches on modelling agencies that were still in operation in 2009, and representations made by the Parties. Taking into consideration that the list of non-AMIP agencies obtained was as comprehensive as can be, and further discounting for non-AMIP agencies that may have very small shares that may not have been captured*

and three agencies that failed to respond, CCS further rounded down the AMIP market share to [XX]% from [XX]%".

98. In the circumstances of this case, it seems to the Board that the CCS had made reasonable efforts in taking steps to obtain financial information from as many modelling agencies as possible in order to arrive at an accurate market share computation. It would not be reasonable to expect the CCS to wait indefinitely for undertakings which, despite repeated reminders, have chosen not to respond to the section 63 notices issued by the CCS. At a certain point in time, the CCS must be entitled to close the investigations and proceed to issue its decision, as it did in the present case. What the CCS did when it did not obtain such information from all the undertakings, was to apply an estimated reduction of [XX%] to the market share of the modelling agencies.

99. At the hearing, the Appellants submitted and relied on the Accounts and Reports of Shiny Happy People Pte Ltd for the financial year ended 31 December 2009 (Exhibit A1) to contend that its revenue of [$XXX] was not taken into account by the CCS in calculating the market share. However, it is not apparent to the Board that the "casting revenue" recorded in the Shiny Happy People's accounts comprises the turnover from the provision of modelling services in Singapore, especially when the principal activities of Shiny Happy People is reported in the accounts as "motion picture production and distribution".

100. At any rate, it should be noted that market share of the Appellants is but one of the several factors to be considered in determining the seriousness of the infringement, and there are a host of other factors as set out in paragraphs 2.3 and 2.4 of the Penalty Guidelines which also have to be considered (such as the nature of the product, the structure and nature of the market). Paragraph 1.7 of the Penalty Guidelines also provides that cartel activities in price-fixing are among the most serious infringements of competition law.

(b) Appreciable Adverse Effect On Competition

101. The Board now turns to the second question whether the infringing conduct of the parties had an appreciable adverse effect on competition in Singapore. It is contended by the Appellants that the CCS has failed to consider if the infringing conduct of the parties had an appreciable adverse effect on competition in Singapore. However, paragraph 20 of the CCS Guidelines on the section 34 prohibition provides that an agreement involving, among others, price fixing "*will always have an appreciable adverse effect on competition*". As the CCS contends, and the Board agrees, the Appellants are not appealing against the finding of liability, and following what is laid down in the CCS Guidelines on the section 34 prohibition, the price-fixing agreement or concerted practice among the infringing parties is considered to have an adverse effect on competition and it is not necessary for the CCS to demonstrate any appreciable adverse effect on competition.

102. Be that as it may, the CCS in its written submissions at [91] above, relies on various instances to show that, far from the Appellants' contentions, the price-fixing agreement among the AMIP members did have an appreciable adverse effect on competition.

103. The Appellants' substantial reliance on the 2 witness statements to contend that the AMIP rates were unlikely to have a significant effect on the market, does not add further to their arguments, as the undisputed fact is that there was a 60% increase in rates for fashion shows and editorials since the inception of the AMIP from 2005 to 2009. This evidence in itself shows that there was an effect on the market. The fact that the price guidelines were hardly followed is also not a weighty factor in determining whether there was an appreciable effect on competition, considering that price-fixing is regarded as one of the most serious forms of infringement of competition law.

104. Lastly, it bears mentioning that after considering the Appellants' written representations on (amongst other things) market share and the nature of the industry, the CCS had reduced the starting percentage of [XX%] proposed in the PID to [XX%] in the ID. It thus cannot be said that the CCS had failed to consider all relevant factors in determining the starting percentage for the calculation of penalties.

VIII. ISSUE (B): Whether the CCS failed to give proper consideration to the profitability of each undertaking and the high turnover but low profit characteristic of the modelling agencies

The Appellants' Contention on Issue (B)

105. The Appellants contend that the CCS failed to give due regard to the principle that, whilst profitability does not replace turnover for the purpose of determining the appropriate penalty, it would be wrong not to give consideration to such profit information as is available, along with other relevant factors. In this regard, the Appellants rely on the decisions of the UK Competition Appeal Tribunal ("CAT") in *Kier Group PLC and others v Office of Fair Trading* [2011] CAT 3 ("***Kier***"); *GF Tomlinson Group Limited and another v Office of Fair Trading* [2011] CAT 7 ("***Tomlinson***") and *Barrett Estate Services Limited and another v Office of Fair Trading* [2011] CAT 9 ("***Barrett***") for the proposition that the payment to sub-contractors or other service providers and the high turnover but low profit of the construction industry should be mitigating factors to be considered in the determination of the appropriate penalty.

106. Citing *Kier*, the Appellants contend that the indication of an undertaking's size and financial status based on turnover can be distorted where the turnover included invoiced amounts for sub-contract work which were simply passed on to the customers without the addition of any margin. In such cases, account should be taken of the typical margin on turnover earned in the industry in order to ensure that the ultimate penalty represents a proportionate and sufficient punishment.

107. Further, the Appellants submit that it was accepted in *Tomlinson* that in a sector of the construction industry, where turnover includes the total payment received from the client for the performance of a contract, but a proportion of that is passed on by the main contractor to the various subcontractors who have worked on the site, turnover is not as good an indicator of an undertaking's economic strength as it may be in other sectors, and that if turnover is used without due allowance for the specific characteristic of the industry in question, it can lead to disproportionate and unjust penalties.

108. It is pointed out that in that case the tribunal accepted that how the industry operates ought to be reflected at some point in the calculation of the penalty by the Office of Fair Trading. It was "an important factor" in considering the likely impact of the penalty imposed. That is also a factor which affects the extent to which turnover can be regarded as a useful indicator of the economic power in the relevant market. Thus, a high turnover and low margin industry is a factor to be taken into account because a penalty representing a particular percentage of turnover is likely to have a greater impact on the undertaking than it would have on an undertaking in an industry where margins are typically higher.

109. The Appellants submit that in response to the above factor, the CCS merely stated that the mere fact of an adverse financial situation is not sufficient to justify a reduction in the financial penalties. In this respect, the CCS failed to appreciate properly the representations of the Appellants. The crux of the submissions is not that the penalties ought to be reduced in view of the Appellants' financial situations, but that the manner in which the modelling industry in Singapore operates and the margin on turnover earned by the Appellants is relevant for determining a fair and proportionate penalty.

110. The Appellants contend that the fact that they had recorded positive gross profits does not matter. The penalty imposed on them should be measured against their net profits, as was done in *Barrett*. Here, the penalties imposed when measured against their net profits are excessive and disproportionate as:

a. the penalty of $44,112 imposed on Bees Work amounts to [XX%] of its turnover, and to [XX%] of its net profit;
b. the penalty of $72,891 imposed on Diva amounts to [XX%] of its turnover, and to [XX%] of its net profit – it is not apparent how the Appellants arrived at this figure, as it appears that Diva has been making [XXX];
c. the penalty of $10,508 imposed on Impact amounts to [XX%] of its turnover, and to [XX%] of its net profit;
d. the penalty of $31,241 imposed on Looque amounts to [XX%] of its turnover, and will seriously threaten its viability as it has been making [XXX] for the past few years.

111. As such, the Appellants submit that in calculating the penalties imposed on the Appellants, the CCS had failed to exercise its discretion properly by failing to consider the way the modelling industry worked and the typical low margin on turnover earned.

112. At the hearing, the Appellants also sought permission of the Board under paragraph 8(3) of the Competition (Appeals) Regulations to raise a ground of appeal not stated in the notice of appeal. The Board gave permission to the Appellants to do so.

113. The Appellants rely on the CAT's decision of *Hays* to contend that the relevant turnover for the purposes of calculating the financial penalty should exclude amounts received by the Appellants for and on behalf of the beneficiary, namely, the model in question and/or the model's foreign mother agents: ID at [268]-[270].

114. Even though the Appellants contract directly with the clients, about [XX% to XX%] of the fees paid by the clients were paid over to the models, leaving the balance [XX% to XX%] as gross income for the Appellants, which is indicative of the low margin business. The models were not the Appellants' employees and the Appellants had an obligation to pay them their fees, and these fees do not belong to the Appellants. Thus, the penalty should be recalculated based on the Appellants' turnover, net of the fees paid to the individual models.

115. After the hearing, the Appellants tendered further written submissions on the relevant turnover for each of the Appellant, if such amounts received by the Appellants for and on behalf of the model in question and the model's foreign mother agents are excluded.

The CCS's Contentions on Issue (B)

116. The CCS contends that it has properly considered the profitability of each undertaking and the high turnover but low margin characteristic of the modelling agencies.

117. The Penalty Guidelines state that "relevant turnover" and not profit is the starting point for computing the penalty. In *Barrett* and *Tomlinson*, the CAT agreed with the OFT that in general, there were good reasons for the use of turnover as the relevant measure of financial significance of an undertaking, and it would be inappropriate to move to a wholly profit-based measure not least because such measure would risk penalising inappropriately more efficient firms.

118. The CCS refers to the Board's decision in *Price Fixing in Bus Services from Singapore to Malaysia and Southern Thailand: Transtar Travel Pte Ltd and Another* [2011] SGCAB 2 ("***Transtar***") at [98], where the Board recognised that although it could consider the undertaking's profits in its determination of the

overall appropriateness of the penalty, in certain businesses, the net profits may not be an accurate marker, as there are various other factors or reasons why the net profits of the undertaking may not be that desirable. At the end of the day, the Board will always look at matters in the round and consider whether the overall penalty is appropriate in the circumstances.

119. As to the Appellants' reliance on certain passages in the decisions of the CAT in the construction industry, the CCS contends that these decisions are not applicable to the present case, as those statement were made in the context where a minimum deterrent threshold ("**MDT**") was applied to increase the penalty to a level which the OFT believed was sufficiently deterring. The CAT disagreed with the OFT's "one-size-fits-all" approach in the application of the MDT and expressed the view that the MDT mechanism should not be allowed to result in the imposition of a financial penalty which is excessive and disproportionate.

120. As to the Appellants' reliance on *Hays*, the CCS distinguishes *Hays* on the following grounds:

a. The modelling service industry is a different service industry from that of recruitment agencies considered in *Hays,* because the wages of the temporary workers that were passed through the agencies were set by the construction firms (i.e. the clients) and the recruitment agencies did not control or influence the level of wages paid by the construction firms. Here, the modelling agencies control and influence the entire modelling rates that were paid by the clients.

b. The fees that were being fixed were not the wages but the target fees i.e. the fees paid by the construction firms to the recruitment agencies for the sourcing and matching of successful candidates. Here, what was being fixed was the entire modelling rate, and not just the commission payable to the modelling agencies.

c. Although there was one single market in *Hays*, the different treatment of the wages of the permanent and temporary workers meant that the usage of gross turnover (which would include the wages of the temporary workers) would result in a distorted view of the participant's respective involvement, depending on its mix of permanent or temporary workers. Here, there was no difference in the manner in which the fees of foreign or local models were treated or the fees earned as a mother agency or local representative agency.

121. Further, the CCS contends that the recruitment agencies in *Hays* simply acted as middlemen when providing temporary workers to the construction industry with minimal involvement and no business risk. Here, the 11 modelling agencies were not mere intermediaries but are the responsible entities for modelling services rendered to clients. The contractual relationship is between the client and the modelling agency, and the client would look to and hold the modelling agency responsible for breach of contract: ID at [272].

122. The CCS found that in the same vein, the modelling agency looks to its clients for payment for services rendered, and must bear the risk of non-payment. There is no contractual relationship between the model and the client. The modelling agencies source and build their own portfolio of models and talents, and offer this portfolio in order to secure bookings and jobs. The agency bears the risk of signing up a model/talent that is unable to fulfill bookings and jobs secured by the agency. The risks are higher where foreign models are involved, as the agency will fly the model over, house him/her and pay him/her an allowance: ID at [273].

123. The agencies are also involved and responsible for the management and development of its models. Where the agency is the mother agency for the model, the agency invests more resources in grooming the model and planning his/her career. Hence, the costs of sourcing and signing up a model or talent, whether

locally-based or from overseas, are business costs that the agency has to incur in order to provide the services to its clients: ID at [274].

124. There is also no consistent or uniform approach to the treatment of sums received in the accounts of the parties. For instance, Impact's accounts had [XXXXXXX]: ID at [275].

125. Thus, the CCS submits that the modelling agencies are the central actors in the provision of modelling services in Singapore. Clients who are looking for modelling services would contract with the modelling agencies, and hold the agencies responsible for providing the services contracted for. The modelling agencies are not acting as mere intermediaries for the models or mother agents, unlike the recruitment agencies in the *Hays* case. Thus, the relevant turnover ought to be derived from the prices charged for modelling services by the modelling agencies to the clients, and not just the net turnover.

The Board's Decision On Issue (B)

126. The Board held in *Transtar* at [85] and *Konsortium* at [182] that in assessing the relevant turnover, it will have regard to the turnover of the business of the undertaking in Singapore for the relevant product and geographic markets affected by the infringement in the undertaking's last business year: see Penalty Guidelines at [2.1].

127. The European Commission's Guidelines on the Method of Setting Fines at [13], which was cited with approval by the Board in *Konsortium* at [183], further provide:

> *In determining the basic amount of the fine to be imposed, the Commission will take the value of the undertaking's sale of goods or services to which the infringement directly or indirectly [Such will be the case for instance for*

horizontal price fixing arrangements on a given product, where the price of that product then serves as a basis for the price of higher or lower quality goods] relates in the relevant geographic area with the EEA. It will normally take the sales made by the undertaking during the last full business year of its participation in the infringement.

128. Here, the relevant market is defined as the sale and provision of the whole range of modelling services involving the use of modelling persons by modelling agencies in Singapore, without any differentiation between the various types of modelling services or assignments: ID at [47]-[58].

129. The Board turns to consider first the case of *Hay* relied upon by the Appellants. In *Hay,* the net turnover (less the amount paid to the workers) was used as the basis for the calculation of financial penalties. The main characteristics of the relevant market that justified the use of the "net revenue" approach in *Hays* are as follows:

a. The workers supplied are under the control, supervision and direction of the clients and are paid a remuneration determined by the clients and not the agencies: *Hays* at [48].
b. The workers were only engaged by the agencies upon the clients agreeing to their engagement, i.e. the agencies would not keep a ready supply of temporary workers for their clients to choose from as and when they needed temporary workers: *Hays* at [47].
c. The fees received by the recruitment agencies were clearly and separately recorded from the amounts to be "passed through" to the temporary workers: *Hays* at [47].
d. The recruitment agencies have a different mix of permanent and temporary workers, and the usage of gross turnover would result in a distorted view of

the parties' involvement depending on the mix of the workers, as the wages of the permanent works do not "pass through" the agencies.

130. Turning to the present case, the Board notes that one salient distinction from *Hays* is that the fees of the models are negotiated and solely determined by the Appellants, as compared to the wages of the workers that were determined by the clients, i.e. the construction firms in the case of *Hays*. It is undisputed that the Appellants are the ones that negotiate with the clients and sets the rates for the modeling services provided by their models. Further, the rate that is being fixed by the Appellants comprises of the amount received by the models, their foreign mother agencies (where applicable) and the commission earned by the Appellants, as compared to the recruitment agencies in *Hays* which had fixed the "target fee", i.e. the fees payable by the construction firm to the recruitment agencies for the placement of workers. Here, the modelling agencies fix the entire rate charged to the clients for the sale and provision of modelling services in Singapore, and not just the commission rates payable to the models. Thus, clearly the facts in the case of *Hays* are distinguishable from the facts in the present case. In the opinion of the Board, the *Hays* case is not applicable here.

131. The Board now turns to the main contention raised in the Notice of Appeal. In the Notice of Appeal, the Appellants are not contending that profitability should replace turnover as a base for determining the appropriate penalty. Nor is it contending that the relevant turnover should be net of the revenue paid to the models which is about [XX% to XX%] of its revenue. What it is contending is that in view of the large part of the turnover paid to the models, which is about [XX% to XX%] of its revenue, and the low margin the modelling agencies receive, the CCS should give consideration to these factors and adjust the penalties appropriately. In support of this argument, the Appellants rely on the decisions of the CAT in the construction industry in *Kier*, *Tomlinson* and *Barrett* .

132. In *Kier*, the CAT said (insofar as relevant) at [170]-[172]:

> *"170 ..... Turnover is of course an indication of the size and financial status of a commercial entity but it is not the only one, and it too can be subject to distortion – as asserted by some of the Present Appellants whose reported turnover was said to include invoiced amounts for sub-contract work simply passed on to the clients without the addition of any margin.*
>
> *171 ..... However, it has not been suggested by the Present Appellants that profit or profitability should replace turnover for present purposes, nor even that it should necessarily play as central a role. Nor is it denied that profit is a broad concept capable of being assessed in a variety of ways. It is simply that it would be wrong not to give consideration to such profit information as is available, along with other relevant factors, when deciding on the appropriate penalty.*
>
> *172 Account should also be taken of the typical margin on turnover earned in the industry in question, in order to ensure that the ultimate penalty represents a proportionate and sufficient punishment and deterrent. This factor has an obvious bearing on the impact a penalty is likely to have, both on the infringer and on other companies engaged in similar commercial activities. ....."*

133. In *Tomlinson*, the CAT said at [131] to [135] as follows:

> *"131 Another characteristic of the construction industry on which some of the Present Appellants relied was the fact that profit margins are very low as a percentage of turnover. This is in part because the turnover reported by a construction company includes the total payment received from the client for the performance of the contract, although a proportion of that may simply be passed on by the main contractor to the various subcontractors who have worked on the site. Turnover in this sector is therefore not, it is said, as good an indicator of an undertaking's economic strength as it may*

be in other sectors. Seddon argued that if turnover is used without due allowance for the specific characteristics of the industry in question it can lead, and here has led, to disproportionate and unjust penalties.....

132. . . . .

I33 . . . . . The fact that a significant proportion of a construction undertaking's turnover comprises monies paid over to the subcontractor is a factor which affects the extent to which turnover can be regarded as a useful indicator of economic presence in this market. It goes too far to say, as Seddon said, that its turnover is unrelated to its financial strength. But it is a factor that is relevant when considering the overall impact of the penalties on these undertakings.

134 Although a number of the Present Appellants raised this same point, they were less clear about how the OFT could or should have taken this factor into account in its calculation of the penalties in these cases. Some of them eschewed any suggestion that profit should have been used as a measure instead of turnover. We agree that individual group profit is an unsatisfactory alternative, for the reasons set out by the OFT in paragraphs VI.72 to VI.74/1643 of the Decision. We also reject the suggestion made by Tomlinson, Interclass and Seddon that the OFT should simply have relied on turnover net of subcontractor fees in its calculations. This would have had a very uneven effect on the undertakings, depending on how far they rely on subcontractors. It would also mean that a company that chooses to employ its own workforce would be disadvantaged.

135 We do however consider that this aspect of the way the construction industry operates should have been reflected at some point in the OFT's calculation. It is an important factor when considering the likely impact of the fines on these undertakings and in particular whether the fines arrived at after applying Steps 1 and 2 of the Guidance are an adequate deterrent.

We have therefore taken this factor into account in that context when we recalculate the fines.

134. Similar pronouncements were made in *Barrett* which followed *Tomlinson*. At [64] to [65] (insofar as relevant) the CAT said:

> *"64 In our judgment, the OFT was too quick to dismiss out of hand the arguments founded on low profitability and the connected issue of the prevalence of sub-contracting arrangements. We agree with the Tribunal's conclusion at paragraph 133 of the Tomlinson Judgment that the OFT was wrong to equate sub-contracting in the construction industry with a retailer accounting for stock in its turnover. The fact that a significant proportion of a construction firm's turnover comprises monies paid over to sub-contractors is a factor which affects the extent to which turnover can be regarded as a useful indicator of economic power in this market.*
>
> *65 The OFT was wrong to overlook this important factor in assessing the appropriate level of penalty to impose in this case. ....."*

135. It is clear that what is acknowledged by the CAT in these three decisions is that the high turnover and low margin of the construction industry should have been reflected in some way in the OFT's calculation, and is an important factor when considering the likely impact the penalties have on these undertakings and in particular whether the penalties arrived at after applying Steps 1 and 2 of the Guidelines are an adequate deterrence: *Tomlinson* at [135]; *Kier* at [170]-[172].

136. The Board notes that the CCS dealt with this point mainly at [291] to [292] of the ID, where the CCS says:

> *"291 Bees Work, Diva, Electra, Impact, Linsan, Looque, and Quest, submitted in their representations that the modeling industry in Singapore was a "high turnover but low profit" industry, and that this characteristic should be*

considered in the determination of appropriate penalties. These Parties argued that the financial penalties imposed by CCS will lead to hardship for them. The Parties relied on a series of appeal cases in the UK concerning the construction industry, in which the UK CAT gave regard to the high turnover but low margins of the construction industry, and overall proportionality, in determining its adjustment of penalties.

292 CCS notes that the mere finding of an adverse financial situation is not sufficient reason to justify a reduction in financial penalties since the recognition of such an obligation would have the effect of conferring an unfair competitive advantage on the undertakings least well adapted to the conditions of the market.

293 .....

294 In the present case, CCS notes that it is not evident that the businesses of the respective Parties are entirely unprofitable. For instance, CCS notes that all the Parties recorded positive gross profits. ....."

137. The Board accepts the Appellants' submission that the high turnover and low margin characteristic of the modelling agencies is a factor that should have been considered in determining whether the penalty was excessive or disproportionate. The Board will consider this factor and decide what adjustment should be appropriately made at the conclusion of this appeal.

IX. ISSUE (C): Whether the CCS erred in finding that the Appellants had an incentive not to declare profits and dividends on profits for external shareholders

138. The CCS in considering other relevant factors says at [294] of the ID that it is not evident that the businesses of the respective Parties are entirely unprofitable and says that all the Parties recorded positive gross profits. The CCS then refers to the following statement made by the Board in *Transtar Travel & Another v CCS in*

Appeal No 3 of 209 at [98] that "*in certain businesses, the net profits may not be an accurate marker as there are various other factors / reasons why the net profits of the undertaking may not be desirable*". Following that, the CCS observes that "*in the majority of the Parties, most (if not all) of the shareholders are also directors or partners, and that therefore there may not be strong incentive for the undertaking to declare profits and dividends on profits for external shareholders*".

139. In the Notice of Appeal, the Appellants assert that the CCS has no factual basis to find that the Appellants have no incentive to declare profits and dividends for external shareholders and surprisingly raise this point as an issue, namely Issue (C) for determination. This point is totally irrelevant. Whether or not the CCS has an factual basis in making the statement, which it makes at [294] of the ID, is irrelevant. Assuming it does not have, it will still not assist the determination of this appeal. The penalty imposed is based on the gross turnover of the Appellants, and it does not matter how much or what amount of that turnover is appropriated or allocated for payment of dividend or profit to their shareholders or owners. That is wholly an internal matter that concerns only the shareholders or owners of the respective undertakings.

X. ISSUE (D): Whether the CCS erred in increasing the penalty on Looque due to the role that Calvin Cheng played in the infringing conduct

(a) Directors' Involvements of the Parties

140. Before considering this issue, the Board would like to consider an aggravating factor taken into account by the CCS, namely, the involvement of the board of directors or members of the senior management of the Parties in the price-fixing agreement. With reference to the following parties, namely: Bees Work, Diva and Impact, the CCS considers that their respective directors were in each case involved in the price-fixing agreement: in the case of Bees Work, it is Christine Ty at [313], in Diva, it is Rowena Foo at [330], and in Impact which is a partnership, it is its manager, Tan Mui Chen and sole proprietor, Tan Thiam Poh at [352]. The CCS

treats their involvement in each case as an aggravating factor, and increases the penalty in each case by [XX%]. Apart from the fact that these persons knew of the infringing conduct and participated in the discussion and agreeing to the agreement, there is no evidence that they took an active role as leaders in the price-fixing agreement.

141. The Board in the case of *SISTIC v The Competition Commission* ("***SISTIC***") at [352] said:

> *"352 The Board notes that involvement of directors or senior management is one of the aggravating factors provided in the CCS Guidelines on Appropriate Amount of Penalty. But the question is whether the CCS is justified in applying this as an aggravating factor in this case. It seems to the Board that usually, if not invariably, directors or members of senior management are involved in every case of an infringement of section 47 prohibition. But, in the opinion of the Board it does not follow that in every such case the involvement of the directors or senior management, which is stated as one of the factor in the guidelines should or would apply as an aggravating factor in increasing the financial penalty. On the basis of the facts in the present case, the Board is unable to find any ground for applying this factor. The Board takes the view that this is not a correct application of an aggravating factor stated in the guidelines."*

142. The question for consideration is whether what the Board decided in the *SISTIC* case is applicable in this case. This point was not raised by the Appellants in their Notice of Appeal as the Appeal was filed on 20 January 2012, and the Board's decision was issued and released on 28 May 2012 and was published soon thereafter. Nor was this point raised in the Appellants' written submission filed on 13 August 2012. Nevertheless, the Board at the hearing raised this point for consideration by the Appellants and the CCS.

143. It is contended by the CCS that what was said by the Board in the above passage is only applicable on the facts of the case in *SISTIC* and is not applicable here. It is

true that the Board in the above passage said that on "*the basis of the facts in the [SISTIC] case, the Board is unable to find any ground for applying this factor*", i.e. the aggravating factor relating to the involvement of the directors and/or members of the senior management.

144. The Board is of the opinion that what the Board said in that case is equally applicable here and the CCS ought not, for each of the three parties, Bees Work, Diva and Impact, to treat the involvement of the directors in Bees Work and Diva and the manger and proprietor in Impact respectively as an aggravating factor and increase the rate of penalty by [XX%]. Accordingly, the Board decides that this increase of [XX%] of the penalty for each of these parties shall be disallowed.

(b) Involvement of Calvin Cheng of Looque

145. The Board now turns to the involvement of Calvin Cheng of Looque in the infringing conduct. At [371] of the ID, the CCS considers, *inter alia*, the involvement and conduct of Calvin Cheng as an aggravating factor applicable to Looque as follows:

> *371 Adjustment for aggravating and mitigating factors: CCS considers the involvement of Looque's director and shareholder, namely Calvin Cheng, as a central figure in the infringing activities of the Parties. Calvin Cheng had given instructions to the Parties on how to mask the fact that this was a collective action on the part of the Parties raise rates so as to avoid attracting attention and complaints. In view of this, CCS considers all these as aggravating factors and increase the penalty by [XX]%. . . . . .*"

146. As a matter of inference, it seems to the Board that the [XX%] was arrived at as follows: the first [XX%] was imposed as a standard aggravating factor applicable to all the Appellants including Looque (which for ease of reference is referred to as the "standard increase"), and an additional [XX%] was imposed on Looque because of Calvin Cheng's active involvement and participation in the manner as found by the

CCS. In so far as the standard increase is concerned, the Board is of the view that the CCS should not impose this increase on Looque, and this is consistent with the decision of the Board with regard to the imposition of this increase on Bees Work, Diva and Impact. This increase of [XX%] is to be disallowed.

The Appellants' Contentions on Calvin Cheng's involvement

147. The Board now turns to additional increase of [XX%] applicable only to Looque because of Calvin Cheng's active involvement and participation in the infringing conduct. The Appellants contend that the CCS erred in increasing the penalty on Looque due to the role that Calvin Cheng played in the infringing conduct. The Appellants say that it is unfair for the CCS to impose an additional penalty of [XX%] on Looque for the actions of Calvin Cheng, as such actions were done in his capacity as President of AMIP, and not as the director and shareholder of Looque. Looque did not play any role as a leader or instigator of the infringement.

148. Further, the finding was based on Calvin Cheng's email dated 28 February 2005 to the AMIP members, which was before the section 34 prohibition came into force and before the CCS Guidelines on the section 34 prohibition were finalised on 20 December 2005 and published in June 2007. There was therefore uncertainty and lack of clarity in the business community in Singapore as to whether common practices would infringe the Act. Calvin Cheng was expected to take a leadership role as the President of the AMIP, and was simply setting up price guidelines rather than fixing prices, and some of the AMIP members did not actually implement his instructions.

The CCS's Contentions on Calvin Cheng's Involvement

149. The CCS contends that the AMIP, in and of itself, is separate from its individual members, did not play a significant role in the operation of the agreement and was

essentially a front for its members, including Looque, to collectively raise rates. As such, the cartel consisted of the 11 modelling agencies, and not the AMIP.

150. On Calvin Cheng's involvement, the CCS asserts as follows:

a. Calvin Cheng, who is Looque's director and shareholder, took the lead and initiative for the group using AMIP as a front and the infringing parties reciprocally looked to him for directions.

b. Calvin Cheng was adamant about raising rates and he told the other infringing parties that rates should be raised gradually so as not to attract attention or prompt complaints.

c. Calvin Cheng acted upon complaints of undercutting by modelling agencies that were not party to the agreement.

d. Calvin Cheng instructed the infringing parties to use their own letterheads and to tailor rate sheets to make them look like their own when providing quotes to clients.

151. The CCS relies on the decision of the UK Court of Appeal in *Safeway Stores Limited and Others v Twigger and Others* [2010] EWCA Civ 1472 in which the Court held that the Act only imposes liability on the undertaking and not on individuals (such as directors) and the principle of whether acts of a company director were in breach of his duty to the company was not relevant. Given that the liability of Looque was personal, the fact that Calvin Cheng was operating in another capacity as President of AMIP is not relevant to the determination of liability for Looque and does not absolve Looque from enhanced penalties.

152. For these reasons, the CCS submits that it was correct to impose an additional [XX%] uplift on Looque for the actions of Calvin Cheng, who was the "central figure" in the infringing conduct.

The Board's decision on Calvin Cheng's Involvement

153. It is not seriously in dispute that Calvin Cheng played an active role in the infringing conduct of the Parties. The CCS is justified in saying that he was a central figure; he took the lead and the initiative in setting agreed rates for modelling services. The fact that one of his emails was sent on 28 February 2005 does not detract from this, considering that the Act has already been passed by that date, and Calvin Cheng had later instructed the infringing parties to use their own letterheads and to tailor rate sheets to make them look like their own when providing quotes to client, so as to avoid any accusation that this would infringe the Act.

154. The CCS found that the AMIP was not party to the Parties' agreement to fix rates for modelling services and instead was merely a front for the Parties to collectively raise rates. The Board accepts this finding by the CCS. It seems to the Board that any actions taken by Calvin Cheng in relation to the infringing parties' agreement must necessarily be in his capacity as a director and shareholder of Looque, rather than in his capacity as President of the AMIP. The Board finds that the CCS is justified in imposing the additional penalty of [XX%] on Looque, which is the undertaking in question. As was held in the UK Court of Appeal in *Safeway Stores Limited and Others v Twigger and Others* [2010] EWCA Civ 1472, the Act only imposes liability on the undertaking and not on individuals, such as its directors.

XI. ISSUE (E): Whether the CCS erred in finding that Bees Work's financial information did not reflect any fees received for casting of locations

The Appellants' Contentions on Issue (E)

155. Bees Work has an additional ground of appeal, namely: that the CCS erred in finding that Bees Work's financial information did not reflect any fees received for casting of locations. Bees Work claims that the sum of [$XXX] falling in the

category of "casting/production" constitute non-modelling services and that the CCS wrongly included this amount in the relevant turnover of Bees Work.

156. Bees Work submits that the casting and production fees included search fees to source for locations and personnel such as stylists, photographers and make-up artists, and such fees amounting to [$XXX], which was reduced from the initial figure of [$XXX], should be deducted from the relevant turnover, as this should be considered income from non-modelling services.

The CCS's Contentions on Issue (E)

157. According to the CCS, in the oral representations made by Bees Work and other infringing parties to the CCS on 19 August 2011, the CCS asked Bees Work to elaborate on the nature of the work which it had submitted was not modelling work. In relation to "casting/production fees" which amounts to [$XXX], Bees Work explained that this was for search fees paid to Bees Work when clients wanted to source for locations and personnel such as talents, stylists, photographers and make-up artists. The invoices submitted by Bees Work in support of the "casting and production fees" figure reflected the casting of models and talents which, the CCS submits falls within the market definition, and therefore forms part of Bees Work's relevant turnover.

158. CCS' definition of the relevant product market encompasses all services provided by modelling agencies which involve the use of modelling persons (including talents and models). Relevant turnover therefore includes turnover from the sale and provision of modelling services provided by modelling persons.

159. The CCS submits that the sum of [$XXX], later reduced to [$XXX] after the hearing under the category of "casting/production fees" was correctly included in Bees Work's relevant turnover because Bees Work had explained that these were

search fees paid to Bees Work for sourcing locations or personnel such as talents, stylists, photographers and make-up artists. Bees Work did not further break down the fees for each type of service. Such services thus fall within the relevant product market definition, which is the supply of modelling services by modelling agencies, and includes modelling services for advertorials, editorials, fashion shows, bridal shows, product launches and road shows.

160. Further, the invoices submitted by Bees Work in support of these casting and production fees reflected the casting of models and talents, which clearly falls within the relevant product market definition and hence forms part of Bees Work's relevant turnover.

The Board's Decision on Issue (E)

161. It is not in dispute that the casting/production fees were search fees paid to Bees Work for sourcing locations or personnel, such as talents, stylists, photographers and make-up artists, and it seems to the Board that such services would constitute modelling services as compared to non-modelling services, such as courses in choreography, photography and grooming, which do not involve the use of modelling persons. The Board is therefore of the opinion that the "casting/production" fees amounting to the sum of [$XXX] are properly included in the relevant turnover.

XII. FINAL DECISION OF THE BOARD ON PENALTY

162. The Board now turns to consider what adjustment should be made in the circumstances of this case taking into account the characteristics of the modelling industry of high turnover and low margin discussed at [131] – [136] above. The Board is of the opinion that this is a mitigating factor and on the basis of the facts of this case, a reduction of [XX%] should be allowed on the penalty imposed on each of the Appellants.

163. For the reasons given above, the Board decides that the penalty imposed by the CCS on each of the Appellants should be adjusted and be reduced by [XX%] with the consequence that the penalty be as follows:

(a) the penalty of $44,112 imposed on Bees Work by the CCS be reduced by [XX%] of [$XXX] (being $7,352) to $36,760;

(b) the penalty of $72,891 imposed on Diva by the CCS be reduced by [XX%] of [$XXX] (being $12,148) to $60,743;

(c) the penalty of $10,508 imposed on Impact by the CCS be reduced by [XX%] of [$XXX] (being $1,751) to $8,757; and

(d) the penalty of $31,241 imposed on Looque by the CCS be reduced by [XX%] of [$XXX] (being $4,686) to $26,555.

164. In making these adjustments, the Board bears in mind the general observation made by the CCS and is of the opinion that the reduced amounts of penalty would still have the deterrent effect.

XIII. COSTS

Contentions of the Parties

165. The Appellants in the Notice of Appeal and the written submissions ask for an order that the costs of the appeal be borne by the CCS.

166. On the other hand, the CCS argues that even if the Board allows a reduction of the penalty, it does not follow that the Appellants should be entitled to costs. The CCS relies on the guiding principles on costs as set out in *Independent Media Support Limited v Office of Communications* [2008] CAT 27 at [6] (also referred to in *Transtar* at [113]):

a. There is no fixed rule as to the appropriate costs order; how the Tribunal's discretion will be exercised in any case will depend on the particular circumstances of the case;

b. It follows that there is no presumption under rule 55 (which is in *pari materia* to Regulation 30(1) of the Competition (Appeals) Regulations) that costs should be borne by the losing party;

c. Subject to the first principle, a legitimate starting point is that a party who can fairly be identified as a winning party should ordinarily be entitled to recover his costs from the losing party.

d. The starting point is, of course, subject to a consideration of whether the winning party has incurred costs in arguing issues on which he has lost, or has acted unreasonably in the proceedings;

e. Other relevant considerations include whether it was reasonable for the unsuccessful party to raise, pursue or contest a particular ground of appeal; the manner in which the parties pursued or defended the appeal and whether any award of costs may frustrate the objectives of the Act.

167. The CCS also cites the precedent in *Transtar*, where even though the appellants succeeded in the appeal and obtained a reduction in penalties, as there were points of arguments where they failed, the Board ordered each party to pay their own costs.

The Board's Decision on Costs

168. Regulation 30(1) of the Competition (Appeals) Regulations provides that the Board may, in relation to any appeal proceedings, award costs in its discretion.

169. In the its previous decisions, namely, *Transtar & Anor v CCS* (Appeal No 3 of 2009) and *SISTIC*, the Board respectfully followed and adopted the following principles on costs as laid down in the case of *Independent Media Support Limited v Office of Communications* [2008] CAT 27:

"*(a)* *There is no fixed rule as to the appropriate costs order; how the Board's discretion will be exercised in any case will depend on the particular circumstances of the case*

(b) *It follows that there is no presumption under rule 55 (which is in pari materia to Regulation 30(1) of the Competition (Appeals) Regulations) that costs should be borne by the losing party;*

(c) *Subject to the first principle, a legitimate starting point is that a party who can fairly be identified as a winning party should ordinarily be entitled to recover his costs from the losing party;*

(d) *The starting point is, of course, subject to a consideration of whether the winning party has incurred costs in arguing issues on which he has lost, or has acted unreasonably in the proceedings;*

(e) *Other relevant considerations include whether it was reasonable for the unsuccessful party to raise, pursue or contest a particular ground of appeal; the manner in which the parties pursued or defended the appeal and whether any award of costs may frustrate the objectives of the Competition Act.*"

170. The Appellants succeed in the appeal in part, but there are various points of arguments where they fail. Having regard to all the circumstances of this case, the Board is of the opinion that a fair order as to costs is that each party should bear and pay its own costs. The Board so orders.

XIV. INTEREST

171. On the question of interest, Regulation 31 of the Competition (Appeals) Regulations provides:

"***Interest***

31 *(1)* *If the Board imposes, confirms or varies any financial penalty, the Board may, in addition, order that interest be paid on the amount of any*

such penalty from such date, not being a date earlier than the date upon which the notice of appeal was lodged in accordance with regulations 7 and 8, and at such rate as the Board considers appropriate.

(2) Unless the Board otherwise directs, the rate of interest shall not exceed the rate prescribed in the Rules of Court (Cap. 322, R 5) in respect of judgment debts.

(3) Any interest ordered to be paid under paragraph (1) shall form part of the penalty payable and be enforced according to section 85 of the Act."

172. Order 42 rule 12 of Rules of Court provides:

> *"**Interest on judgment debts (O. 42, r.12)***
>
> *12. Except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at the rate of 6% per annum or at such other rate as the Chief Justice may from time to time direct or at such other rate not exceeding the rate aforesaid as the Court directs, such interest to be calculated from the date of judgment until the judgment is satisfied:*
> *Provided that this rule shall not apply when an order has been made under section 43(1) or (2) of the Subordinate Courts Act (Chapter 321)."*

173. The Honourable the Chief Justice in 2007 directed that the default interest rate shall be 5.33% per annum with effect from 1 April 2007 until further notice: Paragraph 77 of the Supreme Court Practice Directions.

174. In the previous cases of the *Coach Operators* and *SISTIC*, the Board ordered the appellants there to pay interest on the penalty at the rate of 5.33% per annum from the date of the decision to the date of payment. Similarly in this case, the Board is of the view that the Appellants should pay interest at the same rate, and accordingly orders that the Appellants pay interest on the penalty at the rate of 5.33% from the date of this decision to the date of payment.

XV. ORDERS

175. For the reasons given above, the Board hereby allows the appeal on the financial penalty in part and orders that the respective financial penalties imposed on the Appellants be reduced as follows:

(a) the penalty on Bees Work be reduced to $36,760;
(b) the penalty on Diva be reduced to $60,743;
(c) the penalty on Impact be reduced to $8,757; and
(d) the penalty on Looque be reduced to $26,555.

176. The Board hereby orders that the Appellants pay the respective amounts of penalties aforesaid and pay interest thereon at the rate of 5.33% per annum from the date of this decision to the date of payment. The Board further orders that each party pay its own costs and expenses of or incidental to this appeal.

Dated this 10th day of April 2013

Thean Lip Ping	Goh Phai Cheng	Tan Kim Song	Foo Chee Peng Jane
Chairman	Member	Member	Member