

Decision of the Competition and Markets Authority

**Anti-competitive behaviour relating to the purchase of freelance services supporting the production and broadcasting of sports content
Case 51156**

21 March 2025

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

The names of individuals mentioned in the description of the infringements in the original version of this Decision have been removed from the published version on the public register. Names have been replaced by a general descriptor of the individual's role.

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1. INTRODUCTION AND BACKGROUND TO THE CMA'S INVESTIGATION

A. Introduction

1.1. This decision (the '**Decision**') is addressed to the persons listed below (each a '**Party**', together the '**Parties**');

- (a) the British Broadcasting Corporation ('**BBC**');¹
- (b) BT Group plc ('**BT**');²
- (c) IMG Media Limited, its current parent company, Endeavor Group Holdings, Inc³ and its previous parent company Endeavor Operating Company, LLC, previously named WME Entertainment Parent, LLC⁴ (together, '**IMG**');⁵
- (d) ITV Broadcasting Limited⁶ and its parent company, ITV plc⁷ (together, '**ITV**');⁸ and
- (e) Sky UK Limited⁹ and its previous parent company Sky Limited¹⁰ (together '**Sky**').¹¹

1.2 By this Decision, the Competition and Markets Authority ('**CMA**') has concluded that each Party has infringed the prohibition in section 2(1) (the '**Chapter I prohibition**')

¹ The British Broadcasting Corporation is a body corporate, incorporated under Royal Charter, registered at Broadcasting House, Peel Wing, Portland Place, London W1A 1AA, with Company Number RC000057. BBC Sport is the division within BBC which is responsible for the majority of BBC's production and broadcasting of sports content. Through BBC Sport, BBC was active on the market for the purchase of the labour of freelance workers that support the production and broadcasting of sports content in the UK for the duration of the Infringements involving BBC.

² BT Group plc is a UK public limited company, registered at 1 Braham Street, London E1 8EE, with Company Number 04190816. Through BT Sport, a division operated until August 2022 within BT's Consumer business unit, BT was active on the market for the purchase of the labour of freelance workers that support the production and broadcasting of sports content in the UK for the duration of the Infringements involving BT.

³ Endeavor Group Holdings, Inc is a public company listed on the New York Stock Exchange. It is incorporated in the State of Delaware in the United States, and its head office is registered at 3rd Floor, 9601 Wilshire Boulevard, Beverly Hills, CA 90210, United States. From the point of an Initial Public Offering in April 2021 to the present day, Endeavor Group Holdings, Inc has been the parent company of IMG Media Limited.

⁴ From May 2014 to April 2021, IMG Media Limited's parent company was WME Entertainment Parent, LLC, which subsequently changed its name to Endeavor Operating Company, LLC, on 6 February 2019. This entity came about from a transaction whereby William Morris Endeavor Entertainment acquired IMG Worldwide.

⁵ IMG was active on the market for the purchase of the labour of freelance workers that support the production and broadcasting of sports content in the UK for the duration of the Infringements involving IMG.

⁶ ITV Broadcasting Limited is a UK limited company, registered at ITV White City, 201 Wood Lane, London, United Kingdom, W12 7RU, with company number 00955957.

⁷ ITV plc is a UK public limited company, registered at White City Place, 201 Wood Lane, London W12 7RU, with company number 04967001.

⁸ ITV Sport is the business unit of ITV responsible for the production and broadcasting of ITV's sports content. Through ITV Sport, ITV was active on the market for the purchase of the labour of freelance workers that support the production and broadcasting of sports content in the UK for the duration of the Infringements involving ITV.

⁹ Sky UK Limited is a UK limited company, registered at Grant Way, Isleworth, Middlesex, TW7 5QD, with company number 02906991.

¹⁰ Sky Limited was previously known as Sky plc and was a UK public listed company prior to its delisting on 7 November 2018. On 6 December 2018, Sky plc was wholly acquired by Comcast Corporation.

¹¹ Sky Sports is the business unit within Sky UK Limited responsible for delivering all of Sky's UK sports content. Through Sky Sports, Sky was active on the market for the purchase of the labour of freelance workers that support the production and broadcasting of sports content in the UK for the duration of the Infringements involving Sky.

of the Competition Act 1998 (the '**Act**'). More specifically, the CMA finds that each Party was involved in the following infringements:

- (a) Infringement 1, involving ITV and Sky (March 2014);
- (b) Infringement 2, involving BT and ITV (August 2014);
- (c) Infringement 3, involving ITV and Sky (Autumn 2015);
- (d) Infringement 4, involving IMG and Sky (April 2016);
- (e) Infringement 5, involving ITV and Sky (April 2016-January 2017);
- (f) Infringement 6, involving BBC and Sky (July-November 2016);
- (g) Infringement 7, involving BT and Sky (Spring 2018);
- (h) Infringement 8, involving ITV and Sky (May 2018);
- (i) Infringement 9, involving IMG and Sky (July 2019);
- (j) Infringement 10, involving BT and IMG (December 2020);
- (k) Infringement 11, involving BT and Sky (Winter 2020/2021);
- (l) Infringement 12, involving IMG and Sky (January 2021);
- (m) Infringement 13, involving BT and IMG (July 2021);
- (n) Infringement 14, involving BBC and BT (September 2021); and
- (o) Infringement 15, involving BBC and IMG (October 2021).

- 1.3 Each of the 15 infringements (together, the '**Infringements**') involved the disclosure and receipt, or the exchange, of competitively sensitive information in respect of the purchase of the labour of freelance workers that support the production and broadcasting of sports content in the United Kingdom. The CMA also finds that each of the Infringements had as its object the prevention, restriction or distortion of competition.

B. Background to the CMA's investigation

- 1.4 The CMA¹² opened an investigation under section 25 of the Act on 12 July 2022 by way of unannounced inspections at the premises of BT Sport, IMG and ITV,

¹² Given the subject matter of the investigation, the CMA and the Office of Communications ('**Ofcom**') have concurrent jurisdiction to investigate the case under the Act. It was agreed by Ofcom and the CMA that the CMA would investigate the case.

pursuant to warrants issued under section 28 of the Act. A voluntary inspection took place in respect of Sky.¹³ On 4 April 2023, formal notices of investigation were issued to BBC and Sunset & Vine Productions Limited ('S&V'), along with notices under section 26 of the Act to produce specified documents and information. During the course of its investigation, the CMA also interviewed 12 witnesses on a voluntary basis.

- 1.5 Sky approached the CMA for immunity under the CMA's leniency policy prior to the launch of the investigation and was granted Type A immunity.¹⁴ Following the launch of the investigation, IMG,¹⁵ ITV,¹⁶ and BT¹⁷ all approached the CMA for leniency, and were granted Type C leniency. Since their approaches to the CMA, Sky, IMG, ITV, and BT all provided documents and information voluntarily to the CMA during the investigation, in accordance with their cooperation obligations under the CMA's leniency policy.¹⁸
- 1.6 In February 2023, the CMA notified BT, IMG, ITV and Sky of its decision to expand the investigation to include suspected breaches of competition law in relation to the employment of staff supporting the production and broadcasting of sports content in the UK. Subsequently, on 2 April 2024, the CMA notified the Parties that, for reasons of administrative priority, it had decided not to proceed with this aspect of the investigation.
- 1.7 On 23 July 2024, the CMA notified S&V that for reasons of administrative priority it had decided not to proceed with the investigation against S&V.
- 1.8 On 3 March 2025, the CMA decided to settle the case with each of BBC, BT, IMG and ITV (together, the **Settling Parties**), after each of the Settling Parties:¹⁹
 - (a) made a clear and unequivocal admission that it had infringed the Chapter I prohibition in the terms set out in a draft statement of objections (issued to the Parties on 12 February 2025);
 - (b) confirmed that the infringing conduct had ceased and committed that it would refrain from engaging in the same or similar infringing conduct;

¹³ As noted below, Sky had already approached the CMA for leniency by this point and had already provided a substantial amount of information in relation to the conduct.

¹⁴ Sky approached the CMA for immunity on 26 May 2021 and was granted Type A immunity on 13 March 2025.

¹⁵ IMG approached the CMA for leniency on 14 July 2022 and was granted Type C leniency on 13 March 2025.

¹⁶ ITV approached the CMA for leniency on 20 July 2022 and was granted Type C leniency on 13 March 2025.

¹⁷ BT approached the CMA for leniency on 7 July 2023 and was granted Type C leniency on 13 March 2025.

¹⁸ See *Applications for leniency and no-action in cartels cases* (OFT1495, adopted by the CMA board).

¹⁹ CMA8, *Competition Act 1998: Guidance on the CMA's investigation procedures in Competition Act 1998 cases*, 19 December 2024, paragraphs 14.7 and 14.8

- (c) accepted that a maximum penalty would be imposed on it (with the basis on which the maximum penalty had been calculated being set out in a draft penalty calculation issued on 12 February 2025);
- (d) agreed to a streamlined investigative procedure for the remainder of the investigation; and
- (e) agreed not to appeal this Decision in the Competition Appeal Tribunal or to challenge this Decision through judicial review in any other competent court or tribunal in the United Kingdom.

1.9 On 5 March 2025, the CMA issued a statement of objections²⁰ to the Parties.

1.10 By this Decision, the CMA is imposing financial penalties under section 36 of the Act in respect of the Infringements.

²⁰ In accordance with section 31 of the Act and Rules 5 and 6 of The Competition Act 1998 (Competition and Market Authority's Rules) Order 2014, SI 2014/548.

2. INDUSTRY BACKGROUND AND RELEVANT MARKETS

A. Industry background

- 2.1 During the period from 2014 to 2021,²¹ all of the Parties had a significant presence in the production and/or broadcasting of sports content in the UK. BBC, BT, ITV and Sky consistently purchased broadcasting rights to major sporting events and had very significant expenditure in the acquisition of sports rights in the UK during this period.²² During this period, Sky was the largest buyer of sports rights, with BT being the second largest. As a major production company, IMG worked with rights-holders and broadcasters, including at least some of the other Parties, to produce sports content.²³
- 2.2 Given their significant presence in the market for the production and/or broadcasting of sports content in the UK, the Parties also spent significant sums on procuring freelance labour to support that activity, and together accounted for a significant proportion of that purchasing market.²⁴ Other purchasers of such freelance labour in the UK included broadcasters such as Channel 4 and Eurosport, content streaming service providers such as Amazon, and production companies such as S&V.
- 2.3 Rates of pay for freelance labour to support the Parties' sports content were informed by the need to pay sufficiently high rates to attract talented freelancers capable of producing high-quality content, balanced against the need to avoid paying too much and thereby impacting production budgets and/or quality.
- 2.4 Generally speaking, there tended to be three external triggers for the review of rates of pay for freelance labour supporting the production and broadcasting of sports content in the UK. These were:
- (a) A decision and/or announcement by Sky that it would increase its rates of pay for freelancers that it hired indirectly via Outside Broadcast ('OB') service providers, which typically occurred every two years;²⁵
 - (b) Temporary seasonal adjustments to rates of pay, typically in respect of public holidays at Christmas and the New Year (where increased demand in terms of the

²¹ The Infringements took place in the period of March 2014 to October 2021.

²² For example, in 2021 the Parties' expenditure in sports rights was Sky - £1.9 billion, BT - £0.9 billion, BBC - £0.4 billion and ITV - £0.2 billion. See Slide 21 of a report by Ampere, prepared for Ofcom, which sets out the spend on the sports TV rights market in the UK which it estimated to be worth £3.5 billion in 2021 (the [Ampere Report](#)). IMG, by contrast, is a production company and does not buy rights as it does not broadcast sports content itself.

²³ IMG owns Premier League Productions which is a dedicated production partner of the English Premier League. IMG also works with other rights-holders in the production of a wide variety of sporting content.

²⁴ The CMA considered resources such as Ofcom's [Communications Market Report 2022](#), [BBC's Annual Report \(2021-22\)](#) and a report by Oliver and Ohlbaum (April 2024), commissioned by BT.

²⁵ See, for example, the context of Infringements 1, 2, 4, 5, 8 and 14, set out at Chapter 4 below.

number of sporting events to be covered was coupled with reduced supply due to the holiday period);²⁶ and

- (c) Ad-hoc requests/demands made by freelancers themselves, whether hired directly by the Parties, or indirectly via OB service providers. These might be made either individually or, more frequently, collectively.²⁷

2.5 The CMA notes that the Parties may also have conducted internal reviews of freelancer rates or freelancer rate cards from time to time.

B. Relevant markets

B.1 Introduction

2.6 The CMA has considered the relevant labour market or markets affected by each of the Infringements in order to calculate the Parties' 'relevant expenditure' in the markets affected by each Infringement, for the purpose of establishing the level of the financial penalties that the CMA has decided to impose.²⁸

2.7 Each Infringement involved the disclosure and receipt, or the exchange, of competitively sensitive information in respect of the purchase of certain services provided by freelance workers which support the production and broadcasting of sports content in the United Kingdom. These services are defined in this Decision as the Relevant Services.

2.8 The Relevant Services affected by each of the Infringements are set out in Tables 1 and 2 of **Annex 1** of this Decision. These are production roles performed by freelance workers. They constitute lines of specialisation or technical expertise within the production and broadcasting of sports content.²⁹

²⁶ See, for example, the context of Infringements 6 and 9, set out at Chapter 4 below.

²⁷ See, for example, the context of Infringements 3, 7, 10, 11, and 12, set out at Chapter 4 below.

²⁸ CMA's guidance as to the appropriate amount of a penalty (CMA73), paragraphs 2.1 and 2.10 to 2.13. When assessing the relevant market for these purposes, it is not necessary to carry out a formal analysis: the relevant market may properly be assessed on a broad view of the particular trade affected by the infringement in question. See *Argos Limited and Littlewoods Limited v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, paragraphs 169 to 173 and 189; *Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13, paragraphs 176 to 178. See also judgment of 6 July 2000, *Volkswagen AG v Commission* T-62/98, EU:T:2000:180, paragraph 230 and judgment of 12 January 1993, *SPO and Others v Commission* T-29/92, EU:T:1995:34, paragraph 74, on the circumstances in which market definition is required.

²⁹ The Relevant Services for each of the Infringements have been identified using the following principles:

- (a) Where a service is expressly referred to by name in the information that was unilaterally disclosed and/or bilaterally exchanged, the CMA has included that role within the Relevant Services for the Infringement(s) concerned.
- (b) Where the information that was unilaterally disclosed and/or bilaterally exchanged pertains to a broad category of freelance roles that make up an 'Outside Broadcast crew' or 'OB crew' (or similar expression in the context of an Outside Broadcast), without defining what is meant by such expressions, the CMA has interpreted these concepts narrowly. The CMA notes that what is meant or understood by an Outside Broadcast crew may vary, as will commercial practices around the constitution of such a crew using freelance workers. For the Infringements concerned, the CMA has therefore included within the Relevant Services only those roles which the evidence in

- 2.9 The CMA has considered whether different Relevant Services are substitutable with each other, such that they should be grouped together as part of a wider labour market.
- 2.10 There is some proximity between different Relevant Services given the nature of some of the roles, opportunities for career progression³⁰ and the scope for transition between specialisms given sufficient experience and/or training.³¹ However, the CMA's view, which is consistent with the representations made by some of the Parties, is that each of the Relevant Services is sufficiently specialised by nature and not sufficiently substitutable with another Relevant Service (or, by the same token, with other roles supporting the production and broadcasting of sports content falling outside of the Relevant Services).
- 2.11 On this basis, the CMA has decided to treat each production role as its own labour market, such that, for example, camera operators and sound technicians represent two distinct relevant labour markets,³² and such that, for example, camera operators and camera supervisors are also two distinct relevant labour markets.

B.II Whether any of the relevant markets may be wider than each Relevant Service

Substitution between freelancers and employees

- 2.12 Each of the Infringements concerns a restriction of competition in respect of the purchase of the freelance labour specifically – that is, they do not concern the purchase of employed labour services.
- 2.13 The CMA has considered whether services similar to those affected in each Infringement provided by employees are substitutes for each Relevant Service.
- 2.14 The majority of the evidence submitted by the Parties supports the view that, whilst freelancers and employees could technically perform similar roles, in practice there

the CMA's possession suggests forms the objectively and commonly understood roles of a 'core' freelance Outside Broadcast crew. We consider that these are the services provided by freelance Camera Operators, EVS Operators, and Sound Technicians (whose precise titles may vary). More detail on these three Relevant Services is set out in Table 3 of **Annex 1**.

³⁰ See OHX-000661716: Studio and outside broadcast career map. Note that the job descriptions and grades relate to the media broadcasting and production industry in general and are not specific to the sports broadcasting and production industry.

³¹ See [X]: [X] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 4.25. [X] submitted that whilst workers do not move between specialisms and are not substitutable across specialisms, a freelancer in a camera assistance role could, with experience and training, move into a camera operating role, or to a role which uses other types of camera equipment with appropriate training. See also [X]: [X] response to CMA RFI dated 28 March 2024 – Question 2 and 3, paragraph 3.31. [X] submitted that in respect of craft roles, whilst there is a degree of substitutability relating to the seniority of personnel required, and it may be possible for one type of general camera operator to use other types of camera equipment (with appropriate training) it would not typically be feasible for someone to be able to switch between different types of craft role.

³² The CMA also notes that in response to a small but significant non-transitory decrease in rates, a hypothetical monopsonist of camera operators would not typically seek to replace sound engineers with camera operators to take advantage of those lower rates. Equally, camera operators would not typically seek work as sound engineers to avoid the rate decrease.

is limited or no substitutability and they do not fall within the same market or markets.³³

- 2.15 In particular, the production and broadcasting of sports content in the UK is highly seasonal in nature, and highly dispersed, both geographically and in terms of the spread of sports content across multiple production companies and broadcasters. Sports content production is also concentrated at weekends. This means that there is usually insufficient, constant, year-round demand to employ individuals in production roles on a permanent basis as full-time employees.
- 2.16 From a supply-side perspective, maintaining a year-round calendar of work entails providing a particular service to potentially multiple production companies and broadcasters at different times of the year. While part-time employment, perhaps across multiple employers, would theoretically be possible, it may be undesirable from both demand and supply side perspectives. For example, freelancers may not want to be employees as they may have opportunities to earn higher pay with increased flexibility over their work.³⁴ On the demand side, due to the time it takes to hire and train employees, any changes in demand during the year can more easily be met by engaging freelancers.³⁵
- 2.17 The Parties provided some specific examples where employees and freelancers are more substitutable, mainly relating to production management ('production office') and editorial roles.³⁶ However, these do not form part of the Relevant Services for any of the Infringements.
- 2.18 Taking all of the above into account, the CMA has decided not to include services provided by employees in the relevant labour markets for each Infringement.

Substitution between sports and non-sports content

- 2.19 The CMA has considered whether freelancers providing the Relevant Services for the production and broadcasting of sports content are part of a wider labour market

³³ See [X]: [X] response to CMA RFI dated 28 March 2024 – Question 2 and 3, paragraph 3.11. [X] stated that the majority of the UK sports broadcasting industry works on a structure whereby there is a core team of permanent employees, which includes those in editorial and production management roles, and then supplement these permanent employees with primarily craft and potentially editorial freelancers as required for particular events.

³⁴ See [X]: [X] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 1.7: '*In [X]'s experience, a number of Freelancers started their career working at a similar technical facilities company on an employed basis, and then transitioned into working on a freelance basis where they could typically earn a higher pay with increased flexibility over their work.*'

³⁵ Two Parties stated that freelancers were engaged to satisfy short term, seasonal needs and in response to fluctuating levels of demand. See [X]: [X] response to CMA RFI dated 28 March 2024 – Question 4, paragraphs 1.1 and 1.7, and [X]: [X] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 4.2.

³⁶ See [X]: [X] response to CMA RFI dated 28 March 2024 – Question 2 and 3, paragraph 3.7: '*In many instances, employees and freelancers can and will perform very similar editorial or production management functions and therefore the decision as to whether to deploy a permanent employee or seek short term support via a freelancer will be dictated by the specifics of what is required and taking account of the current utilisation of [X]'s permanent employees.*'

that includes freelancers providing the same or similar services which support the production and broadcasting of non-sports content.

- 2.20 The CMA has been told that, whilst it is theoretically possible for freelancers to switch from working on non-sports content to sports content, in practice, purchasers of certain types of freelancers' services are likely to require them to have directly relevant experience to work on the production or broadcasting of sports content.^{37 38} Certain roles may also require specialist knowledge of the sport in question.^{39 40}
- 2.21 The CMA has also been told that pay is generally lower for freelancers working on sports content production and broadcasting, meaning that freelancers working on non-sports content production and broadcasting are unlikely to want to switch.⁴¹ Freelancers may also prefer to stay within their particular genre due to personal interest, accumulated knowledge and experience within that genre.⁴²
- 2.22 The CMA recognises that certain roles, such as makeup artists, may not require sports broadcasting experience or specialist sports knowledge, and may involve more transferable skills.⁴³ In such cases, there may be a greater opportunity for freelancers to switch more readily between working on the production and broadcasting of sports content and non-sports content, as the role is essentially the

³⁷ See [redacted]: [redacted] response to CMA RFI dated 28 March 2024 – Question 4, page 15: 'Workers that provide Relevant Services in relation to non-sports content production and/or broadcasting likely could not / in practice would not perform similar functions to Workers that provide Relevant Services in relation to premium/high-profile sports content production and/or broadcasting (e.g. the Premier League, Wimbledon) because it is imperative that production teams for such premium/high-profile content have directly relevant experience[.]'

³⁸ See [redacted]: [redacted] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 4.10(a): '[T]echnical crew working within sport generally stay within sports production if the skills they employ are different from those that are required in relation to non-sports production. For example, EVS operators working within sport are required to have a good knowledge of each sport's rules and characteristics in order to anticipate and produce slow-motion and instant replays of action sequences in 'real time' during broadcasts[.]'

³⁹ See [redacted]: [redacted] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 2.8: 'Additionally, while the basic skills for a number of roles typically filled by Freelancers on [redacted] productions were, in theory, transferable to non-sports productions, to successfully switch from working on sports productions to a non-sports production, Freelancers would first need to invest time (in on-the-job training and practical experience) to build up the requisite skills, expertise and knowledge of how the non-sports genre operated and what was most important when producing that content (e.g., what an audience wants to see when watching a live football game is not the same as when watching a TV drama). This acted as a practical obstacle to Freelancers switching between different genres, limiting the amount of substitution across genres that occurred in practice.'

⁴⁰ See [redacted]: [redacted] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 3.7: 'From [redacted]'s perspective, it was important to hire Freelancers with the requisite knowledge and experience of the specific sport and rules, to ensure a seamless production.'

⁴¹ See [redacted]: [redacted] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 4.14: 'In practice, however, the rates paid to Freelancers working in sports production or broadcasting are generally lower than those paid to Freelancers working in equivalent roles in entertainment shows and are instead more readily comparable to the rates paid to Freelancers working on news programmes. This is because, similar to news production, sporting events are more regular and frequent than entertainment shows and provide more opportunities to work.'

⁴² See [redacted]: [redacted] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 2.7: 'While Freelancers had the freedom to move between sports and non-sports content, in practice, [redacted] understands that Freelancers generally preferred to specialise within a certain genre based on their interests, knowledge and experience. Freelancers who worked on sports productions naturally gravitated towards these productions – [redacted] understands that Freelancers who [redacted] engaged tended to be 'sports mad' and enjoyed spending their weekends working on, for example, a Premier League football match.'

⁴³ See [redacted]: [redacted] response to CMA RFI dated 28 March 2024 – Question 4, paragraph 4.12(a): 'Make-up artists and stylists responsible for presenters' wardrobes can work across both sports and non-sports programmes, as these roles do not require any sports or other genre specific knowledge.'

same in the sports and non-sports contexts (with one exception being makeup artists working on the production and broadcasting of high-end dramas and/or period dramas). It would be open to the CMA to enquire further as to the substitutability of sports and non-sports freelancers in this context. However, supply side preferences as set out above may still mean that substitutability between freelance makeup artists in sports and non-sports contexts is limited (particularly for makeup artists working on the production and broadcasting of high-end dramas and/or period dramas).

- 2.23 Taking a conservative approach that is also consistent for all Relevant Services across all of the Infringements, the CMA has decided that it is not necessary for the purposes of calculating any financial penalty in this case to include in the relevant labour markets freelancers providing services in relation to non-sports content.

B.III Geographic scope of the relevant markets

- 2.24 The Infringements concern the purchase of services provided by freelancers across the UK generally, without geographic differentiation. This means that, even if the relevant labour markets were narrower than national, the entire UK would have been affected by each of the Infringements.
- 2.25 The CMA has therefore decided for the purposes of determining the level of any penalty in this case, to take into account the Parties' expenditure on each of the Relevant Services across the UK.

B.IV Conclusion

- 2.26 Accordingly, the CMA has decided that, for the purposes of determining the level of any penalty for each of the Infringements, it will take into account each Party's relevant expenditure in the UK on freelancers providing the respective Relevant Service(s) supporting the production and broadcasting of sports content.

3. THE LAW

- 3.1 This Chapter sets out the key legal principles, including references to relevant case law and primary and secondary legislation, applied in this Decision.⁴⁴

A. Chapter I prohibition

- 3.2 The CMA's findings are made by reference to the Chapter I prohibition,⁴⁵ which prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices, which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK.⁴⁶

B. Legal principles for establishing the Chapter I prohibition

B.I Undertakings

- 3.3 For the purposes of the Chapter I prohibition, the term 'undertaking' covers 'every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed.'⁴⁷ An entity is engaged in 'economic activity' where it conducts any activity 'of an industrial or commercial nature by offering goods and services on the market.'⁴⁸ The concept covers an economic unit, even if in law that unit consists of several natural or legal persons.⁴⁹

B.II Coordination between undertakings

Agreements

- 3.4 The Chapter I prohibition is intended to catch a wide range of agreements.⁵⁰ The key question is whether there has been 'a concurrence of wills between at least two parties, the form in which it is manifested being unimportant, so long as it constitutes the faithful expression of the parties' intention.'⁵¹ Courts have also

⁴⁴ Following the UK's exit from the EU, the UK no longer has jurisdiction to apply Article 101 TFEU. However, EU case law applying Article 101 TFEU remains relevant pursuant to section 60A of the Act.

⁴⁵ Section 2(1) of the Act.

⁴⁶ References to the UK are to the whole or part of the UK: section 2(7) of the Act.

⁴⁷ Judgment of 23 April 1991, *Klaus Höfner and Fritz Elser v Macrotron GmbH* C-41/90, EU:C:1991:161, paragraph 21.

⁴⁸ Judgment of 16 June 1987, *Commission v Italian Republic* C-118/85, EU:C:1987:283, paragraph 7.

⁴⁹ Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission* C-97/08 P, EU:C:2009:536 ('*Akzo*'), paragraph 55 and the case law cited; *Sainsbury's v Mastercard* [2016] CAT 11 at 352-357 and 363.

⁵⁰ Judgment of 15 July 1970, *ACF Chemiefarma v Commission* C-41/69, EU:C:1970:71, paragraphs 106 to 114; judgment of 26 October 2000, *Bayer AG v Commission* T-41/96, EU:T:2000:242, paragraph 71; judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356 ('*Anic Partecipazioni*'), paragraph 81; *Argos Limited and Littlewoods Limited v OFT* [2004] CAT 24, paragraph 658.

⁵¹ Judgment of 27 September 2006, *Dresdner Bank v Commission* cases T-44/02 etc, EU:T:2006:271, paragraph 55, citing judgment of 26 October 2000, *Bayer AG v Commission* T-41/96, EU:T:2000:242, paragraph 69 (upheld on appeal in *BAI*

described the concept of an agreement as a ‘common understanding’ between the parties.⁵²

- 3.5 While it is essential to show the existence of a joint intention to act on the market in a specific way in accordance with the terms of the agreement, it is not necessary to establish a joint intention to pursue an anti-competitive aim.⁵³

Concerted practices

- 3.6 A concerted practice is ‘a form of coordination between undertakings which without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition.’⁵⁴
- 3.7 Each economic operator must determine independently the policy it intends to adopt on the market.⁵⁵ This principle does not prevent undertakings from adapting themselves intelligently to the existing or anticipated conduct of their competitors or to customary conditions existing in the market. However, this principle precludes any direct or indirect contact between undertakings of such a kind as either to influence the conduct on the market of an actual or potential competitor or to reveal to such a competitor the conduct which an undertaking has decided to follow itself or contemplates adopting on the market, where the object or effect of those contacts is to give rise to conditions of competition which do not correspond to the normal conditions of the market in question.⁵⁶
- 3.8 It follows that a concerted practice ‘implies, besides undertakings concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two.’⁵⁷ However, that does not

and *Commission v Bayer*, joined cases C-2/01 P and C-3/01 P, EU:C:2004:2, paragraphs 96 and 97) and judgment of 17 December 1991, *Hercules Chemicals v Commission* T-7/89, EU:T:1991:75, paragraph 256.

⁵² For example, in its judgment in *Hitachi*, the EU General Court held that ‘the Commission was right to find that the common understanding constituted an agreement between undertakings within the meaning of Article [101](1)’. Judgment of 12 July 2011, *Hitachi v Commission* T-112/07, EU:T:2011:342, paragraph 272.

⁵³ Judgment of 27 September 2006, *GlaxoSmithKline Services Unlimited v Commission* T-168/01, EU:T:2006:265, paragraph 77 (upheld on appeal in *GlaxoSmithKline Services Unlimited v Commission* joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610).

⁵⁴ Judgment of 14 July 1971, *ICI v Commission* C-48/69, EU:C:1972:70, paragraph 64.

⁵⁵ Judgment of 16 December 1975, *Suiker Unie and Others v Commission* joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114-73, EU:C:1975:174 (*‘Suiker Unie’*), paragraph 173.

⁵⁶ Judgment of 14 July 1981, *Züchner v Bayerische Vereinsbank* C-172/80, EU:C:1981:178, paragraph 14; *Suiker Unie*, paragraph 174; *Anic Partecipazioni*, paragraph 117; Judgment of 21 January 2016, *Eturas and Others*, C-74/14, EU:C:2016:42, paragraph 27 and judgment of 4 June 2009, *T-Mobile Netherlands and Others*, C-8/08, EU:C:2009:343, paragraphs 32 to 33. See also *Balmoral v CMA* [2017] CAT 23, paragraph 38, upheld on appeal, *Balmoral v CMA* [2019] EWCA Civ 162, paragraph 17. See also the Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements (CMA184), August 2023 (*‘Horizontal Guidelines’*), paragraph 8.16.

⁵⁷ *Anic Partecipazioni*, paragraph 118; and *Hüls AG v. Commission* C-199/92 P, ECR I-4287, paragraph 161. See also *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4 (*‘Apex Asphalt’*), paragraph 206(ix).

necessarily mean that the conduct should produce the concrete effect of restricting, preventing or distorting competition.⁵⁸

- 3.9 Where an undertaking participating in a concerted practice remains active on the market, there is a presumption that it will take account of information exchanged with its competitors when determining its own conduct on the market.⁵⁹ For the presumption to be rebutted, the parties concerned must adduce evidence of this.⁶⁰ The presumption can be rebutted, for example, if an undertaking attending a meeting can demonstrate that it at least ended its participation in the meeting as soon as the anti-competitive nature of the gathering became apparent,⁶¹ and publicly distanced itself from what was discussed in order not to give the impression to the other participants that it subscribed to the aim of the meeting and would act in conformity with it.⁶²

Agreements and/or concerted practices

- 3.10 The concepts of agreement and concerted practice are fluid and may overlap; they are distinguishable from each other only by their intensity and the forms in which they manifest themselves.⁶³ It is therefore not necessary to distinguish between agreements and concerted practices, or to characterise conduct as exclusively an agreement or a concerted practice.⁶⁴

Object of preventing, restricting or distorting competition

- 3.11 The Chapter I prohibition prohibits agreements and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition in the UK. The term ‘object’ in this regard refers to the ‘aim’, ‘purpose’ or ‘objective’ of the coordination between the undertakings.⁶⁵ In other words, agreements and concerted practices that can be regarded, by their very

⁵⁸ *Anic Partecipazioni*, paragraph 124. See also *Apex Asphalt*, paragraph 206(xi).

⁵⁹ *Anic Partecipazioni*, paragraph 121. See also *Apex Asphalt*, paragraph 206(x).

⁶⁰ Judgment of 19 March 2015, *Dole Food Company and Dole Fresh Fruit Europe v Commission* C-286/13 P, EU:C:2015:184 (*‘Dole’*), paragraph 127.

⁶¹ Judgment of 20 March 2002, *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft and Others v Commission* T-9/99, EU:T:2002:70, paragraph 223.

⁶² Judgment of 6 April 1995, *Tréfileurope Sales v Commission* T-141/89, ECR II-791, paragraph 85; judgment of 17 December 1991, *Hercules Chemicals v Commission* T-7/89, EU:T:1991:75, paragraph 232; and judgment of 10 March 1992, *Solvay v Commission* T-12/89, ECR 11-907, paragraphs 98-100.

⁶³ Judgment of 4 June 2009, *T-Mobile Netherlands* C-8/08, EU:C:2009:343 (*‘T-Mobile’*), paragraph 23; *Commission v Anic Partecipazioni*, paragraph 131; and *Apex Asphalt*, paragraph 206(ii).

⁶⁴ *Argos Ltd and Littlewoods Ltd v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, paragraphs 21 and 22. See also, *Anic Partecipazioni*, paragraphs 81, 131 and 132.

⁶⁵ See, for example, respectively: *Consten & Grundig v Commission* C-56/64, EU:C:1966:41, paragraph 343; judgment of 8 November 1983, *IAZ and Others v Commission*, joined cases C-96/82 to C-102/82, C-104/82, C-105/82, C-108/82 and C-110/82 EU:C:1983:310 (*‘IAZ’*), paragraph 25; *Competition Authority v Beef Industry Development Society* C-209/07, EU:C:2008:643, paragraphs 32-33.

nature, as being harmful to the proper functioning of competition have as their object the prevention, restriction or distortion of competition in the UK.⁶⁶

- 3.12 They include agreements and concerted practices that contain obvious restrictions of competition such as price-fixing, market sharing or the control of outlets.⁶⁷ Where an agreement or a concerted practice has as its object the prevention, restriction or distortion of competition, it is not necessary to examine its effect on competition.⁶⁸ As also set out further below, subjective intentions are not a necessary factor for a finding that the object of the conduct was anti-competitive. Nor is it a relevant factor whether or not the arrangement was implemented.
- 3.13 The ‘essential legal criterion’ for a finding of anti-competitive object is that the coordination between undertakings ‘*reveals in itself a sufficient degree of harm to competition*’ such that there is no need to examine its effects.⁶⁹
- 3.14 The case law has held that certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.⁷⁰ In these cases, the case law has also held that there is no need to examine their effects.⁷¹
- 3.15 When determining whether an agreement or concerted practice reveals a sufficient degree of harm such as to constitute a restriction of competition by object, regard must be had to the content of its provisions, its objectives and the economic and legal context of which it forms a part.⁷² When determining that context, it is also necessary to consider the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.⁷³
- 3.16 An agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim.⁷⁴

⁶⁶ Judgment of 11 September 2014, *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204 (*‘Cartes Bancaires’*), paragraph 50; judgment of 14 March 2013, *Allianz Hungária Biztosító and Others v Gazdasági Versenyhivatal* C-32/11, EU:C:2013:160 (*‘Allianz’*), paragraph 35 and the case law cited.

⁶⁷ Judgment of 15 September 1998, *European Night Services v Commission* T-374/94, EU:T:1998:198, paragraph 136.

⁶⁸ Judgment of 6 July 2000, *Volkswagen AG v Commission*, T-62/98, EU:T:2000:180, paragraph 178; *Cartes Bancaires*, paragraph 49; *Dole*, paragraph 113; judgment of 21 December 2023, *European Superleague Company v Federation internationale de football association* C-333/21, EU:C:2023:1011, paragraph 159.

⁶⁹ *Cartes Bancaires*, paragraphs 49 and 57; and judgment of 20 January 2016, *Toshiba v Commission* C-373/14 P, EU:C:2016:26 (*‘Power Transformers’*), paragraph 26.

⁷⁰ *Cartes Bancaires*, paragraph 50 and the caselaw cited; judgment of 24 September 2019, *HSBC v Commission* T-105/17, EU:T:2019:675 (*‘HSBC’*), paragraph 54; *Ping Europe Ltd v CMA* [2020] EWCA Civ 13 (*‘Ping’*), paragraph 37.

⁷¹ *Cartes Bancaires*, paragraphs 49 and 57 and the caselaw cited; *HSBC*, paragraph 53; *Ping*, paragraph 37.

⁷² *Cartes Bancaires*, paragraph 53, citing *Allianz*, paragraph 36 and the caselaw cited. See also *Power Transformers*, paragraph 27.

⁷³ *Cartes Bancaires*, paragraph 53.

⁷⁴ *IAZ*, paragraphs 22-25; *Competition Authority v Beef Industry Development Society and Barry Brothers* C-209/07, EU:C:2008:643, paragraph 21.

- 3.17 The prohibition against anti-competitive agreements is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such.⁷⁵
- 3.18 Finally, the fact that an agreement or concerted practice pursues a legitimate objective does not preclude that it is regarded as having an object restrictive of competition as regards another aim pursued, which in turn cannot be regarded as legitimate, also with a view to the content of the agreement or concerted practice and its context.⁷⁶

Information exchange as a ‘by object’ infringement

- 3.19 It is settled law that the exchange of information between competitors is liable to be incompatible with competition law if ‘*it reduced or removed the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings was restricted*’.⁷⁷ This also applies where an exchange of information is used to bolster or facilitate the operation of a cartel (either intentionally or not) or is independent of an underlying cartel.⁷⁸ Information exchange that reduces or removes the degree of uncertainty as to the operation of the market may amount to an infringement on a standalone basis.⁷⁹
- 3.20 In some cases, an exchange of competitively sensitive information *in itself* may allow undertakings to reach a common understanding on the terms of coordination which can lead to a collusive outcome on the market. An exchange of competitively sensitive information is likely to facilitate collusion if it allows an undertaking to signal to its competitors, through any means, the conduct that it would find desirable for those competitors to follow, or the conduct that the undertaking itself would adopt in reaction to the same competitors’ conduct. Such an exchange can create mutually consistent expectations regarding the uncertainties present in the market. On that basis, undertakings can then reach a common understanding on their behaviour on the market, even without an explicit agreement on coordination.⁸⁰
- 3.21 In particular, the Court of Justice has held that an exchange of information which is capable of removing uncertainty between participants as regards the timing, extent and details of the modifications to be adopted by the undertakings concerned in their conduct on the market must be regarded as pursuing an anti-competitive object.⁸¹ It is the capacity of the information in question to reduce uncertainty in a

⁷⁵ *T-Mobile*, paragraph 38.

⁷⁶ *Cartes Bancaires*, paragraph 70; judgment of 30 January 2020, *Generics (UK) Ltd* C-307/18, EU:C:2020:52, paragraph 103; judgment of 2 April 2020, *Bank Budapest* C-228/18, EU:C:2020:265, paragraph 52.

⁷⁷ *HSBC*, paragraph 61 and the caselaw cited; *Balmoral v CMA* [2019] EWCA Civ 162, paragraph 17 and the caselaw cited; and *Lexon (UK) Limited v CMA* [2021] CAT 5 (‘*Lexon*’), paragraph 187(3).

⁷⁸ *Thyssen Stahl v Commission* T-141/94, EU:T:1999:48, paragraphs 379-392.

⁷⁹ *Dole*, paragraph 121; *Balmoral Tanks v CMA* [2017] CAT 23, paragraphs 41-50.

⁸⁰ *Lexon*. See also, Horizontal Guidelines, paragraph 8.21.

⁸¹ *HSBC*, paragraph 62 citing *Dole*, paragraph 122; *T-Mobile*, paragraph 41; and *Lexon*, paragraph 187(4).

market and/or influence the strategic decision-making of the recipient which is relevant to assessing how competitively sensitive the information is, rather than simply the age of the data or period to which it relates.⁸²

- 3.22 The EU and UK courts have held that exchanges of information on factors relevant to pricing amount to a restriction of competition by object.⁸³
- 3.23 The Courts have also confirmed that current and future purchase prices can be highly sensitive commercial information and that the exchange of such information has the object of restricting competition.⁸⁴
- 3.24 The fact that information exchanged with competitors could be gathered in the market does not preclude it from giving rise to an infringement. That information could enable participants to become aware of the relevant information more simply, rapidly and directly than they would from participating in the market.⁸⁵ Even if an undertaking could claim that it could have obtained information relating to its competitor's prices from its customers / suppliers, it may find that information received directly from its competitor more reliable, in particular where the customer/supplier had an incentive to try to 'play off' different suppliers against each other.⁸⁶

Subjective intentions

- 3.25 The object of an agreement or concerted practice is to be identified primarily from an examination of objective factors, such as the content of its provisions, its objectives, and the legal and economic context of which it forms part.⁸⁷
- 3.26 The object of an agreement or concerted practice is not assessed by reference to the parties' subjective intentions when they enter into it.⁸⁸ Anti-competitive

⁸² Horizontal Guidelines, paragraph 8.54.

⁸³ *Balmoral Tanks Limited v CMA* [2017] CAT 23, upheld on appeal in *Balmoral Tanks Ltd & Anor v CMA* [2019] EWCA Civ 162; *Lexon*; *Dole*; and *Philips*, upheld on appeal to the Court of Justice in *Koninklijke Philips NV v Commission* C-98/17 P, EU:C:2018:774. The Competition Appeal Tribunal has stated that '[t]he strictness of the law in this regard reflects the fact that it is hard to think of any legitimate reason why competitors should sit together and discuss prices at all' (*Balmoral Tanks Limited v CMA* [2017] CAT 23, paragraph 41). It has also held that unilateral disclosures of pricing information can infringe the Chapter I prohibition: '[t]he fact of having attended a private meeting at which prices were discussed and pricing intentions disclosed, even unilaterally, is in itself a breach of the Chapter I prohibition, which strictly precludes any direct or indirect contact between competitors having, as its object or effect, either to influence future conduct in the market or to disclose future intentions' (*JJB Sports v Office of Fair Trading* [2004] CAT 17, paragraph 873 (cited with approval by the Competition Appeal Tribunal in *Balmoral Tanks Limited v CMA* [2017] CAT 23, paragraph 41)).

⁸⁴ *Campine v Commission* T-240/17, EU:T:2019:778, paragraph 305, where the Court held, '[t]hrough those exchanges of information, which concerned in particular current and future purchase prices and expected volumes of purchases, that is to say highly sensitive commercial information, the cartel participants communicated to each other how they intended to conduct themselves on the market with regard to factors that were decisive for their input purchasing policy.'

⁸⁵ *Lexon*, paragraph 187(7). See also judgment of 12 July 2001, *Tate & Lyle v Commission*, joined cases T-202/98, T-204/98 and T-207/98, EU:T:2001:185, paragraph 60.

⁸⁶ *Lexon*, paragraphs 106 to 107, 162 and 200 to 201. Horizontal Guidelines, paragraph 8.38.

⁸⁷ *Allianz*, paragraph 36; and *Cartes Bancaires*, paragraph 53.

⁸⁸ Judgment of 28 March 1984, *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission*, joined cases 29/83 and 30/83, EU:C:1984:130, paragraphs 25 and 26.

subjective intentions on the part of the parties can be taken into account in the assessment, but they are not a necessary factor for a finding that the object of the conduct was anti-competitive.⁸⁹

Implementation

- 3.27 Parties cannot avoid liability for an infringement by arguing that they played a limited part in setting up an agreement or concerted practice; that they were not (or were not always) fully committed to the agreement or concerted practice; that the agreement or concerted practice was never implemented or put into effect by them; or that they ‘cheated’ on the agreement or concerted practice.⁹⁰

Burden and standard of proof

- 3.28 The burden of proving an infringement of the Chapter I prohibition falls on the CMA.⁹¹ The standard of proof is the civil standard, that is the balance of probabilities.⁹² The burden of proof does not preclude the CMA from relying, where appropriate, on inferences or evidential presumptions.⁹³
- 3.29 The courts have confirmed that *‘the evidence must be assessed not in isolation, but as a whole’*⁹⁴ and that *‘the evidence must be assessed in its entirety, taking into account all relevant circumstances of fact’*.⁹⁵

Appreciable effect on competition

- 3.30 An agreement or concerted practice will not infringe the Chapter I prohibition if its impact on competition is not appreciable.⁹⁶ An agreement that has an anti-

⁸⁹ *Allianz*, paragraph 37; and *Cartes Bancaires*, paragraph 54.

⁹⁰ Judgment of 14 March 2013, *Dole Food Company Inc and Dole Germany OHG v Commission* T-588/08, EU:T:2013:130, paragraph 484; judgment of 1 February 1978, *Miller v Commission* C-19/77, ECR, EU:C:1978:19, paragraph 7; judgment of 21 February 1984, *Hasselblad v Commission* C-86/82, ECR, EU:C:1984:65, paragraph 46; judgment of 15 March 2000, *Cimenteries CBR v Commission* T-25/95 ECR, EU:T:2000:77, paragraphs 1389 and 2557 (this judgment was upheld on liability by the CJEU in *Aalborg Portland and Others v Commission*, joined cases C-204/00 P etc., EU:C:2004:6 (*‘Aalborg’*)); *Anic Partecipazioni*, paragraphs 79 and 80; judgment of 11 January 1990, *Sandoz v Commission* C-277/87, EU:C:1990:6, paragraph 3.

⁹¹ *Tesco Stores Limited and Others v Office of Fair Trading* [2012] CAT 31 (*‘Tesco’*), paragraph 88.

⁹² *Ibid.*

⁹³ *Napp Pharmaceutical Holdings Ltd and Subsidiaries v Director General of Fair Trading* [2002] CAT 1 (*‘Napp’*), paragraph 110; *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, paragraph 204. See also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, paragraphs 164-166; and, *Aalborg*, paragraph 57, which states *‘[i]n most cases, the existence of an anticompetitive practice or agreement must be inferred from a number of coincidences and indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules’*.

⁹⁴ *Marlines v Commission* T-56/99, EU:T:2003:333, paragraph 28. See also *ICI v Commission* C-48/69, EU:C:1972:70, paragraph 68 cited in *Tesco*, paragraph 46.

⁹⁵ *Thyssen Stahl v Commission* T-141/94, EU:T:1999:48, paragraph 175.

⁹⁶ Judgment of 9 July 1969, *Franz Völk v S.P.R.L. Ets J. Vervaecke* C-5/69, EU:C:1969:35. See also *North Midland Construction plc v OFT* [2011] CAT 14 (*‘North Midland Construction’*), paragraphs 45 and 52 and judgment of 13 December 2012, *Expedia Inc. v Autorité de la concurrence and Others* C-226/11, EU:C:2012:795 (*‘Expedia’*), paragraph 16.

competitive object constitutes an appreciable restriction on competition by its nature and independently of any concrete effect that it may have.⁹⁷

Effect on trade within the UK

- 3.31 The Competition Appeal Tribunal has held that the effect on trade test is a purely jurisdictional test to demarcate the boundary line between the application of EU competition law and national competition law, and that there is no requirement that the effect on trade within the UK should be appreciable.⁹⁸

Exemptions and exclusions

- 3.32 The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of Schedules 1 to 3 (section 3), or is exempt in accordance with sections 6, 9 (see below) or 10 of the Act.⁹⁹
- 3.33 Agreements which satisfy the criteria set out in section 9 of the Act are exempt from the Chapter I prohibition. There are four cumulative criteria to be satisfied:
- (a) the agreement contributes to improving production or distribution, or promoting technical or economic progress;
 - (b) while allowing consumers a fair share of the resulting benefit;
 - (c) the agreement does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and
 - (d) the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- 3.34 Any undertaking claiming the benefit of an exemption bears the burden of proving that the conditions in section 9(1) of the Act are satisfied.¹⁰⁰

⁹⁷ *Expedia*, paragraph 37; and *European Commission Notice on agreements of minor importance* [2014] OJ C291/01, paragraphs 2 and 3. In accordance with section 60A(2) of the Act, this principle applies mutatis mutandis in respect of the Chapter I prohibition. See also *Carewatch Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraph 148.

⁹⁸ *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, paragraphs 459 and 460 and the case law cited. The CAT considered this point also in *North Midland Construction*, paragraphs 48-51 and 62 but considered that it was 'not necessary [...] to reach a conclusion'.

⁹⁹ Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations; Schedule 2 covers competition scrutiny under other enactments; and Schedule 3 covers general exclusions. Section 6 of the Act provides for block exemptions from the Chapter I prohibition. Section 10 of the Act provides for retained exemptions from the Chapter I prohibition.

¹⁰⁰ Section 9(2) of the Act; see also *GlaxoSmithKline plc v CMA (Paroxetine)* [2018] CAT 4, paragraph 83.

4. CONDUCT AND LEGAL ASSESSMENT

A. Standard of proof and evidence

- 4.1 The CMA has assessed the evidence in this case by reference to the civil standard of proof, namely whether it is sufficient to establish, on the balance of probabilities, that an infringement occurred.¹⁰¹
- 4.2 The CAT has acknowledged that evidence explicitly showing unlawful conduct ‘*will normally be only fragmentary or sparse, so that it is often necessary to reconstitute certain details by deduction.*’¹⁰² Competition authorities are therefore entitled to infer the existence of an anti-competitive agreement or concerted practice from fragmentary evidence.
- 4.3 In reaching its decision, the CMA has considered the totality of the evidence in its possession in the round, taking all the relevant factors into consideration. The CMA has given particular weight to contemporaneous documentary evidence. However, it has also taken into account information from individuals directly involved in the conduct. The CMA acknowledges that witness and interview evidence is subjective in nature and may to some extent be inconsistent. It has therefore considered carefully the credibility and reliability of the evidence provided by each witness. Further to this assessment, the CMA has relied on witness and interview evidence in this Decision only to the extent that the CMA considers it to be sufficiently clear, internally consistent, and corroborated by other witness evidence or contemporaneous documentary evidence.

B. Undertakings

- 4.4 The CMA finds that, in respect of the conduct giving rise to each of the Infringements, each of BBC, BT, IMG, ITV and Sky was engaged in economic activity and therefore each was an undertaking for the purposes of the Chapter 1 prohibition (see 2. A. *Industry background*, paragraphs 2.1 to 2.5).
- 4.5 Chapter 5 sets out the CMA’s decision as regards the entities that it has held jointly and severally liable for the conduct. To the extent that these entities were not themselves directly involved in the Infringements, the CMA has concluded that they exercised decisive influence over a company that was directly involved in the Infringements. The CMA considers that these entities form part of the undertakings with which they share liability.

¹⁰¹ *Tesco*, paragraph 88.

¹⁰² *Durkan Holdings Limited and Others v Office of Fair Trading* [2011] CAT 6, paragraph 96, relying on *Aalborg*, paragraphs 56 to 57.

C. Conduct giving rise to the Infringements

- 4.6 For the reasons set out in this section, the CMA finds that each of the following 15 Infringements constitutes a separate concerted practice which had as its object the restriction of competition¹⁰³ within the UK.
- 4.7 In making these findings the CMA has taken into account the content and objectives of each of the 15 Infringements, as well as the economic and legal context in which they occurred.¹⁰⁴

Findings in respect of each, and all, of the 15 Infringements

- 4.8 The CMA makes the following findings which apply equally in respect of each of the 15 Infringements.¹⁰⁵
- (a) Each of BBC, BT, IMG, ITV, and Sky was an important competitor on the purchase market(s) for the Relevant Service(s) affected by each of the Infringements to which it was a party.¹⁰⁶
 - (b) Rates of pay were an important parameter of competition in the purchase market for each Relevant Service.
 - (c) The exchanges of competitively sensitive information in the 15 Infringements artificially increased transparency between competitors in the market, reducing strategic competitive uncertainty on the purchase market(s) for the Relevant Service(s) and thereby substituting practical cooperation for the risks of competition.
 - (d) Where a Party has received competitively sensitive information from another Party, it is presumed to have taken account of that information when determining its own conduct on the market.
 - (e) At a minimum,¹⁰⁷ the objective of the concerted practice was to share or exchange information that removed, or at least reduced, uncertainty between the Parties regarding the rates of pay, thereby dampening competition for the purchase of the Relevant Service(s).

¹⁰³ Where the CMA uses the terms 'restricting' or 'restriction of' competition, this also covers the prevention or distortion of competition.

¹⁰⁴ In so doing, the CMA has taken into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question (see both the Industry Background in Section 2, and consideration of the information exchanged in respect of each Infringement).

¹⁰⁵ The CMA has made these findings in relation to each of the 15 Infringements. However, as they are the same finding they are stated here once for efficiency, rather than being repeated in the findings in respect of each Infringement that follows.

¹⁰⁶ See 2. A. *Industry background*, paragraphs 2.1 to 2.5.

¹⁰⁷ In respect of certain of the Infringements, the CMA makes a further finding that the objective of the concerted practice included coordination on pay.

- 4.9 As set out above in paragraphs 3.25 to 3.26, whilst the subjective intention of the Parties is not a necessary condition to the above finding, where there is relevant evidence of one or more Party's subjective intention in any of the 15 Infringements, the CMA has made a relevant finding below.

C.I Infringement 1, involving ITV and Sky (March 2014)

- 4.10 The CMA finds that, on 3 March 2014, in response to a request from ITV, Sky confirmed to ITV that it would be increasing rates of pay for the Infringement 1 Relevant Services¹⁰⁸ in the following month, and what these new rates would be. When the contact between ITV and Sky took place, Sky had already informed a number of its OB service providers about the forthcoming rate increase, and this information had then been relayed to ITV by one of its own OB service providers. Nonetheless, the usefulness of Sky's confirmation regarding the rate increase is evidenced by internal ITV emails which circulated the confirmation. ITV subsequently increased its own rates of pay to follow Sky's increase.

Context – communication of pay increase to OB providers by Sky

- 4.11 On 26 February 2014, Sky sent an email to a number of OB service providers which it used,¹⁰⁹ attaching a letter which announced a pay increase for Sky nominated Freelance OB Crews of £[X] per day, effective from 1 April 2014.¹¹⁰ Two days later, on 28 February 2014, [Senior Employee] ([OB service provider]),¹¹¹ who was not a copy recipient of the letter from Sky of 26 February 2014, sent an email to individuals at ITV which stated: 'Sky are said to be increasing crew rates by £[X] per person per day across all grades of staff from the 1st of April. Your input would be very much appreciated at the earliest opportunity.'
- 4.12 In his response at 09:08 on 1 March 2014 (a Saturday), [Senior Employee A] ([X], ITV) indicated that ITV had not yet heard of this increase but would investigate. [Senior Employee] ([OB service provider]) responded at 09:23:

'[...] this is the form of words I have seen:

I can confirm that we have increased our rate by £[X] per day across all grades of crew this is effective from 1st April.

¹⁰⁸ Set out at Table 2 of Annex 1.

¹⁰⁹ OHX-000000001: Email from [Employee C] (Sky), entitled 'Freelance Review 2014', sent at 15:05 on 26 February 2014.

¹¹⁰ OHX-000000002: Letter from [Senior Employee C], [X] Sky Sports, dated 26 February 2014 and attached to OHX-000000001.

¹¹¹ [OB service provider] was an OB company, which provided OB services and facilities to a number of the Parties across a range of sports during the period of the Infringements.

Last time this happened the freelance community rounded on ITV for being slow to respond [...].

*As soon as it becomes public, we will get a deluge of calls asking if ITV are going to mirror it. Another non-Sky client has already responded to say they will follow suit. [...]*¹¹²

- 4.13 In the meantime, at 09:10, [Senior Employee A] (ITV)'s colleague [Senior Employee B] ([X], ITV) replied to [Senior Employee A] (ITV) only: *'Good old Sky!'*, to which [Senior Employee A] (ITV) wrote, at 09:47: *'[Senior Employee A] (Sky) will be getting a call Monday!'*¹¹³

Contact between ITV and Sky

- 4.14 At 10:56 on 3 March 2014 (i.e. the following Monday), [Senior Employee A] (ITV) sent an email to [Senior Employee A] ([X], Sky) which requested a call about *'rates being increased across the board for Sports crews'*.¹¹⁴ At 11:16, [Senior Employee A] (Sky) forwarded to [Senior Employee A] (ITV) the email (and attached letter)¹¹⁵ that Sky had sent to OB providers on 26 February 2014, noting: *'FYI'*.

Further context

- 4.15 At 11:19 [Senior Employee A] (ITV) internally forwarded the email to his colleague [Employee A] (ITV) and noted: *'This is very useful indeed'*.¹¹⁶ Subsequently, on 5 March 2014, [Senior Employee A] (ITV) forwarded to additional ITV colleagues the Sky rate increase letter, which he noted he had *'obtained from SKY'*.¹¹⁷
- 4.16 At interview, [Senior Employee A] (Sky) acknowledged that he had sent the email, plus attached letter, to [Senior Employee A] (ITV) in between communicating the

¹¹² OHX-000000084: Email from [Senior Employee] ([OB service provider]) to [Senior Employee A] (ITV), [Employee B] (ITV), [Senior Employee B] (ITV) and [Employee A] (ITV), without a subject title, sent at 23:11 on 28 February 2014. [OB service provider] was not included in the recipients of the email from [Employee C] (Sky) sent at 15:05 on 26 February 2014.

¹¹³ OHX-000000083: Email exchange between [Senior Employee A] (ITV) and [Senior Employee B] (ITV), dated 1 March 2014. [Senior Employee A] (ITV) explained at interview that the reference to '[X]' here was to [Senior Employee A] (Sky), but that in this instance he thought that he had emailed him rather than calling him. See OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, pages 92-94.

¹¹⁴ OHX-000000086.

¹¹⁵ OHX-000000088: Letter from [Senior Employee C], [X], Sky Sports, dated 26 February 2014 and attached to OHX-000000087.

¹¹⁶ OHX-000000087. [Senior Employee A] (ITV) stated at interview that he did not think that he had actually spoken to [Senior Employee A] (Sky) in this instance, as [Senior Employee A] (Sky) had emailed the rate increase letter to him. See OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, pages 92-94. He acknowledged that the information provided by [Senior Employee A] (Sky) would have been useful as it was helpful for internal discussions and to inform internal decision-making - see OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, pages 96-101.

¹¹⁷ OHX-000000093: Email from [Senior Employee A] (ITV) to [employee] (ITV); [employee] (ITV); [employee] (ITV); [employee] (ITV); [employee] (ITV); [employee] (ITV); [employee] (ITV); [employee] (ITV); [employee] (ITV); [Senior Employee B] (ITV); [employee] (ITV); [employee] (ITV); [Employee C] (ITV); and [employee] (ITV), entitled *'PM Meeting: Monday'*, sent at 12:00 on 5 March 2014.

rate change to OB companies and the rate change being implemented.¹¹⁸ [Senior Employee A] (ITV) acknowledged at interview that the information disclosed by [Senior Employee A] (Sky) was useful for internal discussions and to inform internal decision-making, because ITV used the same suppliers as Sky.^{119 120} He also noted that ITV was fairly quick to follow Sky's rate increase.¹²¹

- 4.17 [Senior Employee A] (Sky) explained at interview that his perception was that, as soon as Sky set its rates, other purchasers of freelance labour followed suit.¹²² He further explained his perception that other purchasers tended to increase their rates after Sky and that he did not expect these to be increased by more than Sky's rates.¹²³

Finding on concerted practice and restriction of competition by object

- 4.18 Based on the factual findings on ITV's and Sky's conduct made in paragraph 4.10 above and applying the legal findings in paragraph 4.8 and 4.19, the CMA finds that ITV and Sky engaged in a concerted practice with the object of restricting competition.
- 4.19 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement the CMA finds that:
- (a) The information concerned by this Infringement (future pay arrangements of Sky) was competitively sensitive.
 - (b) The conduct of ITV (in accepting this information) and Sky (in giving this information) was capable of removing, or at least reducing, strategic uncertainty between ITV and Sky as regards, at least, the conduct of Sky (as the disclosing party) on the purchase markets for the Infringement 1 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
 - (c) The objective of this concerted practice¹²⁴ is reinforced by the evidence of ITV's subjective intention to obtain from Sky information on its future pay intentions for use in informing ITV's decision-making (paragraphs 4.14, 4.15 and 4.16), and Sky's subjective intention to disclose that information in the expectation that by

¹¹⁸ See OHX-000659439: CMA witness interview – [Senior Employee A] (Sky) – 23 November 2023, pages 132-133.

¹¹⁹ See OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, pages 98-99.

¹²⁰ See also the evidence of [Senior Employee A] (ITV), referred to in relation to Infringement 3 below, expanding on why the information Sky disclosed on its rates of pay was useful to ITV; namely the potential adverse consequences to ITV of not taking account of, and not acting on, the information.

¹²¹ See OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, page 54.

¹²² See OHX-000659439: CMA witness interview – [Senior Employee A] (Sky) – 23 November 2023, pages 99-100.

¹²³ See Infringement 8, below ('Further Context').

¹²⁴ See paragraph 4.8(e).

doing so it would ensure that ITV would not increase its rates to more than Sky's rates (paragraph 4.17).

C.II Infringement 2, involving BT and ITV (August 2014)

4.20 The CMA finds that, on 13 August 2014, BT and ITV exchanged information on their plans for future rates of pay in respect of the Infringement 2 Relevant Services.¹²⁵ ITV initiated this contact, indicating that it was requesting the information for the purpose of deciding its own future rates of pay in response to rate increases recently made by Sky.

4.21 At 10:13, [Senior Employee B] (ITV) sent an email to [Employee A] (BT), in which he wrote:

'Just picking up the implications of Sky upping OB crew rates and wondered if I could ask what your policy is on Tech Prods [Technical Producers] rates. Are you putting them up in line with Cams/EVS/Sound? We pay [£300-£400] at the moment.'

4.22 At 11:06, [Employee A] (BT) replied:

'We are still paying [£300-£400] at the moment with no plans to increase at the moment'.

4.23 At 12:22, [Senior Employee B] (ITV) wrote:

'I am pushing for TP's [Technical Producers] to go up in line with the rest of crew (just so you know).'

4.24 At 12:27, [Employee A] (BT) wrote:

'How much do the TPs get?'

4.25 At 12:33, [Senior Employee B] (ITV) wrote:

'We pay [£300-£400] a day [X].'

4.26 At 13:01, [Employee A] (BT) wrote:

'I must admit to pay TP [Technical Producers] between [£300-£400] - [£300-£400]'.¹²⁶

¹²⁵ Set out at Table 2 of Annex 1.

¹²⁶ OHX-000000108.

4.27 Separately, on 13 August 2014 at 13:05, [Senior Employee B] (ITV) sent an internal email to his colleague [Senior Employee A] (ITV) entitled ‘*Tech prod pay*’ and noted:

‘*BT pay between [£300-£400] [§<] and [£300-£400] a day*

We are [£300-£400] [§<]’¹²⁷

Findings on concerted practice and restriction of competition by object

4.28 Based on the factual findings on BT’s and ITV’s conduct made in paragraph 4.20 above and applying the legal findings in paragraphs 4.8 and 4.29, the CMA finds that BT and ITV engaged in a concerted practice with the object of restricting competition.

4.29 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement the CMA finds that:

- (a) The information concerned by this Infringement (future pay intentions of BT and ITV) was competitively sensitive.
- (b) The conduct of BT and ITV in exchanging this information was capable of removing, or at least reducing, strategic uncertainty between them as regards their conduct on the purchase market of the Infringement 2 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
- (c) The objective of this concerted practice ¹²⁸ is reinforced by the evidence of ITV’s subjective intention, which it expressed to BT, to gain insight into the future pay intentions of BT against the backdrop of Sky’s recent pay rate increase for OB freelance crews (paragraph 4.21).

C.III Infringement 3, involving ITV and Sky (Autumn 2015)

4.30 The CMA finds that, between 19 August and 4 September 2015, ITV and Sky exchanged information regarding their rates of pay for the Infringement 3 Relevant Services.¹²⁹ ITV initially disclosed its own information to Sky and requested information on Sky’s rates of pay, stating that its objective was to inform its own decision-making on future rates and to ensure that its rates were aligned with others in the market. Sky then responded with its own information and ITV reassured Sky that any rate increases that it made would be small. Subsequently, ITV referred to the information obtained from Sky when determining its negotiation strategy vis-à-

¹²⁷ OHX-000000109.

¹²⁸ See paragraph 4.8(e).

¹²⁹ Set out at Table 2 of Annex 1.

vis freelance Production Assistants and Producers, who had been requesting rate increases from ITV.

Context – ITV internal communications regarding rates for Producers and Production Assistants

- 4.31 Between 5 and 18 August 2015, there was a discussion via an internal ITV distribution list regarding (i) the rate paid by BT to freelance Producers, and (ii) an approach from freelance Production Assistants requesting rate increases. In this context, [Senior Employee A] (ITV) noted to his colleagues at ITV that he would check the latest position at Sky and report back.^{130 131}

Information exchange between ITV and Sky

- 4.32 On 19 August at 09:34, [Senior Employee A] (ITV) sent an email to [Senior Employee A] (Sky), entitled '*Rates!*', which he noted was his '*yearly e-mail checking crew rates*' and in which he asked to '*[run] some rates past you to cross check*'. He wrote:

'Currently we pay producers [£200-£300] but understand the market maybe [sic] more towards [£200-£300]? per day

Our Script Supervisors are [£300-£400] per transmission day. I think this is behind what the market rate is but again want to check.

Any info would be gratefully received'.¹³²

- 4.33 Subsequently, on 2 September 2015 at 12:37, [Senior Employee A] (ITV) followed up on this email, asking [Senior Employee A] (Sky) if he '*had any comparison rates for the below*' and noted that he '*[didn't] want to offer anything out of line with the standard industry rate*'.¹³³
- 4.34 The following day, 3 September 2015, at 10:23, [Senior Employee A] (Sky) replied:

¹³⁰ OHX-000000117: Email chain entitled '*Producer rate going forward*' sent by [Senior Employee A] (ITV), dated between 5 and 18 August 2015.

¹³¹ [Senior Employee A] (ITV) confirmed at interview that he had been referring to [Senior Employee A] (Sky) here – see OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, page 127.

¹³² OHX-000000128: [Senior Employee A] (ITV) stated at interview that he could not recall whether these emails did occur on a yearly basis, noting that it could have been simply a turn of phrase – see OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, page 150. [Senior Employee A] (Sky) also stated at interview that he did not know why [Senior Employee A] (ITV) called this his '*yearly email*' as [Senior Employee A] (ITV) had only been in his role since 2013 or 2014 – see OHX-000659439: CMA witness interview – [Senior Employee A] (Sky) – 23 November 2023, page 172.

¹³³ [Senior Employee A] (ITV) noted at interview that Sky was a point of comparison for ITV as it was an established broadcaster. He also noted that Sky used the same freelancer pool as ITV, so being behind them on rates would be problematic. See OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, pages 141-144.

'Producers – [£300-£400] – but we very rarely use them and if we do it's cos we need them for a specific job so coming with extra expertise.'

PA (our version of [Script Supervisor]) – [£200-£300] – it's low and we know it but it's a history thing and not been changed for years. This could be described as a lesser role to the music counting script sups but as you will know some of the sports are complex. [...]

Would you like me to check with the LE [Light Entertainment] side or is it just sport?'

- 4.35 The following day, 4 September 2015, [Senior Employee A] (ITV) confirmed to [Senior Employee A] (Sky) via email, sent at 13:12, that just Sky Sports's rates were fine. He also noted that ITV was *'under on Producer and over on PA but any rise will be slight. Will confirm what we agree.'*¹³⁴

Subsequent references by ITV to rate information provided by Sky

- 4.36 On 10 September 2015 at 21:18, [Senior Employee A] (ITV) sent an email entitled *'Rate Increases'* to [Employee B] (ITV), [employee] (ITV), [employee] (ITV) and [Employee C] (ITV). In this, he noted recent rate increase requests from freelance Production Assistants and Producers. In relation to Production Assistants, he noted:

'- We've consulted with our counterparts at BT & SKY and we pay well.'

- 4.37 He then set out what each of BT, Sky and ITV paid, as well as noting that it had been over [£<] since the Production Assistants had had a pay increase. He went on to set out ITV's proposed rates from 2016. In respect of Producers, he noted that:

'- On the Rugby we have set a precedent of a slightly higher rate of [£200-£300]. [...] It makes sense now that we continue with that rate for all our output.'

- BT pay [£200-£300] for their Producers. Sky tend to have staff producers.'

...

*'Let us know if your [sic] happy we go ahead. I doubt PA's will refuse to work with us (especially given the fact that we pay higher) so it's a low risk but wanted you to be aware.'*¹³⁵

¹³⁴ OHX-000000128.

¹³⁵ OHX-000000135.

Further context

- 4.38 At interview, [Senior Employee A] (ITV) explained his perception of the potential adverse consequences to ITV not taking account of, and not acting on, the information on the rates of pay of other purchasers with whom ITV shared suppliers. He stated that if ITV did not benchmark against BT and Sky, freelancers and/or OB service providers could complain that ITV was behind on rates, with the effect that they could refuse to work for ITV.¹³⁶

Findings on concerted practice and restriction of competition by object

- 4.39 Based on the factual findings on ITV's and Sky's conduct made in paragraph 4.30 above and applying the legal findings in paragraphs 4.8 and 4.40, the CMA finds that ITV and Sky engaged in a concerted practice with the object of restricting competition.
- 4.40 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement the CMA finds that:
- (a) The information concerned by this Infringement (pay information of ITV and Sky, and future pay intentions of ITV) was competitively sensitive.
 - (b) The conduct of ITV and Sky (in exchanging this information) was capable of removing, or at least reducing, strategic uncertainty between them as regards their conduct on the purchase markets for the Infringement 3 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
 - (c) The objective of this concerted practice¹³⁷ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 3 Relevant Services. These objectives are reinforced by the evidence of ITV's subjective intention to align on industry rates (paragraphs 4.32, 4.33, 4.35, and 4.38); and Sky's giving of information in response to that stated intention and its offer to give wider information (paragraph 4.34).

C.IV Infringement 4, involving IMG and Sky (April 2016)

- 4.41 The CMA finds that, on 20 April 2016, Sky proactively disclosed to IMG that it would be increasing its rates of pay for the Infringement 4 Relevant Services,¹³⁸ and what these new rates would be.

¹³⁶ See OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, page 140-142.

¹³⁷ See paragraph 4.8(e).

¹³⁸ Set out at Table 2 of Annex 1.

Context – communication of price increase to OB suppliers by Sky

- 4.42 At 17.06 on 19 April 2016, Sky sent via email a document entitled ‘*Freelance Rate Review*’¹³⁹ to a number of its OB service providers announcing a pay increase for Sky OB Freelance Crews of £[redacted] per day, effective from 1 July 2016.¹⁴⁰ [Senior Employee A] (Sky) noted at interview that this was the first rate increase by Sky to its freelance OB crews since [redacted].¹⁴¹

Contact between Sky and IMG

- 4.43 Eight hours later, at 01:03 on 20 April 2016, [Senior Employee A] (Sky) sent an email to [Senior Employee] ([redacted]),¹⁴² IMG) entitled ‘*Freelancer Rate Review*’ in which he wrote:

‘Just a quick note to let you know Sky have reviewed the freelancer rate and decided to increase by £[redacted] (meaning a standard rate of [£300-£400] now)

The Gtee [Guarantee] rates have also been increased to [£400-£500] for VT/Vision/Sound now to address some fears around shortages of skill in the market [place].’

- 4.44 At 05:47 on the same day, [Senior Employee] (IMG) acknowledged receipt of the information contained in the email.¹⁴³ [Senior Employee A] (Sky) noted that the disclosure of information to IMG might have come as a result of a previous request but he could not recall exactly.¹⁴⁴

Subsequent reference by IMG to rate information provided by Sky

- 4.45 [Senior Employee] (IMG) indicated at interview that he had probably provided this information to IMG’s Production Management team, as it affected their budgets and the rates that IMG would set.¹⁴⁵ He explained further that, as Sky is the biggest producer in the industry, when Sky sets its rates there is a ripple effect across the

¹³⁹ OHX-000307577: Letter from [Senior Employee C], [redacted], Sky Sport, dated April 2016.

¹⁴⁰ OHX-000307576: Email from [Employee C] (Sky) to [OB service provider], [OB service provider], [OB service provider], [OB service provider], [OB service provider] and [OB service provider], entitled ‘*Freelance Review 2016*’ sent at 17:06 on 19 April 2016.

¹⁴¹ See OHX-000659439: CMA witness interview – [Senior Employee A] (Sky) – 23 November 2023, page 42.

¹⁴² Premier League Productions is an IMG operation specialising in the production and distribution of studio shows and content for worldwide viewers of English Premier League football.

¹⁴³ OHX-000000032.

¹⁴⁴ See OHX-000659439: CMA witness interview – [Senior Employee A] (Sky) – 23 November 2023, page 230.

¹⁴⁵ See OHX-000659434: CMA witness interview – [Senior Employee] (IMG) – 24 January 2024, pages 71-72.

industry, meaning that most of the time, broadcasters have to follow suit or otherwise freelancers will not work for them.^{146 147}

Findings on concerted practice and restriction of competition by object

- 4.46 Based on the factual findings on IMG's and Sky's conduct made in paragraph 4.41 above and applying the legal findings in paragraphs 4.8 and 4.47, the CMA finds that IMG and Sky engaged in a concerted practice with the object of restricting competition.
- 4.47 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:
- (a) The information disclosed by Sky (future pay arrangements of Sky) was competitively sensitive.
 - (b) The conduct of IMG (in accepting this information) and Sky (in giving this information) was capable of removing strategic uncertainty between them as regards, at least, the conduct of Sky (as the disclosing party) on the purchase markets for the Infringement 4 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.

C.V Infringement 5, involving ITV and Sky (April 2016 – January 2017)

- 4.48 The CMA finds that, in March 2016, Sky alerted ITV that it would likely soon be increasing its crew rates of pay. Subsequently, on 20 April 2016 (i.e. the same date as Infringement 4), Sky then proactively disclosed to ITV that it would be increasing its rates of pay for a number of the Infringement 5 Relevant Services,¹⁴⁸ and what these new rates would be. ITV circulated this information internally, noting that ITV would need to consider its strategy to retain freelance staff in the light of Sky's material rate increase.
- 4.49 Approximately nine months later, between 30 and 31 January 2017, ITV requested confirmation from Sky on Sky's current rates of pay for the Infringement 5 Relevant Services¹⁴⁹ (which had already been communicated to ITV by an OB service provider) and disclosed to Sky that it was planning to adjust its own rates. After Sky

¹⁴⁶ See OHX-000659434: CMA witness interview – [Senior Employee] (IMG) – 24 January 2024, page 70.

¹⁴⁷ The perception of [Senior Employee] (IMG) accords with the perception of [Senior Employee A] (Sky). As noted elsewhere, in relation to Infringements 1, 7 and 8, [Senior Employee A] (Sky) explained in interview that his perception was that, as soon as Sky set its rates of pay, other purchasers of freelance labour followed suit. He expanded on his reasons for holding this perception, namely the perceived potential benefits to other purchasers of taking account of, and acting on, the information Sky disclosed on its rates of pay. He further explained his perception that other purchasers tended to increase their rates after Sky and that he did not expect these to be increased by more than Sky's rates.

¹⁴⁸ Set out at Table 2 of Annex 1.

¹⁴⁹ Set out at Table 2 of Annex 1.

provided the requested confirmation, ITV then informed Sky that it would follow suit, including the date from which its rate changes would take effect.

Context – ITV internal communication in March 2016 regarding future rate increase by Sky for OB crews

- 4.50 On 16 March 2016, individuals at ITV discussed internally via email a conversation between [Senior Employee A] (Sky) and [Senior Employee B] (ITV) regarding Sky's future intentions in relation to rates of pay for OB crews. At 03:53, [Senior Employee B] (ITV) sent an email to [Senior Employee A] (ITV) in which he wrote: 'Saw [Senior Employee A] (Sky) and had a good chat. He mentioned that it looks likely they will be putting up crew rates shortly'. At 18:17, [Senior Employee A] (ITV) replied: 'I will give him a call soon then'.¹⁵⁰

Contact between Sky and ITV in April 2016

- 4.51 At 09.01 on 20 April 2016 (i.e. the morning after Sky communicated the OB crew rate increase to its OB suppliers, and eight hours after Sky had communicated the rate increase to IMG, as set out in Infringement 4 above), Sky contacted ITV by email and told ITV that it had decided to increase its OB crew rates of pay. In this communication, sent by [Senior Employee A] (Sky) to [Senior Employee B] (ITV), [Senior Employee A] (ITV) and [Employee A] (ITV), and entitled 'Freelancer Rate Review', [Senior Employee A] (Sky) noted:

'We've announced a crew rate increase of £[redacted] for the majority of the freelancers working with us (up to £300-£400)). We have also increased the Gtee [Guarantee] rate to £400-£450] (Vision/Sound/VT) and £400-£500] (cameras) to try and address the shortage of skilled gtees in the market,

It starts from 1st July 2016

*Let me know if you have any questions!"*¹⁵¹

- 4.52 At 09:56 on the same day, [Senior Employee A] (ITV) disseminated this information internally to an individual within the ITV Finance team, noting that this would need to be notified at the next Finance meeting as it was a 'market shift and we need to consider following to guarantee the crews we need'.¹⁵² At 16:46 on the same day,

¹⁵⁰ OHX-000000153. [Senior Employee A] (ITV) noted at interview that [Senior Employee B] (ITV) had met [Senior Employee A] (Sky) at the Melbourne Grand Prix and that he understood that this is where the conversation had taken place - see OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, page 46. He noted that, despite what he had said to [Senior Employee B] (ITV), he did not think that he had spoken to [Senior Employee A] (Sky) between 16 March and 20 April 2016 - see OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, pages 215-216.

¹⁵¹ OHX-000000030.

¹⁵² OHX-000000154: Email from [Senior Employee A] (ITV) to [Employee C] (ITV), entitled 'Re: Freelancer Rate Review' sent at 09:56 on 20 April 2016.

[Senior Employee A] (ITV) acknowledged to [Senior Employee A] (Sky) receipt of the information and thanked him for confirming the future pay rate increase.¹⁵³

Approach by [OB service provider] to ITV in January 2017

- 4.53 On 10 January 2017, in an email chain between [Senior Employee A] (ITV) and [Employee C] (ITV), entitled '*Freelance Rate Review*', [Senior Employee A] (ITV) noted, at 10:26: '*We are behind BT & SKY for OB rates by £[<] so I think it inevitable we will need to look to go ahead with this for the start of February*'. At 12:17, [Senior Employee A] (ITV) added that he had spoken to '[employee] at [OB service provider]' who was going to send to him '*the agreement SKY have communicated, which BT have followed*', noting: '*it will be very hard for us not to follow suit I think (we have held for [<])*'.¹⁵⁴
- 4.54 On the same day, at 13:13 [employee] ([OB service provider]) sent an email to [Senior Employee A] (ITV) quoting the information provided by Sky regarding the pay rate increases as follows:

'From the 1st July 2016 SKY OB freelance OB crew rates from UM's to floor sound engineers, riggers etc. are increased by £[<] per day within the United Kingdom only.

Exceptions are a larger increase to from [£400-£500] to [£400-£500] for Vision, VT & Sound Guarantees.

Camera Guarantees rise to [£400-£500], Sound and Vision Supervisors rise to [£400-£500], X file Coordinators increase to [£400-£500]

The amount of [£0-£100] per day remains unchanged which is for the usual expenses including hotels. This [£0-£100] always forms a percentage of the above rates (sometimes described as subsistence)'.¹⁵⁵

Contact between ITV and Sky in January 2017

- 4.55 On 30 January 2017, [Senior Employee A] (ITV) sent [Senior Employee A] (Sky) an email, copying in [Employee A] (ITV), in which he noted that ITV was '*going to make the move with OB rates*'. ITV asked for Sky's rates for (i) freelance OB crews (including Unit Managers, Floor Sound Engineers, Camera Operators, Vision Engineers, EVS operators, and Riggers), (ii) Vision Guarantees, Video Tape Guarantees, and Sound Guarantees, (iii) Vision Supervisors, (iv) Camera Guarantees and Camera Supervisors, (v) Sound and Vision Supervisors, and (vi) X

¹⁵³ OHX-000000030: Email from [Senior Employee A] (ITV) to [Senior Employee A] (Sky) copying [Senior Employee B] (ITV) and [Employee A] (ITV), entitled '*Re: Freelancer Rate Review*', sent at 16:46 on 20 April 2016.

¹⁵⁴ OHX-000000169.

¹⁵⁵ OHX-000000177.

File Coordinators, and set out what it believed to be Sky's rates for each of these. [Senior Employee A] (ITV) noted that he had been passed this information but *'[wanted] to confirm direct'*. The following day, [Senior Employee A] (Sky) replied to [Senior Employee A] (ITV) noting that these rates had been in place since 2016. The same day, [Senior Employee A] (ITV) acknowledged Sky's information and noted that ITV would *'follow suit from 1st Feb'*.¹⁵⁶

Further context

- 4.56 [Senior Employee A] (Sky) stated at interview that he had emailed [Senior Employee A] (ITV) in April 2016 about the upcoming Sky rate increase because he had said that he would.¹⁵⁷ ¹⁵⁸ [Senior Employee A] (ITV) explained at interview that ITV would take the knowledge of the Sky rate increase and apply it to ITV's own individual sports to see what the right decision would be in terms of an ITV rate increase.¹⁵⁹ ¹⁶⁰

Findings on concerted practice and restriction of competition by object

- 4.57 Based on the factual findings on ITV's and Sky's conduct made in paragraphs 4.48 and 4.49 above and applying the legal findings in paragraphs 4.8 and 4.58 the CMA finds that ITV and Sky participated in a concerted practice that had the object of restricting competition.
- 4.58 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:
- (a) The information concerned by this Infringement (current and future pay arrangements of Sky and future pay intentions of ITV) was competitively sensitive.
 - (b) The conduct of ITV and Sky (in exchanging this information) was capable of removing, or at least reducing, strategic uncertainty between them as regards the conduct of both Parties on the purchase markets for the Infringement 5 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.

¹⁵⁶ OHX-000000033.

¹⁵⁷ See OHX-000659439: CMA witness interview – [Senior Employee A] (Sky) – 23 November 2023, page 236.

¹⁵⁸ As noted in relation to Infringement 7, the evidence of [Senior Employee A] (Sky) is that he perceived potential benefits to other purchasers of freelance labour taking account of, and acting on, the information Sky disclosed on its rates of pay. Further, as noted in relation to Infringement 8, the evidence of [Senior Employee A] (Sky) is that Sky would not necessarily expect reciprocity when disclosing rate information. Instead, his perception was that other purchasers tended to increase their rates after Sky and he did not expect these to be increased by more than Sky's rates.

¹⁵⁹ See OHX-000659446: CMA witness interview – [Senior Employee A] (ITV) – 17 January 2024, page 222.

¹⁶⁰ See also the evidence of [Senior Employee A] (ITV) referred to in relation to Infringement 3 above, expanding on why the information Sky disclosed on its rates of pay was useful to ITV, namely the potential adverse consequences to ITV of not taking account of, and not acting on, the information.

- (c) The objective of this concerted practice¹⁶¹ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 5 Relevant Services. These objectives are reinforced by the evidence of ITV's subjective intention, in the April 2016 email exchange, to obtain from Sky information on its future pay intentions for use in informing ITV's decision-making (paragraphs 4.50 and 4.56), as well as ITV's subjective intention, in the January 2017 email exchange, to align on industry rates (paragraph 4.55), and Sky's giving of the information, in the January 2017 email exchange, in response to ITV's stated intention to move its rates of pay (also in paragraph 4.55).

C.VI Infringement 6, involving BBC and Sky (July-November 2016)

- 4.59 The CMA finds that, between 14 July and 23 November 2016, BBC and Sky exchanged information regarding their future intentions in respect of rates of pay for the Infringement 6 Relevant Services¹⁶² for the forthcoming Christmas and New Year period. Sky initiated this contact, requesting the information in the context of negotiations with suppliers, and with the stated aim of confirming what BBC was intending to pay.

July 2016 contact between Sky and BBC

- 4.60 At 13:05 on 14 July 2016, [Senior Employee A] (Sky) sent an email to [Employee A] ([X], BBC) in which he wrote:

'I'm hearing a rumour BBC are paying a 1.5T rate [i.e. time and a half] to the Freelancers for working on Boxing Day and NY day. Would you mind letting me know if you do this or people are 'trying it on'.

No problem if you don't wish to comment!".¹⁶³

- 4.61 At 15:31, [Employee A] (BBC) forwarded this email to his colleagues [employee] (BBC) and [Employee B] ([X], BBC).

- 4.62 At 15:37, [Employee B] (BBC) responded directly to [Senior Employee A] (Sky), copying in [Employee A] (BBC), as follows:

'In previous years we've made an additional payment to freelancers of [£0-£100] per person for Boxing Day and NYD which I believe is in line with what you pay too?

¹⁶¹ See paragraph 4.8(e).

¹⁶² Set out at Table 2 of Annex 1.

¹⁶³ [Senior Employee A] (Sky) noted at interview that he was chancing a question here to [Employee A] (BBC), to find out BBC's intentions for the festive period. He noted that he would have heard the 'rumour' from freelancers - see OHX-000659439: CMA witness interview – [Senior Employee A] (Sky) – 23 November 2023, pages 248-249.

[OB service provider] [the OB company used by BBC] *haven't made me aware of any change to this plan for this coming festive season so we'd expect to be doing the same.'*

- 4.63 [Senior Employee A] (Sky) replied to [Employee B] (BBC) at 15:48: *'I expect we will make the similar payment this year but won't be telling the Freelancers for a couple of months!'*.¹⁶⁴

November 2016 contact between BBC and Sky

- 4.64 Several months later, on 23 November 2016 at 13:35, [Employee] ([OB service provider])¹⁶⁵ sent an email to, *inter alia*, [Employee A] (BBC) and [Senior Employee A] (Sky), entitled *'Boxing Day Crew Rate'*. In this, she noted that she had *'just found out BT/Timeline are trying to poach our Boxing Day Crew by offering them time and a half'*.

- 4.65 At 14:22, [Senior Employee A] (Sky) replied to that email, addressing the following to [Employee A] (BBC): *'Sky are doing +[£0-£100] which we have done in previous years, are you adopting the same principle?'*

- 4.66 At 14:34, [Employee] ([OB service provider]) replied:

'[W]e (BBC and [OB service provider]) have adopted your policy and the [sic] PLP¹⁶⁶ also agreed last year to do the same as we wanted everyone to receive the same rate.

I think it's really cheeky for them to do that in order to try and poach our crew....[j]ust thought you should all be aware of this'.¹⁶⁷

- 4.67 Separately, at 14:25, [Employee A] (BBC) forwarded [Employee]'s ([OB service provider]) email and [Senior Employee A]'s (Sky) response internally to [Employee C] (BBC), [employee] (BBC) and [employee] (BBC), asking: *'Should we follow Sky on Boxing Day ?'*
- 4.68 At 14:31 [Employee C] (BBC) replied: *'We did in 2014 - I was away last year so not sure if it happened again. I seem to remember we did the same for New Year's Day as well'.*

¹⁶⁴ OHX-000653076.

¹⁶⁵ [OB service provider] is an OB service provider. [OB service provider] was contracted to deliver coverage of darts for Sky, and the Match of the Day programme for BBC, both of which took place over the Christmas/New Year period – see OHX-000659439: CMA witness interview transcript – [Senior Employee A] (Sky) – 23 November 2023, pages 265-269.

¹⁶⁶ PLP is an acronym for Premier League Productions, which, as noted above, is an IMG operation specialising in the production and distribution of studio shows and content for worldwide viewers of English Premier League football.

¹⁶⁷ OHX-000650953.

4.69 At 14:31 [Employee A] (BBC) replied: *'I think we will have to pay extra to crew the games to be honest.'*¹⁶⁸

Finding on concerted practice and restriction of competition by object

4.70 Based on the factual findings on BBC's and Sky's conduct made in paragraph 4.59 above and applying the legal findings in paragraph 4.8 and 4.71, the CMA finds that BBC and Sky engaged in a concerted practice with the object of restricting competition.

4.71 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:

- (a) The information concerned by this Infringement (future pay intentions of BBC and Sky) was competitively sensitive.
- (b) The conduct of BBC and Sky (in exchanging this information) was capable of removing strategic uncertainty between them as regards their conduct on the purchase markets for the Infringement 6 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
- (c) The objective of this concerted practice¹⁶⁹ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 6 Relevant Services. These objectives are reinforced by evidence of BBC's and Sky's subjective intentions to obtain from the other confirmation of their respective future pay intentions in order to ensure alignment on pay (paragraphs 4.64, 4.65 and 4.66).

C.VII Infringement 7, involving BT and Sky (Spring 2018)

4.72 The CMA finds that, between 29 March and 14 May 2018, BT and Sky exchanged information regarding their respective plans for future rates of pay in respect of the Infringement 7 Relevant Services.¹⁷⁰ BT initiated the contact, requesting information about Sky's future intentions and stating that it would be desirable for BT and Sky to be aligned in their response to a collective pay increase request. BT and Sky then exchanged information regarding the timing of potential rate increases, with Sky indicating that it would not be implementing these imminently and BT following Sky's approach. Six weeks later, Sky disclosed to BT information on future pay arrangements that it had (one hour previously) communicated to a number of its EVS operators.

¹⁶⁸ OHX-000652019.

¹⁶⁹ See paragraph 4.8(e).

¹⁷⁰ Set out at Table 2 of Annex 1.

Context – Rate increase request sent by EVS Operators to BT

- 4.73 On 20 March 2018 at 09:52, [Freelancer 1], on behalf of a number of freelance EVS Operators, sent an email entitled '*EVS ops letter*' to [employee] (BT), [employee] (BT), [employee] (BT), [employee] (BT) and [employee] (BT), copying in a large number of EVS operators. This noted:

'Please find attached letter from the EVS ops CC'd asking for a rise in our rate. We understand that freelance reps met with Sky last week and discussed the matter of a rise. We await your response.'

- 4.74 At 17:51, [employee] (BT) replied, copying in [Senior Employee] ([redacted], BT), to state that she had forwarded this to [Senior Employee] (BT) in his capacity as BT's [redacted]. On 21 March 2018, [Senior Employee] (BT) replied that he would discuss the request internally '*over the next few days*'.¹⁷¹

Further context: BT obtains Sky's contact details

- 4.75 Two days later, on 23 March 2018 at 09:35, [Senior Employee] (BT) sent an email to a contact at an OB company, asking for [Senior Employee A] (Sky)'s contact details, in the context of '*a looming pay rise situation for EVS and Camera Ops*.' These details were duly provided.¹⁷²

Contact between BT and Sky

- 4.76 Very shortly afterwards on the same day, at 10:22, [Senior Employee] (BT) sent an email to [Senior Employee A] (Sky), entitled '*EVS and Cameras pay increase request*', in which he wrote:

'We've had a collective request for a pay increase from EVS ops [EVS Operators] who have also informed me that camera ops [Camera Operators] are supportive of the approach. They are looking for £[redacted] per day ([redacted]%). In the past we (BT Sport) have followed Sky's lead, but on this occasion I think it sensible that we present a united front. I believe that in 2016 Sky committed to a review every two years and therefore (and if that is correct), you are due to consider rates prior to 18/19 season.

*Have you any time today to discuss?'*¹⁷³

- 4.77 At interview, [Senior Employee] (BT) stated that he thought that his intention here had been to get advance notice of what Sky was going to do in respect of any rate

¹⁷¹ OHX-000377528.

¹⁷² OHX-000365821.

¹⁷³ OHX-000374060.

increase, although he also acknowledged that '*[presenting] a united front*' could have meant reaching out to try to come to an agreement.¹⁷⁴ [Senior Employee] (BT) also acknowledged that, if Sky had stated that it was not increasing its rates, it was unlikely that BT would have done so.¹⁷⁵ [Senior Employee A] (Sky) stated at interview that he understood [Senior Employee]'s (BT) reference to '*[presenting] a united front*' to mean that if Sky increased its rates then so would BT.¹⁷⁶

- 4.78 On the following day, 24 March 2018, [Senior Employee A] (Sky) replied to [Senior Employee] (BT), noting that this was '*[i]nteresting timing with what's going on at Sky*' and suggested catching up the following week. At interview, [Senior Employee A] (Sky) explained that his comment about '*interesting timing*' was because around then Sky would have been preparing to tell the industry about its upcoming rate increase.¹⁷⁷
- 4.79 At 14:51 on 26 March 2018, [Senior Employee] (BT) suggested speaking sometime after 16:00. However, it does not appear from the email chain that a call took place, as the next message in the email chain, sent by [Senior Employee A] (Sky) at 19:12 on 29 March 2018 noted: '*I'm not sure we're going to be reviewing this imminently. Did the [Operators] give you a timeline deadline?!*'. [Senior Employee] (BT) replied at 19:41: '*No they didn't. I have little problem with stalling for a few weeks. Does that work for you?*'¹⁷⁸
- 4.80 The CMA has also seen an internal BT document which appears to document the exchange noted above. This document is an internal BT Excel file, entitled '[X]', which includes contemporaneous references to Sky's approach to the '*EVS Ops. [Operators] Rate rise*', and which indicates that BT decided to '*stall the Ops [Operators]*' because Sky was not reviewing this point immediately. The first tab within the Excel file, entitled '[X]', lists '[X]' and the corresponding '*Updates and Actions*'. Row 63 of this tab, dated '*3/21/2018*' (i.e. in US date-format, the day following the approach to BT by the EVS Operators'), relates to '*EVS Ops. Rate rise*'. It contains an entry dated '*28/03/18*' (i.e. just after [Senior Employee] (BT) had suggested a meeting to [Senior Employee A] (Sky)), which states: '*Second meeting to be set up [...] [Senior Employee] (BT) wait for [Senior Employee A] (Sky) to get back from SKY*'. This is followed by an entry dated '*04/04/18*' (i.e. six days after [Senior Employee A] (Sky) indicated to [Senior Employee] (BT) that Sky was not

¹⁷⁴ See OHX-000659443: CMA witness interview – [Senior Employee] (BT) – 7 March 2024, pages 294-295, 299-300 and 302.

¹⁷⁵ See OHX-000659443: CMA witness interview – [Senior Employee] (BT) – 7 March 2024, pages 342-344.

¹⁷⁶ See OHX-000659441: CMA witness interview – [Senior Employee A] (Sky) – 19 December 2023, page 10.

¹⁷⁷ See OHX-000659441: CMA witness interview – [Senior Employee A] (Sky) – 19 December 2023, page 10.

¹⁷⁸ See OHX-000374060. [Senior Employee] (BT) acknowledged at interview that it was possible that the phrase '*[h]ave agreed to stall the Ops*' referred to an agreement with [Senior Employee A] (Sky) to do so: see OHX-000659443: CMA witness interview – [Senior Employee] (BT) – 7 March 2024, pages 320-323.

going to be reviewing EVS Operators' rates imminently) which states '*sky not reviewing imeadiately [sic]. Have agreed to stall the Ops for the timebeing [sic]*'.¹⁷⁹

- 4.81 Approximately six weeks after the previous contact between [Senior Employee] (BT) and [Senior Employee A] (Sky), on 14 May 2018 at 13:58, [Senior Employee A] (Sky) replied to the email chain between the two individuals, stating: '*[...] we've gone with £[<] increase from July 1st ... I'm sure it'll be greeted with celebrations on the streets....*'. Two minutes later, at 14:00, [Senior Employee] (BT) queried whether this was for '*Cams [Camera Operators] as well as EVS*' and [Senior Employee A] (Sky) confirmed at 14:01: '*All roles via OB – so Sound assistants, cams [Camera Operators], evs [EVS Operators], riggers, vision eng [Vision Engineers]*'. [Senior Employee] (BT) then thanked [Senior Employee A] (Sky) for sharing this. At 17:18 on the same day, [Senior Employee] (BT) forwarded the entire email chain to his colleague [Employee B] ([<], BT).¹⁸⁰
- 4.82 Also on the same day, [Senior Employee] (BT) notified other colleagues, including his superior, [employee] (BT), of Sky's rate increase.¹⁸¹
- 4.83 Subsequent to this, on 4 July 2018, BT announced its own rate increases for OB crews (including EVS Operators and Camera Operators), as well as for Studio crews and Gallery crews, effective from 1 August 2018.¹⁸²

Further context

- 4.84 At interview, [Senior Employee A] (Sky) explained his perception of the potential benefits to other purchasers with whom Sky shared suppliers of their taking account of the information Sky disclosed on its rates of pay. He stated that if another purchaser did not wait for Sky's rate increases to be implemented before increasing its own rates, thus avoiding a gap between Sky's rate increase and the other purchaser's rate increase, freelancers would not leave that other purchaser in the meantime.¹⁸³

Finding on concerted practice and restriction of competition by object

- 4.85 Based on the factual findings on BT's and Sky's conduct made in paragraph 4.72 above and applying the legal findings in paragraphs 4.8 and 4.86, the CMA finds

¹⁷⁹ OHX-000442488.

¹⁸⁰ OHX-000374060.

¹⁸¹ OHX-000372779: Email from [Senior Employee] (BT) to [employee] (BT) and [employee] (BT), entitled '*SKY OB rate increases*', sent at 17:25 on 14 May 2018.

¹⁸² See OHX-000377528: Email from [Senior Employee] (BT) to [Freelancer 1], as well as [employee] (BT), [employee] (BT), [employee] (BT) and [employee] (BT), entitled '*EVS ops letter*', sent at 15:29 on 4 July 2018, and copying in the EVS operators included in [Freelancer 1]'s email of 20 March 2018.

¹⁸³ See OHX-000661689: CMA case team internal notes of section of [Senior Employee A] (Sky) interview on 28112023 where recorder failed, page 2.

that BT and Sky engaged in a concerted practice with the object of restricting competition.

4.86 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:

- (a) The information concerned by this Infringement (future pay intentions) was competitively sensitive.
- (b) The conduct of BT and Sky (in exchanging this information) was capable of removing strategic uncertainty between them as regards their conduct on the purchase markets for the Infringement 7 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
- (c) The objective of this concerted practice¹⁸⁴ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 7 Relevant Services. These objectives are reinforced by the evidence of BT's subjective intention to align with Sky on rates of pay in response to a collective pay increase request from some of its EVS operators (see paragraphs 4.76, 4.77, 4.79 and 4.80), and Sky's giving of the information in response to BT's stated intention to align with Sky (paragraph 4.81).

C.VIII Infringement 8, involving ITV and Sky (May 2018)

4.87 The CMA finds that, on 14 May 2018, Sky proactively disclosed to ITV that it would be increasing its rates of pay for the Infringement 8 Relevant Services¹⁸⁵ and what these new rates would be.

Context – communication of price increase to OB freelancers by Sky

4.88 On 14 May 2018, at 12:55, [Senior Employee A] (Sky) shared with various freelancers via email¹⁸⁶ a letter¹⁸⁷ in which Sky announced a £[X] price increase in the rate of pay for Sky's freelance OB crews, effective from 1 July 2018. This was the first rate increase by Sky to its freelance OB crews since [X].

Contact between Sky and ITV

4.89 One minute later on the same day, at 12:56, [Senior Employee A] (Sky) sent a WhatsApp message to [Senior Employee A] (ITV), noting: “FYI – we’ve done a

¹⁸⁴ See paragraph 4.8(e).

¹⁸⁵ Set out at Table 2 of Annex 1.

¹⁸⁶ OHX-000307578: Email from [Employee C] (Sky) entitled ‘Freelance Review 2018’, sent at 13:55 on 14 May 2018.

¹⁸⁷ OHX-000000017: Letter from [Senior Employee A] (Sky), dated May 2018 announcing a £[X] increase in the pay rate for Sky's OB freelance crews.

£[3<] FL [Freelancer] increase from July.¹⁸⁸ [Senior Employee A] (ITV) acknowledged receipt of the information almost immediately, replying at 12:57: 'Thank you! Understood.' [Senior Employee A] (Sky) noted at interview that this was the same rate increase as the one discussed with [Senior Employee] (BT) in Infringement 7 above.¹⁸⁹ Sky therefore disclosed its rate increase to both BT and ITV on the same date (which was also the same date that Sky communicated the rate increase to its freelance OB crews).

Further context

- 4.90 [Senior Employee A] (Sky) stated at interview that he thought that he had previously told [Senior Employee A] (ITV) that he would inform him when Sky made a change to its OB crew rates and therefore he had been trying to pre-empt an enquiry from [Senior Employee A] (ITV) by providing the rates proactively.¹⁹⁰ He also stated that he did not necessarily expect reciprocity when disclosing such information as other purchasers tended to increase their rates after Sky and he did not expect these to be increased by more than Sky's rates.¹⁹¹

Finding on concerted practice and restriction of competition by object

- 4.91 Based on the factual findings on ITV's and Sky's conduct made in paragraph 4.87 above and applying the legal findings in paragraph 4.8 and 4.92, the CMA finds that Sky and ITV engaged in a concerted practice with the object of restricting competition.
- 4.92 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:
- (a) The information concerned by this Infringement (future pay arrangements of Sky) was competitively sensitive.
 - (b) The conduct of ITV (in accepting this information) and Sky (in giving this information) was capable of removing, or at least reducing, strategic uncertainty between ITV and Sky as regards, at least, the conduct of Sky (as the disclosing Party) on its conduct on the purchase markets for the Infringement 8 Relevant Services and reveals a sufficient degree of harm to competition to constitute an object infringement.

¹⁸⁸ OHX-000000539: WhatsApp message from [Senior Employee A] (Sky) to [Senior Employee A] (ITV) of 14 May 2018.

¹⁸⁹ See OHX-000659441: CMA witness interview – [Senior Employee A] (Sky) – 19 December 2023, page 15.

¹⁹⁰ See OHX-000659441: CMA witness interview – [Senior Employee A] (Sky) – 19 December 2023, pages 15-16.

¹⁹¹ See OHX-000661689: CMA case team internal notes of section of [Senior Employee A] (Sky) interview on 28112023 where recorder failed, page 5.

- (c) The objective of this concerted practice¹⁹² is reinforced by the evidence of Sky's subjective intention to disclose its future pay arrangements in the expectation that by doing so it would ensure that ITV would not increase its rates to more than Sky's rates (paragraph 4.90).

C.IX Infringement 9, involving IMG and Sky (July 2019)

- 4.93 The CMA finds that, on 17 July 2019, Sky disclosed to IMG information regarding its future intentions in respect of rates of pay for the Infringement 9 Relevant Services,¹⁹³ during the forthcoming Christmas and New Year period. IMG had requested this information from Sky with the stated objective of assessing whether or not IMG and Sky were aligned. Contemporaneous internal IMG documentary evidence also reveals that IMG sought this information for the purposes of informing its own decision-making on future rates, ensuring that its rates were aligned with other market participants, and avoiding paying more than necessary for the relevant freelance labour. Having obtained confirmation from Sky about its plans, IMG decided, at this juncture, not to increase its pay rate.

Context – internal IMG discussions regarding Christmas period bank holiday payments

- 4.94 On 13 July 2019, [Employee A] ([X], IMG) sent an internal email to [Employee B] ([X], IMG) entitled '*Xmas Period Bank Hol Additional Payment*'. In this he noted, in the context of additional payments to freelancers working over Christmas and New Year's Day holidays: '*I don't think its [sic] unreasonable to pay 1.5 T [i.e. time and a half] [...] I've asked SKY what they are paying – they are going to get back to me – if it turns out everyone else is going to be paying double time then maybe we should match it, if its only amazon, I think we should stick to 1.5.*'
- 4.95 [Employee B] (IMG) responded two days later, at 19:48, copying in [Employee C] ([X], IMG): '*Agree with your suggestion of holding off to see what Sky are doing*'.¹⁹⁴

Contact between IMG and Sky

- 4.96 On 16 July 2019, [Employee A] (IMG) sent an email to [Employee A] ([X], Sky) asking: '*Quick q - do you pay 1.5 or double rate to freelancers on New Year's day (or any public holidays) – was just wondering if we are on the same page or not really...*'.

¹⁹² See paragraph 4.8(e).

¹⁹³ Set out at Table 2 of Annex 1.

¹⁹⁴ OHX-000000363. The CMA has not seen evidence of [Employee A] (IMG) contacting Sky regarding this matter prior to the email exchange with [Employee A] (Sky) noted below (which occurred on 16 July 2016 – i.e. after, rather than before, [Employee A]'s (IMG) email exchange with [Employee B] (IMG)).

4.97 The following day (i.e. 17 July 2019), [Employee A] (Sky) replied: *'We only pay extra on Boxing Day and NYD and it's a [£0-£100] flat payment'*. At 07:38, [Employee A] (IMG) thanked her for this information.¹⁹⁵

4.98 [Employee A] (IMG) then replied to the original internal email conversation with [Employee B] (IMG), at 08:19 on 17 July 2019:

'So SKY have told me they only pay extra on Boxing Day and NYD and it's a [£0-£100] flat payment.

With that in mind, I think its [sic] not unreasonable to keep it at 1.5 time'.¹⁹⁶

Findings on concerted practice and restriction of competition by object

4.99 Based on the factual findings on IMG's and Sky's conduct made in paragraph 4.93 above and applying the findings in paragraphs 4.8 and 4.100, the CMA finds that Sky and IMG engaged in a concerted practice with the object of restricting competition.

4.100 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:

- (a) The information concerned by this Infringement (future pay intentions of Sky) was competitively sensitive.
- (b) The conduct of IMG (in accepting this information) and Sky (in giving this information) was capable of removing strategic uncertainty between them as regards, at least, the conduct of Sky (as the disclosing party) on the purchase markets for the Infringement 9 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
- (c) The objective of this concerted practice¹⁹⁷ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 9 Relevant Services. These objectives are reinforced by the evidence of IMG's subjective intention, which it expressed to Sky, to ensure that it was aligned on rates of pay with other competitors, including Sky (paragraphs 4.94 to 4.96).

C.X Infringement 10, involving BT and IMG (December 2020)

4.101 The CMA finds that, on 21 December 2020, BT and IMG exchanged information regarding rates of pay for the Infringement 10 Relevant Services.¹⁹⁸ BT initiated the

¹⁹⁵ OHX-000000414.

¹⁹⁶ OHX-000000363.

¹⁹⁷ See paragraph 4.8(e).

¹⁹⁸ Set out at Table 2 of Annex 1.

contact, requesting this information from IMG with the stated objectives of informing its decision-making on future rates of pay and avoiding causing market disruption. BT disclosed its information to IMG, which responded with its own information, expressing satisfaction that there was alignment between them in respect of the rates of pay. BT also disclosed to IMG that it was likely to also be increasing the rates of pay for other freelance services supporting the production and broadcasting of sports content.

Context: approach from BT Sound Assistants

- 4.102 On 15 December 2020, [Employee B] (BT) sent an email, entitled ‘*SOUND ASSISTANT ROLE – Rate Increase Request*’, to a number of individual freelancers, copying in [Senior Employee] (BT), in which she thanked the recipients for ‘*separate emails relating to a requested rate increase for the Sound Assistant role at BT Sport*’. The email stated that rates would not be updated ‘*until at least August 2021*’. On 20 December 2020 one of the individuals replied to express their disappointment at BT’s response.¹⁹⁹

Contact between BT and IMG

- 4.103 At 09:26 the following day, i.e. 21 December 2020, [Senior Employee] (BT) sent an email to [Employee C] (IMG), in which he asked her, in the context of a ‘*little pay dispute*’ that he was ‘*trying to settle without tipping over the whole apple cart*’, to ‘*share how much you pay your studio sound assistants per day*’. He went on to note: ‘*When we raise rates I always try to canvas opinion so as not cause too much ‘market’ disruption. We pay [£300-£400].*’
- 4.104 At 10:08 on the same day, [Employee C] (IMG) replied:
- ‘Our studio SA’s [Sound Assistants] gets [sic] [£300-£400] for a 8-12 hour day. That includes holiday entitlement. You pay fractionally more.*
- May I ask what you pay your VM’s [Vision Mixers] for a similar shift duration please?’*
- 4.105 At 10:27, [Senior Employee] (BT) forwarded this email chain to his colleague [Employee B] (BT), asking: ‘*Can you help with her VM [Vision Mixer] question please?*’ At 10:46 [Employee B] (BT) replied to both [Employee C] (IMG) and [Senior Employee] (BT): ‘*We pay our Studio VMs [£400-£500] per day for a 10x hour shift*’.
- 4.106 At 10:55 [Employee C] (IMG) wrote:

¹⁹⁹ OHX-000504268.

‘that’s exactly the same as we pay. Good to know we are aligned there.

[Senior Employee] (BT) on that basis are BT upping the rates specifically for SA’s and more generally across the board?’.

4.107 At 11:00, [Senior Employee] (BT) replied: *‘Distinct possibility’*.²⁰⁰

4.108 The following day, i.e. 22 December 2020, [Senior Employee] shared with his colleague, [Employee B] (BT), a draft response to the Sound Assistant referred to at paragraph 4.102 above, noting to [Employee B] (BT) above the draft that he was *‘[s]truggling with this for some reason [...] [employee (BT)]; [[Senior Employee] (BT)’s superior at BT] supports a rise if we were to give one, but PLP and Gravity are at [£300-£400] and not heard back from SKY yet.’*²⁰¹ At 16:55 on the same day, [Senior Employee] (BT) sent a revised version of the draft email to [Employee B] (BT) for comment. This version noted: *‘I have now compared the BT Sport rate with other sport production companies and broadcasters and have found that we are in line [sic] and in some cases above what others pay’* (which the previous version had not).²⁰² The *‘other sport production companies’* are not named, however.

4.109 [Senior Employee] (BT) acknowledged at interview that he had been attempting to find out what other operators paid to ensure that, if BT did decide to increase the rate of pay, this was in line with others in the market.²⁰³ He explained that this is what his comments on *‘market disruption’* and *‘tipping over the whole apple cart’* had referred to.²⁰⁴ At interview, [Employee C] (IMG) noted that the rate information she had provided to [Senior Employee] (BT) came from IMG’s rate card²⁰⁵ for the relevant role.²⁰⁶

Findings on concerted practice and restriction of competition by object

4.110 Based on the factual findings on BT’s and IMG’s conduct made in paragraph 4.101 above and applying the legal findings in paragraph 4.8, and 4.111, the CMA finds that BT and IMG engaged in a concerted practice with the object of restricting competition.

4.111 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:

²⁰⁰ OHX-000504170.

²⁰¹ OHX-000504268.

²⁰² OHX-000504345.

²⁰³ See OHX-000659444: CMA witness interview – [Senior Employee] (BT) – 8 March 2024, page 104.

²⁰⁴ See OHX-000659444: CMA witness interview – [Senior Employee] (BT) – 8 March 2024, pages 104-105.

²⁰⁵ A rate card in this context is a document setting out the rates that a purchaser of freelance services would typically pay for different services provided to them, in order to assist with budgeting.

²⁰⁶ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 171.

- (a) The information concerned by this Infringement (pay information of BT and IMG, and future pay intentions of BT) was competitively sensitive.
- (b) The conduct of BT and IMG (in exchanging this information) was capable of removing strategic uncertainty between them as regards their conduct on the purchase markets for the Infringement 10 Relevant Services and reveals a sufficient degree of harm to competition to constitute an object infringement.
- (c) The objective of this concerted practice²⁰⁷ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 10 Relevant Services. These objectives are reinforced by the evidence of BT's and IMG's subjective intention to align on industry rates (paragraphs 4.103 and 4.109 in respect of BT, and 4.106 in respect of IMG), with IMG giving information in response to BT's stated intention to align and itself requesting further information (paragraphs 4.104 to 4.106).

C.XI Infringement 11, involving BT and Sky (Winter 2020/2021)

- 4.112 The CMA finds that, between 22 December 2020 and 7 January 2021, BT and Sky exchanged information regarding their rates of pay for the Infringement 11 Relevant Services.²⁰⁸ BT initiated this contact, disclosing its own rates of pay and requesting this information from Sky, with the stated objective of allowing BT to align its rate with Sky's. Sky responded with its own rates of pay.

Context – previous contact between IMG and BT regarding Sky

- 4.113 During the email exchange between [Senior Employee] (BT) and [Employee C] (IMG) described in Infringement 11, [Senior Employee] (BT) had asked [Employee C] (IMG) if she knew what Sky paid its Sound Assistants.²⁰⁹ At 11:08 on 21 December 2020, [Employee C] (IMG) replied that she did not know but would try to find out from [Senior Employee B] ([S<], Sky). The following day, at 10:32, [Senior Employee] (BT) asked: *'Did [Senior Employee B] (Sky) [sic] get back to you? I am always really cautious when increasing rates and try to align with SKY when I can. I can go to her directly if you would prefer.'* At 10:51 [Employee C] (IMG) replied that she had not yet contacted [Senior Employee B] (Sky) and that [Senior Employee] (BT) could contact her directly. At 10:59 [Senior Employee] (BT) replied to note: *'Have mailed her. I'll report back'*.²¹⁰

²⁰⁷ See paragraph 4.8(e).

²⁰⁸ Set out at Table 2 of Annex 1.

²⁰⁹ OHX-000504170: Email from [Senior Employee] (BT) to [Employee C] (IMG) and [Employee B] (BT), entitled *'RE: Quick question....'*, sent at 11:00 on 21 December 2020.

²¹⁰ OHX-000504170.

Contact between BT and Sky

- 4.114 Also at 10:59 on 22 December 2020, [Senior Employee] (BT) sent an email to [Senior Employee B] (Sky) in which he noted: *‘Our f/l [freelance] sound assistants are seeking a pay increase and I am doing a ‘ring round’ to check rates. We currently pay [£300-£400] for studio work. [Employee C] (IMG) reports that PLP pay [£300-£400] so we are already a little ahead. I wanted check [sic] where you guys are so that we can align if possible. Can you let me know or put me on to someone who can tell me?’*
- 4.115 On 26 December at 11:44, [Senior Employee B] (Sky) replied: *‘Cc’ing in [Employee B] (Sky) who manages the sound department and would be the best person to answer this for you.’*
- 4.116 On 7 January 2021 at 16:35, [Employee B] ([X], Sky) emailed [Senior Employee] (BT) directly, as follows:

‘Apologies for the delay in getting back to you.

We pay per hour based on a minimum of [X] hours per booking.

Sound Assistants [£0-£100] ph

PSC Op [Operators] [£0-£100] ph

Sound Sups [Supervisors] [£0-£100] ph

Hope that helps.’²¹¹

- 4.117 [Senior Employee] (BT) acknowledged at interview that he had been fairly explicit in this email exchange about what his objective was when seeking this information from Sky. He explained that this had been so that [Senior Employee B] (Sky) would provide the requested information to him, meaning that they would know where each other stood.²¹²

Findings on concerted practice and restriction of competition by object

- 4.118 Based on the factual findings on BT’s and Sky’s conduct made in paragraph 4.112 above and applying the legal findings in paragraphs 4.8 and 4.119, the CMA finds that BT and Sky participated in a concerted practice with the object of restricting competition.

²¹¹ OHX-000000023.

²¹² See OHX-000659444: CMA witness interview – [Senior Employee] (BT) – 8 March 2024, pages 122-123.

4.119 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:

- (a) The information concerned by this Infringement (pay information of BT and Sky) was competitively sensitive.
- (b) The conduct of BT and Sky (in exchanging this information) was capable of removing strategic uncertainty between them as regards the conduct of both Parties on the purchase markets for the Infringement 11 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
- (c) The objective of this concerted practice²¹³ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 11 Relevant Services. These objectives are reinforced by the evidence of BT's subjective intention, which it expressed to Sky, to ensure that it was aligned on pay with its competitors, and particularly with Sky (paragraph 4.114).

C.XII Infringement 12, involving IMG and Sky (January 2021)

4.120 The CMA finds that, on 8 January 2021, IMG and Sky exchanged information regarding their rates of pay for the Infringement 12 Relevant Services.²¹⁴ Sky initiated this contact, requesting information on IMG's rates of pay, whilst acknowledging the confidential nature of such information, and disclosing information on its own rates of pay. IMG then responded, disclosing its own information and noting the benefit to all parties of transparency. IMG witness evidence expanded on this benefit by explaining that it meant resisting IMG and Sky being played off against one another by freelancers.

Contact between Sky and IMG

4.121 On 8 January 2021 at 14:55, [Employee C] ([X], Sky) sent an email to [Employee C] (IMG) entitled '*off the record... Length of day & pay*', in which she wrote:

'I know this is probably very confidential, but I was hoping to check with you your EVS Op [Operator] pay rate. Our EVS crew have previously been paid [£300-£400] for up to a 12 hour ob [Outside Broadcast], but historically this was 1 match coverage.

A [sic] Operator mentioned to me the PLP [sic] pay [£400-£500] for up to 12 hours;

²¹³ See paragraph 4.8(e).

²¹⁴ Set out at Table 2 of Annex 1.

A) is that correct?

B) how many fixtures could they be working on in that 12 hour shift?

C) is that a buyout rate, so if they do 6 hours or 12 they get [£400-£500]?

D) what happens if they do 13 hours?

4.122 Less than two hours later, at 16:32, [Employee C] (IMG) replied:

'More than happy to share what we pay our EVS ops [Operators] but I also have to put it in context. We have EVS ops working in our studio galleries (day to day studio) those get [£400-£500] for a 12 hour shift.

We had to work out a different payment model for our EVS ops working across the live games as we were struggling to get ops to do the longer sessions (2 fixtures) for the same rate- We only pay [£300-£400] for an EVS op doing a single fixture.'

4.123 [Employee C] (IMG) also provided answers to each question within [Employee C]'s (Sky) email of 14:55 (reproduced below with [Employee C]'s (IMG) responses shown in bold):

*'A) is that correct? **Yes but not those in our studios who get [£400-£500] and EVS ops [Operators] only doing 1 game only get [£300-£400]***

*B) how many fixtures could they be working on in that 12 hour shift? **2 fixtures***

*C) is that a buyout rate, so if they do 6 hours or 12 they get [£400-£500] ? **Yes***

*D) what happens if they do 13 hours? **Capped at [£400-500]- on a 4 Match Saturday (non- concurrent k/o's [kick-offs]) we'd have 2 x EVS Ops [Operators] each getting [£400-£500] each doing 2 fixtures.'***

4.124 Finally, [Employee C] (IMG) noted: *'Hope all makes sense but do let me know if you need anything else. We are more than happy to be transparent as I think it benefits us all.'*²¹⁵

4.125 [Employee C] (IMG) acknowledged at interview that, in hindsight, and since having received competition law training, she would not send an email like this again.²¹⁶ She noted that the phrase *'I think it benefits us all'* meant that she thought that it

²¹⁵ See OHX-000000019.

²¹⁶ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 183.

helped the companies to know what others paid, as the companies get played off against each other.²¹⁷

Further context

- 4.126 Infringement 12 occurred contemporaneously with [Employee C] (IMG) setting as a work objective the leveraging of her industry relationships with her competitors to benchmark freelancer rates. Specifically, on 10 March 2021 at 13:26, [Employee C] (IMG) sent an email to [employee] (IMG), [employee] (IMG), [employee] (IMG) and [employee] (IMG), entitled ‘Goals.’ The email outlined [Employee C]’s (IMG) personal goals at work for that year, as well as how these aligned with her line managers’ goals. Her second goal was: ‘[...] *Using relationships with SKY and BT to benchmark freelance rates and work with IMG Studios on delivery of a new improved rate card*’.²¹⁸

Findings on concerted practice and restriction of competition by object

- 4.127 Based on the factual findings on IMG’s and Sky’s conduct made in paragraph 4.120 above and applying the legal findings in paragraphs 4.8 and 4.128, the CMA finds that IMG and Sky participated in a concerted practice with the object of restricting competition.
- 4.128 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:
- (a) The information concerned by this Infringement (pay information of IMG and Sky) was competitively sensitive.
 - (b) The conduct of IMG and Sky (in exchanging this information) was capable of removing the strategic uncertainty between them as regards the conduct of both Parties on the purchase market of the Infringement 12 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
 - (c) The objective of this concerted practice²¹⁹ is reinforced by the evidence of Sky’s subjective intention to request, and accept, IMG’s ‘*very confidential information*’ (paragraph 4.121), and IMG’s subjective intention to be transparent on pay for the Parties’ mutual benefit (paragraphs 4.122, 4.124 and 4.125).

²¹⁷ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 188.

²¹⁸ OHX-000000386.

²¹⁹ See paragraph 4.8(e).

C.XIII Infringement 13, involving BT and IMG (July 2021)

4.129 The CMA finds that, on 27 and 28 July 2021, BT and IMG exchanged information regarding their rates of pay in respect of the upcoming (2021/2022) season for the Infringement 13 Relevant Services.²²⁰ IMG initiated this contact, referring to a previous discussion in which BT indicated it would be happy to receive such requests. IMG disclosed information about its own rates of pay for the 2021/2022 season, explained that it thought that these needed to be adjusted for the 2022/2023 season, and requested information on BT's rates of pay. IMG stated that its objectives were to ensure that its rates were aligned with BT's and to avoid a bidding war. BT responded by disclosing detailed information on its own rates of pay for the 2021/2022 season. IMG used the information obtained from BT to inform its own rate card prices as well as other pricing decisions in subsequent months.

Context – initial approaches to BT by IMG

4.130 On 29 June 2021 at 08:42, [Employee C] (IMG) sent an email to [Senior Employee] (BT), in which she wrote:

'Need a favour please, There's a couple of rates I wanted to sense check with you. To determine if we are aligned with the rest of the industry.

You did say you have no issue.

*What's the best way of doing this. Email okay for you. Or would you rather we discuss on the phone.'*²²¹

4.131 The CMA has not seen a response to this. However, almost a month later, on 20 July 2021 at 13:39, [Employee C] (IMG) sent a WhatsApp message to [Senior Employee] (BT), in which she wrote: *'Need some help from you if you can spare 10 min somewhere tomorrow. Phone probably best unless you want to do on Teams/ Zoom. It [sic] re IR35²²² for on screen team and also f/i [freelancer] rates.'*²²³ From the evidence described in paragraph 4.132 below (*'gt [great] to catch up last week'*) the CMA infers that [Employee C] (IMG) and [Senior Employee] (BT) spoke to one another following this message. [Employee C] (IMG) also indicated at interview that this was likely.²²⁴

²²⁰ Set out at Table 2 of Annex 1.

²²¹ OHX-000000394.

²²² 'IR35' refers to off-payroll working rules, introduced by HMRC in 2021 to ensure that freelance workers paid broadly the same Income Tax and National Insurance as an employee would. The rules affected a significant number of freelancers engaged by the Parties and were therefore a topic of industry discussion around this time.

²²³ OHX-000012840.

²²⁴ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, pages 250 – 254.

Subsequent contact between IMG and BT

- 4.132 A week later, in a further WhatsApp exchange between [Senior Employee] (BT) and [Employee C] (IMG) which started at 10:58 on 27 July 2021, [Employee C] (IMG) wrote the following:

'Hiya [Senior Employee] (BT)- gt [great] to catch up last week [...]

So ito [in terms of] freelance rates(tx [thanks] for being willing to share)

Keen to know for 20/21 what u r paying:

Studio

Directors- [£500-£600]

VM's [Vision Mixers]- [£400-£500]

EVS ops [Operators] [£400-£500]

Sound Supers [Supervisors], [£400-£500]

SA's [Sound Assistants] [£300-£400]

Gallery PA's [Production Assistants] [£300-£400]

FM's [Floor Managers] [£300-£400]

Pierro Ops [Piero Operators] [£300-£400]

Jib ops [Jib Operators]- [£500-£600]

MUA's [Make-up Artists]- [£200-£300]

Cam Ops [Camera Operators] [£300-£400]

Runners - [£0-£100] p/h

Editors [£0-£100] p/h [£400-£500] buy out 12 hours. Min shift 6 hours

AP's [Assistant Producers] [£200-£300]

Producers [£300-£400]-[£300-£400]

VT COord [Videotape Coordinators]- [£300-£400]

I've added what we are currently paying (season 21/22)

Rates same for any shift from 8 up to 12 hours.

We're thinking some rates might need adjusting for 22/23 but want to be aligned. Wanted to be clear we have no intention of getting into a bidding war just want to be aligned and benchmark the rates. Also sick of being told we are not paying what others are which I inherently distrust.

Give me a shout when you have digested and we can compare or whatsapp back whatever is easier'.²²⁵

- 4.133 The following day, at 08:16, [Senior Employee] (BT) forwarded this WhatsApp message to his colleague, [Employee B] (BT), noting that he would 'explain at 10.00'.²²⁶
- 4.134 At interview, [Senior Employee] (BT) noted that it was possible that he had forwarded the message to [Employee B] (BT) in order to discuss with her what information he should provide to [Employee C] (IMG), given that [Employee B] (BT) was the administrator of BT's rate card.²²⁷
- 4.135 At 10:35 on the same day, [Senior Employee] (BT) sent two documents to [Employee C] (IMG) via WhatsApp, an Excel spreadsheet and a pdf, entitled '[<].xlsx' and '[<].pdf' respectively, noting: 'This should help'.²²⁸ At 19:13 [Employee C] (IMG) replied: 'Brilliant thanks [Senior Employee] (BT). This will help'.²²⁹
- 4.136 The documents consist of, respectively, Excel and pdf formats of the same spreadsheet, entitled:

*'RATE CARD – UPDATED FOR 2021 2022 SEASON'²³⁰ (VERSION 1)
LOCATIONS*

²²⁵ OHX-000000396.

²²⁶ OHX-000652501.

²²⁷ See OHX-000659444: CMA witness interview – [Senior Employee] (BT) – 8 March 2024, pages 217-218.

²²⁸ Although the documents themselves could not be extracted from the WhatsApp communication, [Senior Employee] (BT) confirmed at interview that these were the same documents as an Excel spreadsheet, entitled '[<].xlsx' (OHX-000549336), and a pdf, entitled '[<].pdf' (OHX-000549337), which he had attached to an email sent from his work email address to his personal email address at 10:34 on the same day (i.e. one minute before he sent the WhatsApp containing the documents with the same titles to [Employee C] (IMG)) – see OHX-000659444: CMA witness interview – [Senior Employee] – 8 March 2024, pages 205-207 and 222-223. [Employee C] (IMG) also confirmed at interview that these documents (i.e. the documents which [Senior Employee] (BT) had sent to himself) were the same as those that he had sent to her via WhatsApp – see OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 260.

²²⁹ OHX-000000396.

²³⁰ [Senior Employee] (BT) explained at interview that BT tended to want to have any rate increases in place by 1 August annually as this is when it considered the new football season to start – see OHX-000659444: CMA witness interview – [Senior Employee] (BT) – 8 March 2024, pages 17-18.

OUTSIDE BROADCAST
FIXED FACILITY

- 4.137 The spreadsheet lists a number of freelancer roles and their corresponding rates, including both low and high rates for a number of these.
- 4.138 [Employee C] (IMG) acknowledged at interview that she had taken the roles that she needed from this spreadsheet and used the information to inform IMG's rate card. She also stated that three roles had had their rates changed as a result of this information exchange – that of Studio Floor Managers, Make-up Artists and Sound Assistants.²³¹

Subsequent references by IMG to rate information provided by BT

- 4.139 The information obtained from BT through the exchanges described above continued to have currency within IMG and be referred to by [Employee C] (IMG) for a number of months following the receipt of that information.
- (a) On 5 October 2021, [Employee C] (IMG) sent an email to [employee] (IMG) and [employee] (IMG), in the context of an internal email chain discussing potential increases in freelancer rates, in which she noted: *'The benchmark from BT had TYP [TP – Technical Producer] rates between [£300-£400] and [£400-£500]. Very likely BT will increase next season to be in line with SKY's recent increases so yes let's change to [£400-£500] also given [Employee B] (IMG) has already agreed the increase'*.²³² [Employee C] (IMG) acknowledged at interview that her reference to the *'benchmark from BT'* would have been to the high and low rates included in BT's rate card document which [Senior Employee] (BT) had sent to her in July of that year.²³³
- (b) Subsequently, on 25 November 2021 at 22:09, [employee] (IMG) sent an email to [Employee C] (IMG) entitled *'PLP FMs'*, in which she asked: *'Do you know what range you pay your freelance FMs [Floor Managers] on PLP? Is it for a certain shift length?'* [Employee C] (IMG) replied at 08:22 the following day: *'From next season (August 2022) [sic] it's likely we will increase the FM rate to [£300-£400]. I did a benchmarking exercise (BT sport) for the pitch budgets and the rate we paid was lower than BT'*.²³⁴ Again, [Employee C] (IMG) confirmed at interview that the *'benchmarking exercise'* referred to here was the information exchange with BT described above.²³⁵

²³¹ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 265.

²³² OHX-000000399: Email from [Employee C] (IMG) to [employee] (IMG) and [employee] (IMG), entitled *'RE: PLP – Pitch budget – [%] increase freelancers'*, sent on 5 October 2021 at 17:46.

²³³ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 277.

²³⁴ OHX-000000401.

²³⁵ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 297.

- (c) The following year, on 4 March 2022 at 11:37, [Employee C] (IMG) wrote in an email to IMG colleagues, in the context of an internal email chain regarding a review of freelance Assistant Producer rates (as well as Director, EVS Operator and Editor roles): *'shall we catch up re this next week, as I did some benchmarking (with BT Sport) last July on all freelance rates'*.²³⁶ The following week, on 11 March 2022, in the context of a separate internal IMG email chain, entitled *'Benchmarking & F/L rates'*, regarding recent benchmarking carried out by IMG in relation to freelance Assistant Producer rates, [employee] (IMG) noted in an email sent at 14:14, which copied in [Employee C] (IMG): *'We did do some due diligence of our own'* and listed some figures arising from this.²³⁷ Again, [Employee C] (IMG) confirmed at interview that the reference to *'due diligence'* referred to here was the information exchange with BT described above.²³⁸
- (d) Finally, three months later, on 24 June 2022, in the context of an internal IMG email chain entitled *'Freelancer Rates'*, which discussed rates for freelance GFX Operators, following the notification by a freelance GFX designer that he was increasing his day rates, [employee] ([X], IMG) noted, in an email to [Employee C] (IMG) and [employee] (IMG) on 24 June 2022 at 17:17, that she *'[could not] see bench mark [sic] rates'* and asked [Employee C] (IMG) if she knew of these. At 17:38, [Employee C] (IMG) replied: *'Not sure on GFX ops [Operators] (with Kit) rates externally. Not something BT provided me with the other Benchmark rates [sic]'*.²³⁹ Again, [Employee C] (IMG) confirmed at interview that the *'benchmarking'* referred to here was the information exchange with BT described above.²⁴⁰

Findings on concerted practice and restriction of competition by object

- 4.140 Based on the factual findings on BT's and IMG's conduct made in paragraph 4.129 above and applying the legal findings in paragraphs 4.8 and 4.141, the CMA finds that BT and IMG engaged in a concerted practice with the object of restricting competition.
- 4.141 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:
- (a) The information concerned by this Infringement (future pay arrangements of BT and IMG, and future pay intentions of IMG) was competitively sensitive.
 - (b) The conduct of BT and IMG (in exchanging this information) was capable of removing strategic uncertainty between them as regards the conduct of both

²³⁶ OHX-000000403: Email chain is entitled *'Freelance AP rates'*.

²³⁷ OHX-000000408.

²³⁸ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 307.

²³⁹ OHX-000000406.

²⁴⁰ See OHX-000659438: CMA witness interview – [Employee C] (IMG) – 14 February 2024, page 310-311.

Parties on the purchase markets for the Infringement 13 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.

- (c) The objective of this concerted practice²⁴¹ also included to coordinate the conduct of the parties on the purchase markets for the Infringement 13 Relevant Services. These objectives are reinforced by the evidence of IMG's subjective intention, which it expressed to BT, to align with BT on its future rates of pay (paragraph 4.132).

C.XIV Infringement 14, involving BBC and BT (September 2021)

- 4.142 The CMA finds that, on or around 10 September 2021, BBC and BT exchanged information regarding their future intentions in respect of rates of pay for the Infringement 14 Relevant Services.²⁴² BBC initiated this contact, in the context of responding to rate increases announced by Sky, indicating that it did not want to increase its rates of pay if its competitors were not doing the same.

Context – communication of pay increase to OB suppliers by Sky

- 4.143 On 19 August 2021, Sky sent a document to its OB suppliers announcing a pay increase for Sky OB / Remote Freelance Crews of £[redacted] per day, effective from 1 September 2021, with a further increase of £[redacted] per day, effective from 1 April 2022. This document was then forwarded by [Freelancer 2] to BT. This was discussed internally by BT in late August, with BT noting that it was '£[redacted] p/d adrift of Sky on all the roles mentioned in [Sky's rate increase] letter'.²⁴³
- 4.144 This development was also discussed internally by BBC in late August and early September 2021, in the context of anticipating that OB companies used by BBC might request freelancer rate increases.²⁴⁴

Contact between BBC and BT

- 4.145 On 9 September 2021, BBC contacted BT by email querying whether BT was planning to match Sky's OB crew rate increase.²⁴⁵ The next day, [Senior Employee] (BT) replied, suggesting a discussion over the phone. In response, [Employee E]

²⁴¹ See paragraph 4.8(e).

²⁴² Set out at Table 2 of Annex 1.

²⁴³ OHX-000555668: Email from [Freelancer 2] to [employee] (BT) of 19 August 2021. This email was forwarded to [Senior Employee] (BT), [employee] (BT) and [Employee B] (BT) on the same date, with subsequent emails in the chain sent on 19 and 20 August 2021.

²⁴⁴ OHX-000652082: Email from [Employee D] (BBC) to [Employee E] (BBC), copied to [employee] (BBC), of 26 August 2021; email response of [employee] (BBC), copied to [employee] (BBC), of 8 September 2021; further emails, including response from [Employee E] (BBC); copied to [Employee A] (BBC) on 9 September 2021.

²⁴⁵ OHX-000652508: Email from [employee] (BBC) to [employee] (BT), copied to [Employee E] (BBC) and [Employee C] (BBC).

([§<], BBC) asked for confirmation that BT had not yet matched Sky's price increase. She went on to explain: *'we're under pressure from the OB supplier to match the Sky rates but don't want to be out of kilter and push market rates up if others aren't following suit.'* At 9.58am on the same day [Senior Employee] (BT) replied suggesting a phone call at around 11.30am.

4.146 From the evidence described below, the CMA finds that, during a telephone call between them on 10 September 2021, [Senior Employee] (BT) and [Employee E] (BBC) discussed their respective organisations' future pricing intentions in response to increases by Sky to its own rates of pay for OB crews. Evidence of the fact and contents of the call include:

- (a) Witness evidence from [Senior Employee] (BT) and [Employee E] (BBC), who both stated at interview that a telephone call had taken place between them on 10 September 2021.²⁴⁶
- (b) Further witness evidence from [Senior Employee] (BT), who stated that, on the call on 10 September 2021, he confirmed to [Employee E] (BBC) that it was likely that BT would need to match Sky's rate increases,²⁴⁷ and that [Employee E] (BBC) shared with him information about BBC's own intentions.²⁴⁸
- (c) Personal notes taken by [Employee E] (BBC), dated 10 September 2021 (a Friday) at 11:54 (i.e. 24 minutes after the time proposed for the call by [Senior Employee] (BT)), which included the following:

*'Another meeting on Monday to discuss – likely to hang on to 1st Jan – match from Jan. Look to increase by £[§<] from that point. [...]
I think we will end up caving ... put off for as long as we can.'*²⁴⁹

According to [Employee E] (BBC), those notes record what [Senior Employee] (BT) had described to her as being BT's position. The notes also record that: *'[Senior Employee] (BT) will call me next week.'*²⁵⁰

²⁴⁶ See OHX-000659445: CMA witness interview transcript – [Employee E] (BBC) – 6 December 2023, pages 129-130, and page 154-155, as well as OHX-000659444: CMA witness interview – [Senior Employee] (BT) – 8 March 2024, pages 243-246 and page 252.

²⁴⁷ See OHX-000659444: CMA witness interview transcript – [Senior Employee] (BT) – 8 March 2024, pages 242-243.

²⁴⁸ See OHX-000659444: CMA witness interview transcript – [Senior Employee] (BT) – 8 March 2024, pages 272-273.

²⁴⁹ [Employee E] (BBC) noted at interview that the references to 'we' in these notes was to BT rather than BBC: OHX-000659445: CMA witness interview transcript – [Employee E] (BBC) – 6 December 2023, pages 141-142. She also noted that whatever was in the notes was what was shared on the call – see OHX-000659445: CMA witness interview transcript – [Employee E] (BBC) – 6 December 2023, page 132. She therefore did not deny that she had discussed OB rates with [Senior Employee] (BT).

²⁵⁰ OHX-000652093: Email sent by [Employee E] (BBC) to herself on 10 September 2021 at 11:54. [Employee E] (BBC) noted at interview that she did not have a call with [Senior Employee] (BT) the following week, nor did she recall speaking again to him after this – see OHX-000659445: CMA witness interview transcript – [Employee E] (BBC) – 6 December 2023, page 133. [Senior Employee] (BT) concurred with this at interview: see OHX-000659444: CMA witness interview transcript – [Senior Employee] (BT) – 8 March 2024, page 245.

- (d) An email from [Employee E] (BBC) to BBC colleagues on 10 September 2021 at 11:57 (i.e. 27 minutes after the time proposed for the call by [Senior Employee] (BT):

*'I've just come off a call with BT and the headline is that they haven't increased their rates as yet. They have another meeting on Monday to agree but are essentially looking to hold off until Jan.'*²⁵¹

- (e) An email from [Employee E] (BBC) to BBC colleagues dated 13 September 2021 (i.e. the Monday after her conversation with [Senior Employee] (BT)) in which she noted the position that BT was taking: *'BT likely to hang on to 1st Jan and look to increase by £[X] from that point'*, adding: *'The overall view seems to be ride it out until December, then review and see where this lands.'*²⁵²
- (f) Personal notes of [Senior Employee] (BT) dated 12 October 2021 for the purposes of an internal BT discussion, which record: *'We will not consider a rise until Jan 15th. [...] Latest info BBC and [broadcaster] is they will not follow suit.'*²⁵³
- (g) A record of a subsequent internal BT rate discussion taking place on 26 October 2021, which included the following reference to BBC's intentions: *'BBC - No Rises but will if have to.'*²⁵⁴

Findings on concerted practice and restriction of competition by object

- 4.147 Based on the factual findings on BBC's and BT's conduct made in paragraph 4.142 above and applying the legal findings in paragraphs 4.8 and 4.148, the CMA finds that BBC and BT engaged in a concerted practice with the object of restricting competition.
- 4.148 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:
- (a) The information concerned by this Infringement (future pay intentions of BBC and BT) was competitively sensitive.
 - (b) The conduct of BBC and BT (in exchanging this information) was capable of removing strategic uncertainty between them as regards the conduct of both

²⁵¹ OHX-000652095: Email from [Employee E] (BBC) to [Employee C] (BBC), [employee] (BBC), [Employee A] (BBC), [Employee D] (BBC), [employee] (BBC), [employee] (BBC) and [employee] (BBC), sent at 11:57 on 10 September 2021 (i.e. just after the time [Senior Employee] (BT) had proposed for a call).

²⁵² OHX-000652103: Email from [Employee E] (BBC) on 13 September 2021 to [employee] (BBC), [Employee C] (BBC), [employee] (BBC), [employee] (BBC) and [employee] (BBC), and subsequently forwarded to colleagues [employee] (BBC) and [employee] (BBC).

²⁵³ See OHX-000000508: [Senior Employee] (BT) Evernote personal notes. [Senior Employee] (BT) noted at interview that this information had come from [Employee E] (BBC) - see OHX-000659444: CMA witness interview transcript – [Senior Employee] (BT) – 8 March 2024, page 264; 272-273.

²⁵⁴ See OHX-000081911: Personal notes of [Employee B] (BT), referencing a *'Rate Card Mtg 26/10/21'*.

Parties on the purchase markets for the Infringement 14 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.

- (c) The objective of this concerted practice²⁵⁵ also included to coordinate the conduct of the Parties on the purchase markets for the Infringement 14 Relevant Services. These objectives are reinforced by the evidence of BBC's subjective intention to coordinate on rates of pay (paragraph 4.145) and BT giving information in response to that stated intention (paragraph 4.146).

C.XV Infringement 15, involving BBC and IMG (October 2021)

- 4.149 The CMA finds that, between 14 and 21 October 2021, BBC disclosed to IMG information regarding its rates of pay for the Infringement 15 Relevant Services.²⁵⁶ IMG initiated this contact, requesting information on BBC's current and future rates of pay with the stated objective of ensuring that its rates were aligned with BBC's. BBC responded with this information.

Contact between BBC and IMG

- 4.150 On 14 October 2021 at 10:56, [Employee A] (IMG) sent an email to [Employee D] ([X], BBC) entitled '*Rate query*', requesting information on BBC's current and future rates of pay for freelance Floor Managers. In this he asked: '*Would you be happy in sharing what you pay currently, or what you will be paying next season? Really, I just want to ensure there isn't a large disparity from our side if possible*'.²⁵⁷
- 4.151 At 19:38 on 20 October 2021, [Employee D] (BBC) replied: '*[...] Our FM [Floor Manager] rate is [£200-£300]. This does move to [£300-£400] if a long day and we also pay for a travel day of [£100-£200].*'
- 4.152 At 11:05 the following day, [Employee A] (IMG) asked: '*[...] Do you pay travel day on all games?*'
- 4.153 At 14:23 [Employee D] (BBC) replied:
- 'Not all games no.*
- We try to crew locally so most of our FM's onsite only require the normal day rate or a long day depending on travel time.'*
- 4.154 At 15:01, [Employee A] (IMG) wrote:

²⁵⁵ See paragraph 4.8(e).

²⁵⁶ Set out at Table 2 of Annex 1.

²⁵⁷ OHX-000653566.

‘Same for us when it comes to crewing locally.’²⁵⁸

Findings on concerted practice and restriction of competition by object

- 4.155 Based on the factual findings on BBC’s and IMG’s conduct made in paragraph 4.149 above and applying the legal findings in paragraphs 4.8 and 4.156, the CMA finds that BBC and IMG engaged in a concerted practice with the object of restricting competition.
- 4.156 In addition to the findings set out at paragraph 4.8, in respect of this specific Infringement, the CMA finds that:
- (a) The information concerned by this Infringement (pay information of BBC) was competitively sensitive.
 - (b) The conduct of BBC (in giving this information) and IMG (in accepting this information) was capable of removing strategic uncertainty between BBC and IMG as regards, at least, the conduct of BBC (as the disclosing party) on the purchase market of the Infringement 15 Relevant Services, and reveals a sufficient degree of harm to competition to constitute an object infringement.
 - (c) The objective of this concerted practice²⁵⁹ also included to coordinate the conduct of the parties on the purchase markets for the Infringement 15 Relevant Services. The objectives are reinforced by the evidence of IMG’s subjective intention, which it expressed to BBC, to ensure alignment with BBC on rates of pay (paragraph 4.150).

D. Effect on trade within the UK

- 4.157 The CMA considers that, by its very nature, an agreement or concerted practice between competitors to share competitively sensitive information in respect of a UK market is likely to affect trade within the UK.
- 4.158 The CMA also notes that each of the 15 Infringements was implemented within the UK, affecting purchases of freelance services made by UK-based undertakings of UK-based freelancers involved in the production and broadcast of sports content.
- 4.159 Accordingly, the CMA finds that each of the 15 Infringements may have affected trade within the UK within the meaning of the Chapter I prohibition.

²⁵⁸ OHX-000653566.

²⁵⁹ See paragraph 4.8(e).

E. Appreciable effect on competition

- 4.160 Given that the CMA finds that each of the 15 Infringements has the object of restricting competition, the CMA therefore also finds that each of the 15 Infringements constitutes an appreciable restriction of competition.

F. Exclusion and exemption

- 4.161 The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of section 3 of the Competition Act 1998. The CMA finds that none of the exclusions from the Chapter I prohibition apply.

5. ATTRIBUTION OF LIABILITY

A. Identification of appropriate legal entity

- 5.1 For each Party which the CMA finds has infringed the Act, the CMA has first identified the legal entity involved in each Infringement. It has then determined whether liability for each Infringement should be shared with another legal entity forming part of the same undertaking, in which case each legal entity's liability will be joint and several.

B. Direct personal liability

- 5.2 Liability for an infringement of the Chapter I prohibition rests with the legal person(s) responsible for the operation of the undertaking at the time of the infringement (the 'personal responsibility' principle).²⁶⁰

C. Indirect personal liability

- 5.3 A parent company may be held jointly and severally liable for an infringement committed by its subsidiary – without the parent's knowledge or involvement²⁶¹ – where, as a matter of economic reality,²⁶² it exercised decisive influence over its subsidiary during its ownership period.²⁶³ In such circumstances, the parent company and its subsidiary form a single economic unit and therefore form a single undertaking.²⁶⁴ This assessment turns not only on intervention in, or supervision of, the subsidiary's commercial conduct in the strict sense,²⁶⁵ but on the economic, organisational and legal links between parent and subsidiary, which may be informal.²⁶⁶
- 5.4 If the subsidiary is wholly owned by the parent company, whether directly or indirectly,²⁶⁷ then the parent company is able to exercise decisive influence over the subsidiary and there is a rebuttable presumption in law that the parent did in fact exercise decisive influence over the commercial policy of the subsidiary.²⁶⁸

²⁶⁰ Judgment of 17 December 1991, *Enichem Anic SpA v European Commission* T-6/89, EU:T:1991:74, paragraphs 236-237.

²⁶¹ Judgment of 20 January 2011, *General Química SA v Commission* C-90/09 P, EU:C:2011:21, paragraph 102. See also *Akzo*, paragraphs 59 and 77.

²⁶² Judgment of 24 June 2015, *Del Monte v Commission* C-293/13 P, EU:C:2015:416, paragraphs 75-78.

²⁶³ See *Akzo*, paragraph 60; and judgment of 26 September 2013, *Dow v Commission* C-179/12 P, EU:C:2013:605.

²⁶⁴ See *Akzo*, paragraph 59; and *Sainsbury's Supermarkets Ltd v MasterCard* [2016] CAT 11, paragraph 363.

²⁶⁵ *Akzo*, paragraph 39.

²⁶⁶ Judgment of 11 July 2013, *Commission v Stichting Administratiekantoort Portielje and Gosselin Group NV* C-440/11, EU:C:2013:514; and *Akzo*.

²⁶⁷ Judgment of 8 May 2013, *Eni Spa v Commission* C-508/11 P, EU:C:2013:289, paragraph 48; judgment of 27 January 2021, *Goldman Sachs v Commission* C-595/18 P, EU:C:2021:73, paragraphs 32-33.

²⁶⁸ *Akzo*, paragraphs 60 and 61; judgment of 27 October 2010, *Alliance One & Others v European Commission* T-24/05, EU:T:2010:453, paragraphs 126-130.

D. Application to this case

D.I BBC

5.5 The CMA finds that BBC was directly involved in Infringements 6, 14 and 15, and therefore finds it liable for each of these three Infringements, as well as for the payment of any financial penalty imposed by the CMA in respect of each of the same.

5.6 This Decision is therefore addressed to the British Broadcasting Corporation.

D.II BT

5.7 The CMA finds that BT, through BT Sport, a division operated until August 2022 within BT's Consumer business unit, was directly involved in Infringements 2, 7, 10, 11, 13 and 14, and therefore finds it liable for each of these six Infringements, as well as for the payment of any financial penalty imposed by the CMA in respect of each of the same.

5.8 This Decision is therefore addressed to BT Group plc.

D.III IMG

5.9 The CMA finds that IMG Media Limited was directly involved in Infringements 4, 9, 10, 12, 13 and 15, and therefore finds it liable for each of these six Infringements, as well as for the payment of any financial penalty imposed by the CMA in respect of each of the same.

5.10 At the times of Infringements 4, 9, 10 and 12, IMG Media Limited was wholly owned by WME Entertainment Parent, LLC (which changed its name to Endeavor Operating Company, LLC, on 6 February 2019), which is presumed to have exercised a decisive influence over IMG Media Limited at those times. On the basis that a parent is presumed to exercise a decisive influence over the commercial policy of its wholly owned subsidiaries, the CMA finds Endeavor Operating Company, LLC jointly and severally liable with IMG Media Limited for Infringements 4, 9, 10 and 12.

5.11 At the times of Infringements 13 and 15, IMG Media Limited was wholly owned by Endeavor Group Holdings, Inc. On the basis that a parent is presumed to exercise a decisive influence over the commercial policy of its wholly owned subsidiaries, the CMA finds Endeavor Group Holdings, Inc. jointly and severally liable with IMG Media Limited for Infringements 13 and 15.

5.12 This Decision is therefore addressed to IMG Media Limited, Endeavor Operating Company, LLC, and Endeavor Group Holdings, Inc.

D.IV ITV

- 5.13 The CMA finds that ITV Broadcasting Limited was directly involved in Infringements 1, 2, 3, 5 and 8, and therefore finds it liable for each of these five Infringements, as well as for the payment of any financial penalty imposed by the CMA in respect of each of the same.
- 5.14 ITV Broadcasting Limited was wholly owned by ITV plc at the time of each of these five Infringements. On the basis that a parent is presumed to exercise a decisive influence over the commercial policy of its wholly owned subsidiaries, the CMA finds ITV plc jointly and severally liable with ITV Broadcasting Limited.
- 5.15 This Decision is therefore addressed to ITV Broadcasting Limited and ITV plc.

D.V Sky

- 5.16 The CMA finds that Sky UK Limited was directly involved in Infringements 1, 3, 4, 5, 6, 7, 8, 9, 11 and 12 and therefore finds it liable for each of these 10 Infringements.
- 5.17 At the times of Infringements 1, 3, 4, 5, 6, 7 and 8, Sky UK Limited was wholly owned by Sky plc (which changed its name to Sky Limited on 19 December 2018), which is presumed to have exercised decisive influence over Sky UK Limited at those times. On the basis that a parent is presumed to exercise a decisive influence over the commercial policy of its wholly owned subsidiaries, the CMA finds Sky Limited jointly and severally liable with Sky UK Limited for Infringements 1, 3, 4, 5, 6, 7 and 8.
- 5.18 This Decision is therefore addressed to Sky UK Limited and Sky Limited.

6. THE CMA'S ACTION

A. The CMA's decision

- 6.1 On the basis of the evidence set out in this Decision, the CMA has made a decision that the Parties have infringed Chapter I of the Act.

B. Financial penalties

- 6.2 Where the CMA makes a decision that an agreement or concerted practice has infringed the Chapter I prohibition, the CMA may require an undertaking which is a party to that agreement and/or concerted practice to pay a penalty in respect of the infringement if it is satisfied that the infringement has been committed intentionally or negligently.²⁶⁹
- 6.3 Sky approached the CMA for immunity on 26 May 2021 and was granted Type A immunity on 13 March 2025. No financial penalty will be imposed on Sky, provided that it meets the conditions of the immunity agreement between Sky and the CMA. Consequently, the CMA has not calculated the level of financial penalty that would be applied to Sky if immunity had not been granted.
- 6.4 No financial penalty will be imposed on ITV in respect of Infringement 2, or on IMG in respect of Infringements 9 and 15, on the basis that they satisfy the 'but for' test under the CMA's leniency policy.²⁷⁰ Consequently, the CMA has not calculated the level of financial penalty that would be applied to ITV and IMG in respect of these Infringements.

B.1 Intention/negligence

- 6.5 The CMA is not obliged to specify whether it considers the infringement to be intentional or merely negligent for the purposes of determining whether it may exercise its discretion to impose a penalty.²⁷¹ The CAT has defined the terms 'intentionally' and 'negligently' as follows:

'...an infringement is committed intentionally for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition. An infringement is committed negligently for the purposes of

²⁶⁹ Sections 36(1) and 36(3) of the Act.

²⁷⁰ Where a CMA investigation covers multiple related infringements, and the CMA would not have investigated a particular infringement involving the applicant 'but for' evidence provided by that applicant, the applicant would not be penalised for the particular infringement in question, even though it is granted a reduction in penalties, rather than corporate immunity, for the wider investigation (see paragraph 9.7 of OFT1495).

²⁷¹ *Napp*, paragraphs 453 to 457. See also judgment of 25 March 1996, *SPO and Others v Commission* C-137/95 P, EU:C:1996:130, paragraphs 53-57.

*section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition.*²⁷²

- 6.6 It is sufficient to show that the undertaking could not have been unaware that its conduct had the object, or would have the effect, of restricting competition, without it being necessary to show that the undertaking also knew that it was infringing the Chapter I prohibition.²⁷³ In some cases, the fact that certain consequences are plainly foreseeable is an element from which the requisite intention may be inferred.²⁷⁴
- 6.7 As set out in paragraph 4.6, the CMA has concluded that each of the 15 Infringements constitute a separate concerted practice that had as its object the restriction of competition. At a minimum, the objective of the concerted practices was to share or exchange information that removed, or at least reduced, uncertainty between the Parties regarding the rates of pay, an important parameter of competition, thereby dampening competition for the purchase of the Relevant Services.²⁷⁵ It follows that the Parties must have been aware, or cannot have been unaware, that their conduct in respect of the Infringements had the object of restricting competition. At the very least, the Parties ought to have known that the conduct would result in a restriction of competition.
- 6.8 Ignorance or a mistake of law does not prevent a finding of intentional infringement.²⁷⁶
- 6.9 Accordingly, the CMA concludes that each of the Infringements was committed intentionally, or at least negligently, by the Parties.
- 6.10 The CMA considers that it is appropriate in the circumstances of this case to exercise its discretion under section 36(1) of the Act to impose a financial penalty on each of the Parties in respect of each of the Infringements in which it participated.²⁷⁷ In determining such penalties, the CMA has had regard to the seriousness of the infringement and the desirability of deterring similar conduct in the future in accordance with section 36(7A) of the Act.

B.II The CMA's margin of appreciation in determining the appropriate penalty

- 6.11 Provided that:

²⁷² *Argos Limited and Littlewoods Limited v OFT* [2006] CAT 13, paragraph 221. See also *Napp*, paragraph 456.

²⁷³ *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director of Fair Trading* [2002] CAT 1 at [456].

²⁷⁴ *Ibid.*

²⁷⁵ See paragraph 4.8 above.

²⁷⁶ Judgment of 18 June 2013, *Bundeswettbewerbsbehörde and Bundeskartellamt v Schenker & Co. AG and Others C – 681/11*, EU: C: 2013:404, paragraph 38.

²⁷⁷ Save for Sky in respect of all its Infringements, ITV in respect of Infringement 2, and IMG in respect of Infringements 9 and 15, for the reasons set out at paragraphs 6.3 and 6.4 above.

- (a) the penalties it imposes in a particular case are within the range of penalties permitted by section 36(8) of the Act and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000;²⁷⁸ and
- (b) it has had regard to the Penalty Guidance in accordance with section 38(8) of the Act,²⁷⁹

the CMA has a margin of appreciation when determining the appropriate amount of a penalty under the Act.²⁸⁰ The CMA is not bound by its decision in relation to the calculation of financial penalties in previous cases.²⁸¹ Rather, the CMA makes its assessment on a case-by-case basis²⁸² having regard to all relevant circumstances and the objectives of its policy on financial penalties.

C. Calculation of the financial penalties

- 6.12 In accordance with section 38(8) of the Act, the CMA must have regard to the guidance on penalties in force at the time when setting the amount of the penalty. The Penalty Guidance sets out a six-step approach for calculating the penalty.²⁸³

C.I Step 1 – starting point

- 6.13 The starting point for determining the level of financial penalty which will be imposed on an undertaking is calculated having regard to the seriousness of the infringement and the need for general deterrence, and the relevant turnover of the undertaking.²⁸⁴ This is a case-specific assessment, taking into account overall: how likely it is for the type of infringement at issue, by its nature, to harm competition; the extent and likelihood of harm to competition in the specific relevant circumstances of the individual case; and whether the starting point is sufficient for the purpose of general deterrence.²⁸⁵

Percentage starting point

- 6.14 As set out in paragraph 4.6, all of the Infringements had as their object the restriction of competition and the CMA has considered them to be cartel conduct for the purposes of its leniency policy. They concern the exchange of competitively

²⁷⁸ SI 2000/309.

²⁷⁹ CMA's Guidance as to the appropriate amount of a penalty (CMA73) – 16 December 2021 ('Penalty Guidance')

²⁸⁰ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at [168] and *Umbro Holdings and Manchester United and JJB Sports and Allsports v OFT* [2005] CAT 22, at [102].

²⁸¹ See, for example, *Eden Brown and Others v OFT* [2011] CAT 8 (Eden Brown), at [78].

²⁸² See, for example, *Kier Group and Others v OFT* [2011] CAT 3, at [116] where the CAT noted that '*other than in matters of legal principle there is limited precedent value in other decisions relating to penalties, where the maxim that each case stands on its own facts is particularly pertinent*'. See also *Eden Brown*, at [97] where the CAT observed that '*[d]ecisions by this Tribunal on penalty appeals are very closely related to the particular facts of the case*'.

²⁸³ Penalty Guidance, paragraph 2.1. See also footnote 13 of the Penalty Guidance, which applies in multi-party cases.

²⁸⁴ Penalty Guidance, paragraphs 2.2 to 2.13.

²⁸⁵ Penalty Guidance, paragraph 2.4.

sensitive information (that is, information about pay) in respect of the purchase of freelance labour. The conduct of the Parties in each Infringement increased transparency and reduced the strategic uncertainty between the Parties to each Infringement as regards their conduct on the purchase market(s) for the Relevant Services. In some cases, the objective of the concerted practice also included the coordination of conduct on the relevant purchase market(s).

- 6.15 In light of the above, the CMA concludes that it is appropriate to use a starting point within the 21 to 30% range, which the CMA applies for the most serious types of infringement, including cartel activities.²⁸⁶
- 6.16 In addition to the type of infringement, the CMA considers that the following factors are relevant in determining the appropriate starting point in this case:²⁸⁷
- (a) **Structure of the market** - During the period in which each of the Infringements took place, the Parties had a significant presence in the production and/or broadcasting of sports content in the UK. The Parties also spent significant sums on procuring freelance labour to support that activity and together accounted for a significant proportion of that purchasing market.
 - (b) **Market coverage** - All of the Parties had a material market presence, such that even though each Infringement only involved two Parties that represented a significant amount of the demand for the Relevant Service(s) for each Infringement.
 - (c) **Potential effect of Infringements on third parties** - The conduct may have harmed, or at least had the potential to harm, freelancers by putting downward pressure on wages. However, the potential to cause harm is limited to some extent at least by the fact that there was some transparency in the market (including via OB service providers and freelancers themselves).
 - (d) **Purchasing cartels** - Purchasing cartels tend to lower (rather than increase) prices and consequently result in smaller relevant expenditure. This means that a higher starting point percentage may be needed properly to reflect the seriousness of the Infringements.
- 6.17 Finally, the CMA has also considered whether the starting point is sufficient for the purpose of deterring other undertakings, whether in the same market or more broadly, from engaging in the same or similar conduct.²⁸⁸
- 6.18 The CMA has considered the percentage starting point on an Infringement-by-Infringement basis and, whilst recognising that the content of each Infringement

²⁸⁶ Penalty Guidance, paragraph 2.5.

²⁸⁷ Penalty Guidance, paragraph 2.7.

²⁸⁸ Penalty Guidance, paragraph 2.8.

differs, has concluded that all the Infringements are sufficiently similar in terms of seriousness to warrant the same starting point.

- 6.19 Taking all of these factors in the round, the CMA has concluded that a starting point of 22% is appropriate in this case for each of the Infringements to reflect the seriousness of each Infringement and the need for general deterrence.

Relevant turnover

- 6.20 The relevant turnover is the turnover of the undertaking in the relevant product and geographic market affected by the infringement in the undertaking's last business year; that is, the financial year preceding the date when the infringement ended.²⁸⁹ In certain circumstances it may be appropriate to use a different figure as reflecting the true scale of an undertaking's activities in the relevant market.²⁹⁰
- 6.21 In this case, the CMA has used the relevant expenditure,²⁹¹ not the relevant turnover, of the Settling Parties in the markets affected by the Infringements for the purposes of determining the financial penalty. The CMA has taken this approach because the Infringements concern the amount paid for the purchase of labour provided by freelancer workers.
- 6.22 The Relevant Services, relevant business years and relevant expenditures for each of the Settling Parties are set out in **Annex 1** and **Annex 2**.

Conclusion on step 1

- 6.23 Taking the above into account, the penalties for each Settling Party at the end of step 1 are:

Infringement	Penalty at end of step 1
BBC	
6	£502,306
14	£247,052
15	£59,908
BT	
2	£1,610
7	£634,848
10	£118,209
11	£171,594

²⁸⁹ Penalty Guidance, paragraph 2.10.

²⁹⁰ Penalty Guidance, paragraph 2.11.

²⁹¹ Relevant expenditure includes expenditure on directly and indirectly hired freelancers; does not include Value Added Tax; does not include National Insurance Contributions; does not include associated costs (such as expenditure that covers reimbursement of, or payments made to facilitate, freelancers' expenditure on accommodation, travel and food, and per diem allowances or expenses claims); and is rounded to the nearest pound.

Infringement	Penalty at end of step 1
13	£1,162,937
14	£467,349
IMG	
4	£599,922
10	£158,781
12	£188,471
13	£2,673,284
ITV	
1	£223,762
3	£33,253
5	£222,951
8	£258,987

C.II Step 2 – duration

- 6.24 The amount resulting from step 1 may be increased or, in particular circumstances, decreased to take into account the duration of the infringement.²⁹²
- 6.25 Where the total duration of an infringement is less than one year, the CMA will treat the duration as a full year for the purpose of calculating the number of years of the infringement. In exceptional circumstances, the starting point may be decreased where the duration of the infringement is less than one year.²⁹³
- 6.26 In this case, the CMA found that the duration of each of the Infringements was less than one year. The CMA does not consider that in this case there are any exceptional circumstances requiring a departure from the standard approach such as to warrant a multiplier of less than one.²⁹⁴ The CMA has therefore applied a multiplier of one to the figure reached at the end of step 1.

C.III Step 3 – adjustment for aggravating and mitigating factors

- 6.27 The amount resulting from step 2 may be increased where there are aggravating factors, or decreased where there are mitigating factors.²⁹⁵ The CMA does not consider that there are any aggravating factors and has applied no uplift to any of the Settling Parties' penalties.

²⁹² Penalty Guidance, paragraph 2.14.

²⁹³ Penalty Guidance, paragraph 2.14.

²⁹⁴ See also *Apex Asphalt and Paving Co Ltd v OFT* [2005] CAT 4, at [278], in which the CAT found that it was appropriate and reasonable not to make any downward adjustment for duration given that the effect of collusive tendering has a potential continuing impact on future tendering processes by the same tenderers; and that once a contract has been awarded following an anti-competitive tender, the anti-competitive effect is irreversible in relation to that tender.

²⁹⁵ Penalty Guidance, paragraphs 2.15 to 2.18.

- 6.28 The CMA considers that the BBC's overall approach during the CMA's investigation enabled the enforcement process to be concluded more effectively and/or speedily. This includes, but is not limited to, making one individual available for voluntary interview and engaging constructively with various aspects of the CMA's investigation. The CMA therefore considers that it is appropriate to apply a reduction 5% to BBC's penalties at this step.
- 6.29 BT, IMG and ITV, who are each benefitting from the CMA's leniency programme, have not received an additional reduction in financial penalties under this head (since continuous and complete cooperation is a condition of leniency).²⁹⁶

Conclusion on step 3

- 6.30 Taking the above into account, the penalties at the end of step 3 for BT, IMG and ITV remain unchanged. For BBC, the penalties at the end of step 3 are:

Infringement	Penalty at end of step 3
BBC	
6	£477,191
14	£234,699
15	£56,913

C.IV Step 4 – adjustment for specific deterrence

- 6.31 The penalty figure reached after steps 1 to 3 may be increased to ensure that the penalty to be imposed on the undertaking is sufficient to deter it from breaching competition law in the future. The CMA may take account of the undertaking's specific size and financial position, and any other relevant circumstances of the case.²⁹⁷ When assessing an undertaking's financial position, the CMA will generally take into account the undertaking's worldwide turnover as the primary indicator of the size of the undertaking and its economic power, unless the circumstances of the case indicate other metrics are more appropriate.²⁹⁸
- 6.32 In this case, in addition to each of the Settling Party's worldwide turnover, the CMA also took account of their average expenditure on freelancers supporting the production and/or broadcasting of sports content in the UK. Having regard to the factors set out in paragraphs 2.20 to 2.23 of the Penalty Guidance, the CMA considers that the penalties at the end of step 3 are sufficient to achieve deterrence for each Settling Party, and do not require any increase for specific deterrence.

²⁹⁶ Penalty Guidance, footnote 31.

²⁹⁷ Penalty Guidance, paragraph 2.19.

²⁹⁸ Penalty Guidance, paragraph 2.20.

C.V Step 5 – adjustment to check that the penalty is proportionate and prevent the maximum penalty being exceeded

- 6.33 At step 5, the CMA will take a step back to check whether, in its view, the overall penalty reached after step 4 is proportionate ‘in the round’,²⁹⁹ taking account of the factors set out in paragraph 2.26 of the Penalty Guidance. In this case, in addition to the Settling Parties’ size and financial position, the CMA has also taken into account their average annual expenditure on freelance labour.
- 6.34 The CMA notes that there is some overlap in BT’s and IMG’s respective relevant expenditure for applicable Infringements numbered 10 to 14.³⁰⁰ The CMA has considered whether the fact that, as a result, some of BT’s and IMG’s relevant expenditure has been factored into their aggregate penalties more than once (that is, it was ‘double-counted’) means that BT’s and IMG’s penalties need to be adjusted for proportionality. Having considered BT’s and IMG’s penalties in aggregate and on the basis of an ‘in the round’ assessment, the CMA does not consider them to be disproportionate.
- 6.35 In sum, having considered all relevant factors in the round, the CMA concluded that all of the Settling Parties’ penalties after step 4 are proportionate on both:
- (a) a per-Infringement basis, with the sole exception of the penalty on the BBC for Infringement 6 (see below); and
 - (b) an aggregate basis for each of the Settling Parties.

Infringement 6

- 6.36 The CMA has considered whether the BBC’s penalty for Infringement 6 required an adjustment for proportionality. Infringement 6 concerned the exchange of competitively sensitive information related to an isolated period of additional pay rather than normal rates of pay (namely additional payments for the Boxing Day and New Year public holidays of 2016/17). Furthermore, expenditure on those additional payments was many times smaller than the expenditure on pay across the financial year for the Relevant Services that the CMA used as its starting point for the Infringement 6 penalty calculation.
- 6.37 On the other hand, the information exchanged related to payments for freelance labour in a period of likely greater competitive intensity, and the exchange of that information was capable of reducing competitive uncertainty between the BBC and

²⁹⁹ Penalty Guidance, paragraph 2.25.

³⁰⁰ This applies to BT in respect of its penalties for Infringements 10 and 11, and 13 and 14, and IMG in respect of its penalties for Infringements 12 and 13.

Sky as regards their responses at similar times of increased demand and/or limited labour supply.

- 6.38 Taking the above into account, the CMA has concluded that the penalty on the BBC after step 4 is disproportionate and that a reduction of 50% should be applied.

Conclusion on step 5

- 6.39 Taking the above into account, the penalties at the end of step 5 for each of the Settling Parties are:

Infringement	Penalty at end of step 5
BBC	
6	£238,595
14	£234,699
15	£56,913
Total	£530,208
BT	
2	£1,610
7	£634,848
10	£118,209
11	£171,594
13	£1,162,937
14	£467,349
Total	£2,556,548
IMG	
4	£599,922
10	£158,781
12	£188,471
13	£2,673,284
Total	£3,620,458
ITV	
1	£223,762
3	£33,253
5	£222,951
8	£258,987
Total	£738,952

C.VI Step 6 – application of reductions including under the CMA’s leniency programme, settlement and approval of voluntary redress schemes

Leniency

- 6.40 BT has admitted its involvement in Infringements 2, 7, 10, 11, 13 and 14 and signed a leniency agreement with the CMA dated 13 March 2025. Provided BT continues to co-operate and comply with the conditions of the leniency agreement, BT will benefit from a leniency discount of 15%.
- 6.41 IMG has admitted its involvement in Infringements 4, 9, 10, 12, 13 and 15 and signed a leniency and immunity agreement with the CMA dated 13 March 2025.³⁰¹ Provided IMG continues to co-operate and comply with the conditions of the leniency and immunity agreement, IMG will benefit from a leniency discount of 40%.³⁰²
- 6.42 ITV has admitted its involvement in Infringements 1, 2, 3, 5 and 8 and signed a leniency and immunity agreement with the CMA dated 13 March 2025.³⁰³ Provided ITV continues to co-operate and comply with the conditions of the leniency agreement and immunity agreement, ITV will benefit from a leniency discount of 42.5%.³⁰⁴

Settlement

- 6.43 The CMA will apply a penalty reduction where an undertaking settles with the CMA, which will involve, among other things, the undertaking admitting its participation in the infringement.³⁰⁵
- 6.44 As the Settling Parties agreed to settle the case with the CMA, which included admitting the facts and legal characterisation of the relevant Infringements and agreeing not to appeal any infringement decision in the Competition Appeal Tribunal or to challenge any infringement decision through judicial review in any other competent court or tribunal in the United Kingdom, the CMA has reduced each Settling Party’s penalty by 20%.

³⁰¹ The CMA awarded IMG immunity in respect of Infringements 9 and 15. This was on the basis that the ‘but for’ test applied in relation to evidence provided by IMG for Infringements 9 and 15 (see paragraph 9.7 of OFT1495).

³⁰² This 40% discount comprises a 35% discount in connection with the conduct set out in this Decision and an additional 5% ‘Leniency Plus’ discount as per paragraphs 9.1 to 9.4 of OFT1495.

³⁰³ The CMA awarded ITV immunity in respect of Infringement 2. This was on the basis that the ‘but for’ test applied in relation to evidence provided by ITV for Infringement 2 (see paragraph 9.7 of OFT1495).

³⁰⁴ This 42.5% reduction comprises a 35% discount in connection with conduct set out in this Decision and an additional 7.5% ‘Leniency Plus’ discount as per paragraphs 9.1 to 9.4 of OFT1495.

³⁰⁵ Penalty Guidance, paragraph 2.31.

C.VII Penalties imposed by the CMA

6.45 In light of the above, the CMA considers the following penalties to be appropriate in the circumstances of this case:

- (a) BBC: £424,165
- (b) BT: £1,738,453
- (c) IMG: £1,737,820
- (d) ITV: £339,918

D. Payment of penalty

6.46 The CMA therefore requires:

- (a) BBC to pay a penalty of **£424,165**
- (b) BT to pay a penalty of **£1,738,453**
- (c) IMG to pay a penalty of **£1,737,820**
- (d) ITV to pay a penalty of **£339,918**

6.47 The penalties must be paid to the CMA by close of banking business on 22 May 2025.

E. Directions

6.48 Section 32(1) of the Act provides that if the CMA has made a decision that an agreement infringes the Chapter I prohibition, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.

6.49 As the CMA finds that each of the Infringements has already come to an end, it will not issue directions in this case.

Lucília Falsarella Pereira

Senior Director, Competition Enforcement

for and on behalf of the Competition and Markets Authority

ANNEX 1: RELEVANT SERVICES

Infringements	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Relevant Services															
<i>Assistant Producers</i>													E		
<i>Camera Operators</i>	OB			OB	OB & E	OB	E	OB	OB				E	OB	
<i>Directors / Studio Directors</i>													E		
<i>Editors</i>													E		
<i>EVS Operators</i>	OB			OB	OB & E	OB	E	OB	OB			E	E	OB	
<i>Floor Managers / Studio Floor Managers</i>													E		E
<i>Gallery Production Assistants</i>													E		
<i>Jib Operators</i>													E		
<i>Makeup Artists</i>													E		
<i>Producers</i>			E										E		
<i>Production Assistants / Script Supervisors</i>			E												
<i>Runners</i>													E		
<i>Sound Guarantees</i>				E											
<i>Sound Supervisors</i>					E						E		E		
<i>Sound Technicians</i>	OB			OB	OB & E	OB	E	OB	OB	E	E		E	OB	
<i>Technical Producers</i>		E													
<i>Vision Engineers</i>					E		E								
<i>Vision Guarantees</i>				E											
<i>Vision Mixers</i>										E			E		
<i>VT Coordinators</i>													E		

Table 1: Illustration of the Relevant Services for each Infringement

Key

1. E – the information disclosed or exchanged relates expressly to a particular freelancer role or roles
2. OB – the information disclosed or exchanged relates to freelancer roles forming part of any ‘Outside Broadcast Crew’

Table 2: Description of the Relevant Services for each Infringement

Infringement	Relevant Services
Infringement 1, involving ITV and Sky (March 2014)	Freelance Camera Operators, EVS Operators, and Sound Technicians engaged directly or indirectly by ITV and Sky.
Infringement 2, involving BT and ITV (August 2014)	Freelance Technical Producers engaged directly or indirectly by BT and ITV.
Infringement 3, involving ITV and Sky (Autumn 2015)	Freelance Producers and Production Assistants (also known as Script Supervisors) engaged directly or indirectly by ITV and Sky.
Infringement 4, involving IMG and Sky (April 2016)	Freelance Camera Operators, EVS Operators, Sound Guarantees, Sound Technicians, and Vision Guarantees engaged directly or indirectly by IMG and Sky.
Infringement 5, involving ITV and Sky (April 2016 – January 2017)	Freelance Camera Operators, EVS Operators, Sound Supervisors, Sound Technicians, and Vision Engineers engaged directly or indirectly by ITV and Sky.
Infringement 6, involving BBC and Sky (July-November 2016)	Freelance Camera Operators, EVS Operators, and Sound Technicians engaged directly or indirectly by BBC and Sky.
Infringement 7, involving BT and Sky (Spring 2018)	Freelance Camera Operators, EVS Operators, Sound Technicians, and Vision Engineers engaged directly or indirectly by BT and Sky.
Infringement 8, involving ITV and Sky (May 2018)	Freelance Camera Operators, EVS Operators, and Sound Technicians engaged directly or indirectly by ITV and Sky.
Infringement 9, involving IMG and Sky (July 2019)	Freelance Camera Operators, EVS Operators, and Sound Technicians engaged directly or indirectly by IMG and Sky.
Infringement 10, involving BT and IMG (December 2020)	Freelance Sound Technicians and Vision Mixers engaged directly or indirectly by BT and IMG.
Infringement 11, involving BT and Sky (Winter 2020/2021)	Freelance Sound Supervisors and Sound Technicians engaged directly or indirectly by BT and Sky.
Infringement 12, involving IMG and Sky (January 2021)	Freelance EVS Operators engaged directly or indirectly by IMG and Sky.

Infringement	Relevant Services
Infringement 13, involving BT and IMG (July 2021)	Freelance Assistant Producers, Camera Operators, Directors (also known as Studio Directors), Editors, EVS Operators, Floor Managers (also known as Studio Floor Managers), Gallery Production Assistants, Jib Operators, Makeup Artists, Producers, Runners, Sound Supervisors, Sound Technicians, Vision Mixers, and VT Coordinators engaged directly or indirectly by BT and IMG.
Infringement 14, involving BBC and BT (September 2021)	Freelance Camera Operators, EVS Operators, and Sound Technicians engaged directly or indirectly by BBC and BT.
Infringement 15, involving BBC and IMG (October 2021)	Freelance Floor Managers (also known as Studio Floor Managers) engaged directly or indirectly by BBC and IMG.

Table 3: The Relevant Services and their functions in the production and broadcasting of sports content

Relevant Services of freelance:	Explanation
Assistant Producers	Assistant Producers support the Producer and production generally, and help to plan the recording or live transmission and ensure the contributors know what is expected of them on the day.
Camera Operators	Camera Operators are responsible for controlling camera equipment during rehearsal, recording, or live transmission. As defined, Camera Operators excludes operators of specialist camera equipment such as Steadicams or aerial/drone cameras.
Directors (aka Studio Directors)	Directors are responsible for the overall look/feel of the production or broadcast, running the programme from moment to moment. They will likely direct the camera crew, guide the lighting and sound team, cue presenters, pundits, commentators, etc, and set the overall pace and style of the production or broadcast.
Editors	Editors in a sports context create short films / graphics to be inserted into the live broadcast. They also create highlights from the live shows.
EVS Operators	EVS Operators are responsible for operating specialist, industry standard EVS technology to provide slow-motion and instant replays of action sequences during sports broadcasts.
Floor Managers (aka Studio Floor Managers)	Floor Managers oversee preparation of the studio for rehearsals and transmission, and manage presenters and contributors, ensuring they are in the right place at the right time. They are also responsible for ensuring presenters and contributors are prompted to start and end contributions in line with programme requirements.

Relevant Services of freelance:	Explanation
Gallery Production Assistants	Gallery Production Assistants work in the Gallery and are responsible for ensuring that live programming runs to time.
Jib Operators	Jib Operators are responsible for using a special 'crane' to which a camera is attached. It is used to capture overhead or sweeping shots.
Makeup Artists	Makeup Artists are responsible for preparing on-screen individuals (such as pundits or presenters) with appropriate makeup.
Producers	Producers are responsible for planning and executing the overall production of a sports broadcast event or show.
Production Assistants (aka Script Supervisors)	Production Assistants are responsible for ensuring the continuity of production, including running orders and timing.
Runners	Runners are responsible for assisting the production team with low-level practical tasks so that the production runs smoothly. Examples might include ensuring that individuals (such as presenters) are shown to the correct place.
Sound Guarantees	Sound Guarantees ensure that all sound equipment that is used in a broadcast or recording operates reliably.
Sound Supervisors	Sound Supervisors are responsible for overseeing and leading the work of the sound department.
Sound Technicians	The CMA notes that a variety of role titles are used in the industry interchangeably to describe the profession of technicians in the sound department, such as Floor Sound Engineers, Sound Recordists, Sound Assistants and Assistant Audio Engineers. The role of Sound Technicians as defined: captures these roles, all of which entail technical services in relation to the fixing, fitting or setting up of microphones and

Relevant Services of freelance:	Explanation
	sound equipment and the capturing of sound; but excludes other sound department roles performing different functions, such as Sound Supervisors (defined above), Sound Guarantees (defined above), and Sound Mixers.
Technical Producers	Technical Producers oversee the technical/engineering set-up and make decisions regarding technical issues to ensure a smooth operation.
Vision Engineers	Vision Engineers are responsible for the maintenance and function of all video equipment.
Vision Guarantees	Vision Guarantees are responsible for ensuring that all parts of the 'vision chain' work – from cameras in a studio or location to monitors in the gallery. They are also responsible for balancing pictures.
Vision Mixers	Vision Mixers are responsible for selecting and cutting the appropriate camera angle that will be broadcast to viewers.
VT Coordinators	VT Coordinators are responsible for overseeing and selecting pre-recorded inserts into a broadcast.

ANNEX 2: Consolidated penalty calculation tables

Table 4: BBC

INFRINGEMENTS		6	14	15
	Relevant business year (ending)	31 Mar 2016	31 Mar 2021	31 Mar 2021
	Expenditure	£2,283,210	£1,122,963	£272,311
PENALTY CALCULATIONS				
Step 1 - Starting point	Starting point	22%	22%	22%
	Penalty after Step 1	£502,306	£247,052	£59,908
Step 2 - Duration	Duration multiplier	1	1	1
	Penalty after Step 2	£502,306	£247,052	£59,908
Step 3 - Adjustment for aggravating and/or mitigating factors	Total aggravating uplift	0%	0%	0%
	Total mitigating reduction	5%	5%	5%
	Penalty after Step 3	£477,191	£234,699	£56,913
Step 4 - Deterrence	Adjustment for deterrence	0%	0%	0%
	Penalty after Step 4	£477,191	£234,699	£56,913
Step 5a - Proportionality	Adjustment for proportionality	50%	0%	0%
	Penalty after Step 5a	£238,595	£234,699	£56,913
Step 5b - Worldwide Turnover Test	10% of worldwide turnover	£539,000,000	£539,000,000	£539,000,000
	Penalty after Step 5b	£238,595	£234,699	£56,913
COMBINED PENALTY AFTER STEP 5		£530,208		
Step 6 - Leniency and Settlement Discounts	Leniency discount	0%	0%	0%
	Settlement discount	20%	20%	20%
	Penalty after Step 6	£190,876	£187,759	£45,530
COMBINED PENALTY AFTER STEP 6		£424,165		

Table 5: BT

INFRINGEMENTS		2	7	10	11	13	14
	Relevant business year (ending)	31 Mar 2014	31 Mar 2018	31 Mar 2020	31 Mar 2020	31 Mar 2021	31 Mar 2021
	Expenditure	£7,319	£2,885,673	£537,315	£779,974	£5,286,079	£2,124,312
PENALTY CALCULATIONS							
Step 1 - Starting point	Starting point	22%	22%	22%	22%	22%	22%
	Penalty after Step 1	£1,610	£634,848	£118,209	£171,594	£1,162,937	£467,349
Step 2 - Duration	Duration multiplier ⁴	1	1	1	1	1	1
	Penalty after Step 2	£1,610	£634,848	£118,209	£171,594	£1,162,937	£467,349
Step 3 - Adjustment for aggravating and/or mitigating factors	Total aggravating uplift	0%	0%	0%	0%	0%	0%
	Total mitigating reduction	0%	0%	0%	0%	0%	0%
	Penalty after Step 3	£1,610	£634,848	£118,209	£171,594	£1,162,937	£467,349
Step 4 - Deterrence	Adjustment for deterrence	0%	0%	0%	0%	0%	0%
	Penalty after Step 4	£1,610	£634,848	£118,209	£171,594	£1,162,937	£467,349
Step 5a - Proportionality	Adjustment for proportionality	0%	0%	0%	0%	0%	0%
	Penalty after Step 5a	£1,610	£634,848	£118,209	£171,594	£1,162,937	£467,349
Step 5b - Worldwide Turnover Test	10% of worldwide turnover	£2,080,000,000	£2,080,000,000	£2,080,000,000	£2,080,000,000	£2,080,000,000	£2,080,000,000
	Penalty after Step 5b	£1,610	£634,848	£118,209	£171,594	£1,162,937	£467,349
COMBINED PENALTY AFTER STEP 5		£2,556,548					
Step 6 - Leniency and Settlement Discounts	Leniency discount	15%	15%	15%	15%	15%	15%
	Settlement discount	20%	20%	20%	20%	20%	20%
	Penalty after Step 6	£1,095	£431,697	£80,382	£116,684	£790,797	£317,797
COMBINED PENALTY AFTER STEP 6		£1,738,453					

Table 6: IMG

INFRINGEMENTS		4	10	12	13
	Relevant business year (ending)	31 Dec 2015	31 Dec 2019	31 Dec 2020	31 Dec 2020
	Expenditure	£2,726,920	£721,734	£856,686	£12,151,289
PENALTY CALCULATIONS					
Step 1 - Starting point	Starting point	22%	22%	22%	22%
	Penalty after Step 1	£599,922	£158,781	£188,471	£2,673,284
Step 2 - Duration	Duration multiplier	1	1	1	1
	Penalty after Step 2	£599,922	£158,781	£188,471	£2,673,284
Step 3 - Adjustment for aggravating and/or mitigating factors	Total aggravating uplift	0%	0%	0%	0%
	Total mitigating reduction	0%	0%	0%	0%
	Penalty after Step 3	£599,922	£158,781	£188,471	£2,673,284
Step 4 - Deterrence	Adjustment for deterrence	0%	0%	0%	0%
	Penalty after Step 4	£599,922	£158,781	£188,471	£2,673,284
Step 5a - Proportionality	Adjustment for proportionality	0%	0%	0%	0%
	Penalty after Step 5a	£599,922	£158,781	£188,471	£2,673,284
Step 5b - Worldwide Turnover Test	10% of worldwide turnover	£479,000,000	£479,000,000	£479,000,000	£479,000,000
	Penalty after Step 5b	£599,922	£158,781	£188,471	£2,673,284
COMBINED PENALTY AFTER STEP 5		£3,620,458			
Step 6 - Leniency and Settlement Discounts	Leniency discount	40%	40%	40%	40%
	Settlement discount	20%	20%	20%	20%
	Penalty after Step 6	£287,963	£76,215	£90,466	£1,283,176
COMBINED PENALTY AFTER STEP 6		£1,737,820			

Table 7: ITV

INFRINGEMENTS		1	3	5	8
	Relevant business year (ending)	31 Dec 2013	31 Dec 2014	31 Dec 2015	31 Dec 2017
	Expenditure	£1,017,098	£151,150	£1,013,412	£1,177,212
PENALTY CALCULATIONS					
Step 1 - Starting point	Starting point	22%	22%	22%	22%
	Penalty after Step 1	£223,762	£33,253	£222,951	£258,987
Step 2 - Duration	Duration multiplier	1	1	1	1
	Penalty after Step 2	£223,762	£33,253	£222,951	£258,987
Step 3 - Adjustment for aggravating and/or mitigating factors	Total aggravating uplift	0%	0%	0%	0%
	Total mitigating reduction	0%	0%	0%	0%
	Penalty after Step 3	£223,762	£33,253	£222,951	£258,987
Step 4 - Deterrence	Adjustment for deterrence	0%	0%	0%	0%
	Penalty after Step 4	£223,762	£33,253	£222,951	£258,987
Step 5a - Proportionality	Adjustment for proportionality	0%	0%	0%	0%
	Penalty after Step 5a	£223,762	£33,253	£222,951	£258,987
Step 5b - Worldwide Turnover Test	10% of worldwide turnover	£362,000,000	£362,000,000	£362,000,000	£362,000,000
	Penalty after Step 5b	£223,762	£33,253	£222,951	£258,987
COMBINED PENALTY AFTER STEP 5		£738,952			
Step 6 - Leniency and Settlement Discounts	Leniency discount	42.5%	42.5%	42.5%	42.5%
	Settlement discount	20%	20%	20%	20%
	Penalty after Step 6	£102,930	£15,296	£102,557	£119,134
COMBINED PENALTY AFTER STEP 6		£339,918			