

Decision of the Competition and Markets Authority

Competition Act 1998
Design, construction and fit-out services
Case 50481

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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 [✂].

Certain names of individuals mentioned in the description of the infringement in the original version of this Decision have been removed from the published version on the public register. These names have been redacted or replaced by a general descriptor of the individual's role.

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1. Introduction and glossary

Introduction

1.1 This decision (the '**Decision**') is addressed to:

- (a) Bluu Solutions Limited, Bluuco Limited (together with Bluu Solutions Limited, '**Bluu**'), Tetris Projects Limited and Jones Lang LaSalle Incorporated (collectively referred to as '**JLL**');
- (b) Coriolis Projects Limited ('**Coriolis**');
- (c) Area Sq Limited ('**Area Sq.**'), Cube Interior Solutions Limited ('**Cube**'), Fourfront Group Limited and Fourfront Holdings Limited (collectively referred to as '**Fourfront**');
- (d) Loop Interiors London LLP and Loop Interiors Limited (collectively referred to as '**Loop**');
- (e) Oakley Interiors Limited ('**Oakley**'); and
- (f) ThirdWay Interiors Limited and The ThirdWay Group Limited (collectively referred to as '**ThirdWay**'),

together, the '**Addressees**'.

1.2 By this Decision, the Competition and Markets Authority (the '**CMA**') finds that the Addressees infringed the prohibition in section 2(1) of the Competition Act 1998 (the '**Act**') (the '**Chapter I prohibition**') by participating in one or more agreements and/or concerted practices to submit cover bids and/or exchange commercially sensitive information in relation to certain customer contracts. The CMA finds that these agreements and/or concerted practices had as their object the prevention, restriction or distortion of competition¹ in the supply of non-residential fit-out services in the UK or a part of it and may have affected trade within the UK or a part of it. More specifically, the CMA finds that:

- (a) between 27 November 2006 and 13 December 2006, Bluu and Fourfront were parties to an agreement and/or concerted practice in accordance with which, at Bluu's lead and/or instigation, Fourfront submitted a cover bid for a contract involving fit-out services to the **client Deyaar**;
- (b) between 15 June 2011 and 27 June 2011, Bluu and Fourfront, and Bluu and Coriolis, were parties to agreements and/or concerted practices in

¹ References in this Decision to the restriction of competition also refer to the prevention or distortion of competition.

accordance with which, at Bluu's lead and/or instigation, Fourfront and Coriolis each submitted a cover bid for a contract involving fit-out services to the **client Holloway White Allom**;

- (c) between 23 November 2012 and 17 December 2012, Bluu and Fourfront, Bluu and Coriolis, and Bluu and Oakley, were parties to agreements and/or concerted practices in accordance with which, at Bluu's lead and/or instigation, Fourfront, Coriolis and Oakley each submitted a cover bid for a contract involving fit-out services to the **client Newham College**;
- (d) between 11 April 2013 and 18 June 2013, Bluu and Fourfront were parties to an agreement and/or concerted practice in accordance with which, at Fourfront's lead and/or instigation, Bluu submitted a cover bid for a contract involving fit-out services to the **client Amicus Horizon**;
- (e) between 28 May 2013 and 8 October 2013, Bluu and Fourfront were parties to an agreement and/or concerted practice in accordance with which, at Bluu's lead and/or instigation, Fourfront submitted a cover bid for a contract involving fit-out services to the **client Klesch**;
- (f) between 21 November 2014 and 16 January 2015, Bluu and Fourfront were parties to an agreement and/or concerted practice in accordance with which, at Fourfront's lead and/or instigation, Bluu submitted a cover bid for a contract involving fit-out services to the **client EasyJet**;
- (g) between 24 March 2015 and 17 April 2015, Bluu and Fourfront were parties to an agreement and/or concerted practice in accordance with which, at Bluu's lead and/or instigation, Fourfront submitted a cover bid for a contract involving fit-out services to the **client Dechert**;
- (h) between 22 April 2015 and 17 May 2015, Fourfront and Bluu, and Fourfront and Loop, were parties to agreements and/or concerted practices in accordance with which, at Fourfront's lead and/or instigation, Bluu and Loop each submitted a cover bid for a contract involving fit-out services to the **client Hamilton Fraser Insurance Solutions ('HFIS')**;
- (i) between 16 July 2015 and 6 August 2015, Bluu and Loop were parties to an agreement and/or concerted practice in accordance with which, at Bluu's lead and/or instigation, Loop submitted a cover bid for a contract involving fit-out services to the **client Visium**;
- (j) between 6 November 2015 and 30 November 2015, Bluu and Fourfront were parties to an agreement and/or concerted practice in accordance with which, at Bluu's lead and/or instigation, Fourfront submitted a cover bid for a contract involving fit-out services to the **client Cheniere Energy**;

- (k) between 12 April 2016 and 19 May 2016, JLL and Loop were parties to an agreement and/or concerted practice in accordance with which JLL submitted a cover bid for a contract involving fit-out services to the **client Damac** and Loop made a compensation payment to [Director 1, JLL (previously Director 1, Bluu)] in return;²
- (l) between 16 May 2016 and 31 May 2016, Fourfront and JLL, and Fourfront and Loop, were parties to agreements and/or concerted practices in accordance with which, at Fourfront's lead and/or instigation, each of JLL and Loop submitted a cover bid for a contract involving fit-out services to the **client DAI**; and
- (m) between 22 May 2017 and 23 June 2017, Loop and ThirdWay were parties to an agreement and/or concerted practice in accordance with which, at Loop's lead and/or instigation (i) Loop submitted a cover bid for a contract involving fit-out services to the **client Kokoba** and (ii) Loop and ThirdWay exchanged commercially sensitive information, including future pricing information, in relation to the contract **Redefine**,
- together, the '**Infringements**' and each an '**Infringement**'.

- 1.3 By this Decision, the CMA is imposing financial penalties on Fourfront, Loop Interiors Limited, ThirdWay, Oakley and Coriolis (the '**Settling Parties**') under section 36 of the Act in respect of the Infringements in which they were involved. No financial penalty will be imposed on Bluu Solutions Limited, Bluuco Limited, Tetris Projects Limited, or Jones Lang LaSalle Incorporated (i.e. the JLL entities) in respect of the Infringements in which they were involved provided they continue to co-operate and comply with the conditions of the CMA's leniency programme (see further at paragraphs 2.4 to 2.8 below).

Glossary

- 1.4 In this Decision, the following terms shall have the definitions set out below. Where in this Decision it is helpful for the reader to reference a defined term in the text, such term may also be defined in the text.

² [NB for the purposes of this non-confidential Decision: Director 1, JLL was a statutory director of Tetris-Bluu Limited (later called Tetris Projects Limited), and not a statutory director of Jones Lang LaSalle Incorporated. However, for consistency throughout this non-confidential Decision, the descriptor "Director 1, JLL" is used. Note that, throughout this non-confidential Decision, the descriptors given to individuals describe their position at the time of the events described, unless otherwise stated.]

Term	Definition
the Act	the Competition Act 1998
Addressees	as defined in paragraph 1.1
Area Sq.	Area Sq Limited
Article 101 TFEU	Article 101 of the Treaty on the Functioning of the European Union
Bluu	Bluu Solutions Limited and Bluuco Limited
CAT	Competition Appeal Tribunal
Category A services	where a non-residential fit-out is generally provided to the landlord and involves work on the building itself
Category B services	where a non-residential fit-out is generally provided to the tenant and is more detailed and creative
the CMA Rules	The Competition Act 1998 (Competition and Market Authority's Rules) Order 2014, SI 2014/458
CPM	Client Project Manager
Coriolis	Coriolis Projects Limited
Cube	Cube Interior Solutions Limited
the Chapter I prohibition	the prohibition in section 2(1) of the Competition Act 1998
Fourfront	Area Sq., Cube, Fourfront Group Limited and Fourfront Holdings Limited
Infringement	As defined in paragraph 1.2
JLL	Bluu, Tetris Projects Limited and Jones Lang LaSalle Incorporated
the JLL Immunity Agreement	as defined in paragraph 2.6
Leniency Guidance	CMA's <i>Applications for leniency and no-action in cartel cases</i> (OFT1495, July 2013)

Loop	Loop Interiors London LLP and Loop Interiors Limited
the Loop Leniency Agreement	as defined in paragraph 2.8
Oakley	Oakley Interiors Limited
OFT	the Office of Fair Trading, one of the CMA's predecessor bodies
Penalties Guidance	CMA's <i>Guidance as to the appropriate amount of a penalty</i> (CMA73, 18 April 2018)
Settling Parties	Fourfront, Loop, Thirdway, Oakley and Coriolis, as defined in paragraph 1.3
Settlement Letter(s)	as defined in paragraph 2.17
Terms of Settlement	as defined in paragraph 2.17
ThirdWay	ThirdWay Interiors Limited and The ThirdWay Group Limited
the UK	the United Kingdom

2. Summary of the investigation

- 2.1 This section sets out the origin of this investigation and provides an overview of the investigatory steps taken.

Launch of the investigation

- 2.2 On 19 July 2017, the CMA opened a formal investigation under the Act having determined that it had reasonable grounds for suspecting that a number of businesses had infringed the Chapter I prohibition.
- 2.3 In particular, the CMA had reasonable grounds for suspecting certain businesses had infringed the Chapter I prohibition through anti-competitive conduct in relation to the supply of design, construction and/or fit-out services for workplaces in the UK.

Leniency

- 2.4 Prior to the CMA opening its investigation, JLL applied to the CMA for leniency and provided information to the CMA under the CMA's leniency programme.
- 2.5 On 7 November 2018, the CMA withdrew the protection that Robb Simms-Davies would otherwise benefit from as a result of the leniency application made by his former employer, JLL, due to his refusal to submit to a voluntary interview as requested by the CMA.
- 2.6 On 27 February 2019, the CMA entered into an immunity agreement under the CMA's leniency programme with Bluu Solutions Limited, Bluuco Limited, Tetris Projects Limited, and Jones Lang LaSalle Incorporated (the '**JLL Immunity Agreement**'), in relation to the Infringements in which it was involved. JLL was the first applicant to apply under the policy and was granted immunity from financial penalty, conditional on it continuing to meet the conditions of leniency.
- 2.7 Following the CMA's inspections in July 2017 (see paragraph 2.9 below), Loop applied to the CMA for leniency in relation to the Infringements in which it was involved and provided information to the CMA under the CMA's leniency programme.
- 2.8 On 27 February 2019, the CMA entered into a leniency agreement under the CMA's leniency programme with Loop Interiors Limited (the '**Loop Leniency Agreement**') in relation to its involvement in the relevant Infringements. Under the Loop Leniency Agreement, the CMA has granted Loop Interiors Limited a

reduction of 25% to the financial penalty that would otherwise have been imposed on Loop Interiors Limited in relation to the Infringements in which Loop was involved, conditional on it continuing to meet the conditions of leniency.

Evidence gathering and case closures

- 2.9 Between 19 July and 7 August 2017, the CMA carried out inspections at the premises of Fourfront, [Office fit-out company A], [Office fit-out company B] and Loop under the power of a warrant pursuant to section 28 of the Act.³ Between 19 and 21 July 2017, the CMA also carried out inspections at JLL's premises pursuant to JLL's leniency cooperation obligations. The CMA also attended the premises of Coriolis by arrangement on 7 September 2017.
- 2.10 On 4 June 2018, the CMA sent a case closure letter to [Office fit-out company A], having decided to close the investigation against that party on administrative prioritisation grounds.
- 2.11 On 31 July 2018, the CMA sent case opening letters to Oakley and ThirdWay.
- 2.12 In the course of the investigation, the CMA requested the voluntary production of information, and also required the production of certain documents under section 26 of the Act.
- 2.13 The CMA interviewed the following individuals, all on a voluntary basis:⁴
- (a) [Director, Coriolis] on 16 November 2017;
 - (b) [Director 1, Loop] on 27 April 2018;
 - (c) [Director 2, Loop] on 27 April 2018;
 - (d) [Director 3, Loop] on 27 April 2018;
 - (e) [Representative 1, Bluu] on 19 June 2018;
 - (f) [Director 2, Bluu] on 22 June 2018;

³ More specifically, inspections were carried out at Loop's premises on 19 and 20 July 2017, at [Office fit-out company B]'s premises on 19 July 2017, at [Office fit-out company A]'s premises on 19 and 20 July 2017 and at Fourfront's premises on 19-21 July (inclusive), 25 July and 7 August 2017.

⁴ Robb Simms-Davies (Bluu) refused to be interviewed by the CMA (see paragraph 2.5). [NB for the purposes of this non-confidential Decision: He was no longer a director of Bluu or Tetris-Bluu Limited (later called Tetris Projects Limited) at this time.]

- (g) [Director 3, Bluu; Director 2, JLL] on 27 June 2018;⁵
- (h) [Director 4, Bluu; Representative 1, JLL] on 29 June 2018;
- (i) [Director 1, Fourfront] on 2 July 2018;
- (j) [Director 2, Fourfront] on 6 July 2018;
- (k) [Director 3, Fourfront] on 12 July 2018;
- (l) [Representative, Office fit-out company B] on 15 August 2018;
- (m) [Director 1, ThirdWay] on 6 September 2018;
- (n) [Director 2, ThirdWay] on 7 September 2018.⁶

- 2.14 The CMA also acquired information from third parties, and in particular from many of the clients whose contracts were involved in the Infringements.
- 2.15 On 12 November 2018, the CMA sent a case closure letter to [Office fit-out company B], having decided to close the investigation against that party on administrative prioritisation grounds.

State of play meetings

- 2.16 The CMA held ‘state of play’ meetings with each of the Addressees between 21 August and 18 September 2018. After these meetings, all Settling Parties confirmed they wished to initiate settlement discussions with the CMA.

Settlement

- 2.17 The CMA sent letters to the Settling Parties (the ‘**Settlement Letters**’) on 2 November 2018 setting out the terms of settlement (the ‘**Terms of Settlement**’). All Settling Parties confirmed their agreement in principle to the Terms of Settlement by 9 November 2018.⁷
- 2.18 In the Settlement Letters, the CMA also invited the Settling Parties to make brief representations by 15 November 2018 in respect of any mitigating factors and compliance measures they had taken that may be relevant for the

⁵ [NB for the purposes of this non-confidential Decision: Director 2, JLL was a statutory director of Tetris-Bluu Limited (later called Tetris Projects Limited), and not a statutory director of Jones Lang LaSalle Incorporated. However, for consistency throughout this non-confidential Decision, the descriptor “Director 2, JLL” is used. Director 2, JLL was no longer a director of Tetris-Bluu Limited at the time of interview.]

⁶ [Director 2, ThirdWay] did not make himself available for a second interview as requested by the CMA.

⁷ Coriolis confirmed its agreement in principle to the Terms of Settlement on 7 November 2018; Fourfront, Loop, Oakley and ThirdWay confirmed their agreement in principle on 9 November 2018.

purposes of the penalty calculation. Loop, ThirdWay, Fourfront, and Coriolis provided representations on mitigating factors.⁸ Oakley did not provide submissions on mitigating factors in response to the Settlement Letter.

- 2.19 On 26 November 2018, the CMA issued a Summary Statement of Facts to the Addressees, for the purpose of enabling the Settling Parties to decide whether or not to settle the case, and to give the Addressees the opportunity to make submissions on any manifest factual inaccuracies in the Summary Statement of Facts.⁹ Representations were received from Loop, ThirdWay, Fourfront, and JLL.¹⁰ These representations were considered by the CMA and, where they were accepted, were reflected in the revised Summary Statement of Facts issued to the Addressees on 1 February 2019. Oakley and Coriolis did not provide any representations as to manifest factual inaccuracies in the Summary Statement of Facts.
- 2.20 As part of the settlement process, the CMA also issued a draft penalty calculation to the Settling Parties on 18 December 2018, which took account of the representations made in respect of mitigating factors in response to the Settlement Letters (see paragraph 2.18). The CMA provided the Settling Parties with an opportunity to make oral representations on the draft penalty calculation at settlement meetings held with each Settling Party between 8 and 14 January 2019. All representations made by the Settling Parties were taken into account in determining the final maximum penalty calculations which were issued to the Settling Parties on 1 February 2019.
- 2.21 On 7 February 2019, Coriolis and Oakley each entered into a settlement agreement with the CMA. On 8 February 2019 Loop entered into a settlement agreement with the CMA. On 15 February 2019 Fourfront and ThirdWay each entered into a settlement agreement with the CMA.¹¹ Through these settlement agreements, each Settling Party admitted that it had infringed the Chapter I prohibition as set out in the revised Summary Statement of Facts dated 1 February 2019, which is now reflected in this Decision, and agreed to co-operate in expediting the process for concluding the investigation. The Settlement Letter signed by each Settling Party and the Terms of Settlement

⁸ Further penalty-specific representations were made by Fourfront and Loop in their representations on the Summary Statement of Facts.

⁹ According to paragraph 14.13 of the CMA's [Competition Act 1998: Guidance on the CMA's investigation procedures in Competition Act 1998 cases](#) (CMA8, January 2019), a business with whom settlement discussions take place will be presented with a Summary Statement of Facts.

¹⁰ Fourfront made further representations as to manifest factual inaccuracies in its settlement meeting with the CMA, held on 8 January 2019.

¹¹ Fourfront re-signed its Settlement Letter on 25 February 2019 to correct errors in the Terms of Settlement that it provided to the CMA on 15 February 2019.

annexed to each Settlement Letter dated 7, 8, and 15 February 2019 set out all the conditions of each agreement.

Statement of Objections

- 2.22 On 1 March 2019, the CMA issued a Statement of Objections (**‘SO’**) to the Addressees,¹² in which it proposed to make a decision that they had infringed the Chapter I prohibition.
- 2.23 On 15 March 2019, Fourfront, ThirdWay and Loop made limited representations on what they considered were manifest factual inaccuracies in the SO and JLL made limited representations on what it considered were material factual inaccuracies in the SO. Coriolis and Oakley did not provide any representations on the SO. According to Rule 6(8) of the CMA’s Rules, the CMA may proceed with the case in the absence of such representations.

¹² 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 2014/458 (the ‘CMA Rules’).

3. Factual background

Addressees

Coriolis

- 3.1 Coriolis is a private limited company active in the supply of non-residential fit-out services in the UK¹³ and had turnover of £[>] in its last financial year ending 30 June 2018.¹⁴ In the period since the start of the earliest Infringement involving Coriolis (15 June 2011) to the present, Coriolis was 100% owned by [Director, Coriolis], who was also the only director of the company.
- 3.2 The CMA finds that Coriolis was directly involved in the Infringements Holloway White Allom and Newham College.

Fourfront

- 3.3 Area Sq.¹⁵ and Cube¹⁶ are both private limited companies active in the supply of non-residential fit-out services in the UK. In the period since the start of the earliest Infringements involving Area Sq. and Cube (27 November 2006 and 28 May 2013, respectively) to the present, both companies have been 100% owned by Fourfront Group Limited.¹⁷ Fourfront Group Limited is the holding company of four subsidiaries, each involved in the supply of commercial interiors services. Since 30 April 2016, Fourfront Group Limited has been 100% owned by Fourfront Holdings Limited.¹⁸ The group turnover of Fourfront in its last financial year ending 30 April 2018 was £146,575,546.¹⁹
- 3.4 The CMA finds that Area Sq. was directly involved in the Infringements Deyaar, Holloway White Allom, Newham College, EasyJet, Dechert, HFIS, Cheniere Energy and DAI, and that Cube was directly involved in the Infringements Amicus Horizon and Klesch. The CMA finds that Fourfront

¹³ Coriolis Projects Limited is a private limited company registered at Companies House on 9 June 2008 under company number 06614885.

¹⁴ URN2832

¹⁵ Area Sq Limited is a private limited company registered at Companies House on 5 November 1999 under company number 03874693.

¹⁶ Cube Interior Solutions Limited is a private limited company registered at Companies House on 2 December 2004 under company number 05302645.

¹⁷ Fourfront Group Limited is a private limited company registered at Companies House on 7 March 2006 under the company number 05733761.

¹⁸ On 30 April 2016, Fourfront Group Limited completed a share reorganisation that meant a new ultimate parent company, Fourfront Holdings Limited, was formed. Fourfront Holdings Limited is a private limited company registered at Companies House on 22 March 2016 under company number 10079456.

¹⁹ Fourfront Holdings Limited consolidated statutory accounts Group of companies' accounts made up to 30 April 2018, available at <https://beta.companieshouse.gov.uk/company/10079456/filing-history>.

Group Limited and Fourfront Holdings Limited are jointly and severally liable with Cube and Area Sq. for the relevant Infringements (Fourfront Holdings Limited being liable only for the relevant Infringements during the period in which it was the parent of Fourfront Group Limited).²⁰

JLL

- 3.5 Bluu Solutions Limited is a private limited company active in the supply of non-residential fit-out services in the UK.²¹
- 3.6 In the period since the start of the earliest Infringement involving Bluu Solutions Limited (27 November 2006) to 14 June 2011, Bluu Middle East Holdings Limited²² held 100% of the shares in Bluu Solutions Limited. From 14 June 2011 to the present, Bluuco Limited²³ has held 100% of the shares in Bluu Solutions Limited. From 6 August 2015 to the present, Jones Lang LaSalle Incorporated has been the ultimate 100% parent of Bluuco Limited (and of Bluu Solutions Limited).²⁴
- 3.7 Tetris-Bluu Limited (now called Tetris Projects Limited)²⁵ is a private limited company active in the supply of non-residential fit-out services in the UK. In the period since the start of the earliest Infringement involving Tetris-Bluu Limited (12 April 2016) to the present, Jones Lang LaSalle Incorporated has been the ultimate 100% parent of Tetris-Bluu Limited/Tetris Projects Limited.
- 3.8 The CMA finds that Bluu Solutions Limited was directly involved in the Infringements Deyaar, Holloway White Allom, Newham College, Amicus Horizon, Klesch, EasyJet, Dechert, HFIS, Visium and Cheniere Energy, and that Tetris-Bluu Limited was directly involved in the Infringements Damac and DAI.

²⁰ See further at paragraph 5.39 ff. below.

²¹ Bluu Solutions Limited is a private limited company registered at Companies House on 17 May 2004 under the company number 05129372.

²² Bluu Middle East Holdings Limited was a private limited company registered at Companies House on 5 August 2005 under company number 05529390 and dissolved on 2 February 2016. Prior to 14 June 2011, Bluu Middle East Holdings Limited was named Bluuco Limited.

²³ Bluuco Limited is a private limited company registered at Companies House on 9 June 2011 under company number 07663601. Prior to 14 June 2011, Bluuco Limited was named Bluu Middle East Holdings Limited. In this Decision, for simplicity, the CMA will use the name Bluuco Limited for the company with registered number 07663601 and will use the name Bluu Middle East Holdings for the company with registered number 05529390.

²⁴ Jones Lang LaSalle Incorporated is a company listed on the New York Stock Exchange.

²⁵ Tetris-Bluu Limited was the name of Tetris Projects Limited during the time of the relevant Infringements. Tetris Projects Limited is a private limited company registered at Companies House on 22 July 2010 under the company number 07322946. Between 15 January 2016 to 12 January 2018, it was renamed Tetris-Bluu Limited. In this Decision, when referring to the time during which the relevant Infringements took place, the CMA will refer to Tetris-Bluu Limited, as it was known at that time.

- 3.9 The revenue of the JLL group in 2017 was \$7.9 billion.²⁶
- 3.10 The CMA signed the JLL Immunity Agreement on 27 February 2019 covering the Infringements described in this Decision in which Bluu Solutions Limited and/or Tetris-Bluu Limited were involved.

Loop

- 3.11 Loop Interiors LLP (now named Loop Interiors London LLP)²⁷ is a limited liability partnership which, during the period of the Infringements in which it was involved, was active in the supply of non-residential fit-out services in the UK.
- 3.12 Since the start of the earliest Infringement involving Loop Interiors LLP (22 April 2015) until 12 January 2018 (which was after the end date of the latest Infringement involving Loop), the members of Loop Interiors LLP/ Loop Interiors London LLP and their respective directors and owners were:
- (a) [Loop member company A]: [Director 4, Loop] and [Director, Loop member company A]
 - (b) [Loop member company B]: [Director 1, Loop] and [Director, Loop member company B]
 - (c) [Loop member company C]: [Director 3, Loop]
 - (d) [Loop member company D]: [Director 2, Loop]
 - (e) [Loop member company E]: [Director, Loop member company E] and [Director 5, Loop]

²⁶ Jones Lang Lasalle Incorporated Annual Report 2017, available at https://s22.q4cdn.com/446208711/files/doc_financials/annual/JLL-2017-Annual-Report.pdf.

²⁷ Loop Interiors London LLP is a limited liability partnership registered at Companies House on 1 November 2012 under the company number OC379865. Between 1 November 2012 to 20 September 2017, it was named Loop Interiors LLP. In this Decision, when referring to the time during which the relevant Infringements took place, the CMA will refer to Loop Interiors LLP, as it was known at that time.

- 3.13 On 12 January 2018, Loop Interiors London LLP was restructured into a private limited company, Loop Interiors Limited.²⁸ The turnover of Loop Interiors London LLP for its financial year ending 31 March 2018 was £[§<].²⁹
- 3.14 Since its incorporation on 18 September 2017, [§<] has been a director of Loop Interiors Limited. In addition, [§<] were appointed as directors on 12 January 2018.
- 3.15 The shares in the capital of Loop Interiors Limited have been held equally across its five current directors since its incorporation, each director holding 20% of the shares.
- 3.16 The CMA finds that Loop Interiors LLP was directly involved in the Infringements HFIS, Visium, Damac, DAI, and Kokoba and Redefine. The CMA finds that Loop Interiors Limited is the economic successor of Loop Interiors LLP for the purposes of the Chapter I prohibition.³⁰
- 3.17 The CMA signed the Loop Leniency Agreement on 27 February 2019 covering the Infringements described in this Decision in which Loop was involved.

Oakley

- 3.18 Oakley³¹ is a private limited company active in the supply of non-residential fit-out services in the UK. Oakley's turnover in its last financial year ending 30 September 2018 was £[§<].³²
- 3.19 Since the start of the Infringement involving Oakley (in 23 November 2012) to the present, Oakley has been 100% owned by [Director, Oakley], who has also been the only director of the company.
- 3.20 The CMA finds that Oakley was directly involved in the Infringement Newham College.

²⁸ A company named Loopint Limited was registered at Companies House on 18 September 2017 under the company number 10966814. Loop Interiors LLP was renamed Loop Interiors London LLP and Loopint Limited was renamed Loop Interiors Limited on 20 September 2017. In representations to the CMA, Loop stated that the restructuring of Loop from an LLP to a limited company was not connected in any way to the CMA's investigation and was in contemplation prior to the start of the CMA's investigation.

²⁹ URN2880 (Loop Interiors London LLP unaudited financial accounts for the year ending 31 March 2018). As Loop Interiors Limited has only been trading since 12 January 2018, the CMA does not have a full year's accounts from which to determine the worldwide turnover for Loop Interiors Limited in its last business year.

³⁰ See further at paragraph 5.50 ff. below.

³¹ Oakley Interiors Limited is a private limited company registered at Companies House on 3 March 1997 under company number 03326790.

³² URN2865.

ThirdWay

- 3.21 ThirdWay Interiors Limited³³ is a private limited company active in the supply of non-residential fit-out services in the UK. In the period since the start of the earliest Infringement involving ThirdWay Interiors Limited (22 May 2017) to the present, The ThirdWay Group Limited³⁴ has been the 100% parent of ThirdWay Interiors Limited.
- 3.22 The ThirdWay Group Limited's turnover in financial year ending 31 December 2017 was £49,459,839.³⁵
- 3.23 The CMA finds that ThirdWay Interiors Limited was directly involved in the Infringement Kokoba and Redefine. The CMA finds that The ThirdWay Group Limited is jointly and severally liable with ThirdWay Interiors Limited for this Infringement.³⁶

Overview of non-residential fit-out services in the UK

- 3.24 This section provides an overview of the subject of this investigation, namely the provision of non-residential fit-out services in the UK.
- 3.25 The CMA considers that all the Infringements took place in the supply of non-residential fit-out services in the UK. Within this sector, non-residential fit-out services can be divided between 'Category A' and 'Category B' services:
- (a) Category A services are where a fit-out is generally provided to the landlord and involves work on the building itself.
 - (b) Category B services are where a fit-out is generally provided to the tenant and is more detailed and creative.
- 3.26 Category A and Category B services can also be supplied together.
- 3.27 Category A and Category B services can be delivered by any of the following three models, representing three different procurement routes available to customers:

³³ ThirdWay Interiors Limited is a private limited company registered at Companies House on 12 January 2010 under company number 07123442.

³⁴ The ThirdWay Group Limited is a private limited company registered at Companies House on 2 June 2016 under company number 10210711.

³⁵ The ThirdWay Group Limited consolidated financial accounts for the year ended 31 December 2017, available at <https://beta.companieshouse.gov.uk/company/10210711/filing-history>.

³⁶ See further at paragraph 5.55 ff. below.

- (a) 'Design and Build' model, where a single supplier undertakes all the design, construction and fit-out work based on a project brief from the client;
 - (b) 'Detail and Build' model, where the supplier undertakes the finished detail, construction and fit-out work based on the client's preferred design and/or working with the client's architect; and
 - (c) 'Traditional Build' model, where the supplier executes the client's design and construction plans drawn up by another party.
- 3.28 There are largely three ways in which undertakings active in Category A and Category B non-residential fit-out services obtain business:
- (a) through existing customer relationships;
 - (b) through invitation to tender; and
 - (c) through proactively searching the market and approaching potential customers.
- 3.29 'Detail and Build' and 'Traditional Build' projects will also often be managed by a Client Project Manager ('**CPM**'), who will be appointed by the client in order to co-ordinate the design, detail planning and construction phases. In 'Design and Build' projects, suppliers will generally be responsible for the project management of the project as part of the overall package of services, though CPMs are also sometimes appointed to carry out this role.
- 3.30 In relation to the Infringements, the Klesch contract affected the supply of 'Category A' services. The Deyaar, Holloway White Allom, Newham College, Amicus Horizon, EasyJet, Dechert, HFIS, Visium, Cheniere Energy, Damac, DAI, Kokoba and Redefine contracts affected the supply of 'Category B' services.

Conduct relevant to the Infringements

- 3.31 This section provides an overview of the conduct relevant to each Infringement. Unless indicated otherwise, quotes from documentary evidence in this Decision are verbatim quotes from the evidence without corrections such as for typographical errors.

Deyaar

- **Parties:** Bluu and Fourfront
- **Value of contract:** £225,000³⁷
- **Location:** London
- **Type of contract:** Category B
- **Period:** 27 November 2006 - 13 December 2006
- **Leader and/or instigator:**³⁸ Bluu

Introduction

3.32 Around November 2006, Deyaar sought bids for the fit-out of its premises at Marble Arch Tower, London.³⁹ Devono, a commercial real estate agency, acted as the CPM in relation to this tender.⁴⁰

Evidence

3.33 On 27 November 2006, at 11:15, [Director 1, Bluu] sent an email to [Director 1, Fourfront] titled '*Re: cover price please*',⁴¹ stating:

*'morning, put you down for a cover on Deeyar [Deyaar] (Dubai property company) taking 2,000ft 135 new Bond St ... Devono acting.'*⁴² [emphasis added]

3.34 At 12:45, [Director 1, Fourfront] responded:

*'Got your message will call later.'*⁴³

³⁷ WAPN0597. This was the amount of the bid submitted by Fourfront, excluding VAT.

³⁸ The CMA has considered, in each case, whether any of the parties played a leading role in driving forward and/or instigated the Infringement. The CMA has identified a party as being the 'leader and/or instigator' of an Infringement where the party orchestrated the arrangement, including by requesting cover bids from other parties and/or by providing cover bids and designs to be submitted by other parties, with the aim of improving the chances of the leader/instigator winning the contract.

³⁹ WAPN0001 and WAPN0003. Early correspondence relating to this tender suggested that [Director 1, Bluu] and [Director 1, Fourfront] mistakenly thought that Deyaar's premises were located at New Bond Street, London (WAPN0001); however, it was later clarified that the relevant premises were located at Marble Arch (WAPN0003).

⁴⁰ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 164. [NB for the purposes of this non-confidential Decision: In its confidentiality representations prior to publication of the Decision dated 23 May 2019, Devono stated that it acted in this contract as a real estate property advisor.]

⁴¹ WAPN0001.

⁴² WAPN0001.

⁴³ WAPN0001.

3.35 On 28 November 2006, at 10:15, [Contact, Devono] sent an email to [Director 1, Fourfront] about a *'Fit Out For Space On New Bond Street [Deyaar]'* and asked [Director 1, Fourfront] to call him.⁴⁴

3.36 On 30 November 2006, at 14:17, [Director 1, Fourfront] confirmed to [Contact, Devono] that Fourfront would submit a proposal for the Deyaar contract.⁴⁵

3.37 At 14:19, [Director 1, Fourfront] forwarded the email described in paragraph 3.33 to [Representative 1, Fourfront], with the message:

'Please can you put on the database and make sure that we DO NOT call, just in case someone else reads the notes please put

*" Do NOT CALL WITHOUT FIRST SPEAKING TO [Representative 1, Fourfront] OR [Director 1, Fourfront]"*⁴⁶

3.38 At 14:23, [Contact, Devono] sent an email to [Director 1, Fourfront] with the requirements for the contract.⁴⁷ Immediately after this, at 14:23, [Director 1, Fourfront] forwarded this email to [Director 1, Bluu], and asked:

*'Will you produce a space plan and scope of works for us to send through?'*⁴⁸

3.39 On 12 December 2006, at 9:36, [Representative 2, Bluu] sent an email containing a cost plan with a total cost of £173,000 (excluding furniture) to [Director 1, Fourfront], copying [Director 1, Bluu], stating:

*'[Director 1, Bluu] has asked me to send this info over to you for Deeyar [Deyaar]. **This is what we would like you to be pitching at.***

Include for a furniture budget of around £50k.

*Programme of 6-8 weeks build.*⁴⁹ [emphasis added]

3.40 Shortly after this, at 9:40, [Director 1, Fourfront] replied, asking whether he was going to be provided with a scope of works, or whether he should send a cost summary only.⁵⁰ At 9:51, [Representative 2, Bluu] followed up with an email describing a scope of works.⁵¹

⁴⁴ WAPN0003.

⁴⁵ WAPN0003.

⁴⁶ WAPN0002.

⁴⁷ WAPN0003.

⁴⁸ WAPN0003.

⁴⁹ WAPN0006.

⁵⁰ WAPN0006.

⁵¹ WAPN0006.

3.41 On 13 December 2006, at 9:33, [Director 1, Fourfront] sent an email to [Representative 2, Bluu], copying [Director 1, Bluu] attaching a bid headed '*10th Floor, Marble Arch Cost Plan on behalf of DEEYAR* [Deyaar].⁵² The email stated:

*'This is what I intend to send thru-are you happy with it? I wont send until you come back to me.'*⁵³ [emphasis added]

3.42 The bid attached to this email almost exactly matched the cost breakdown and scope of works set out in [Representative 2, Bluu]'s earlier emails of 9:36 and 9:51 on 12 December 2006. The bid was for a sum of £225,000 excluding VAT, including a provisional sum of £50,000 for furniture, and allowed for seven weeks' onsite work.

3.43 At 9:39, [Director 1, Bluu] replied to [Director 1, Fourfront]'s earlier email of 9:33, copying [Representative 2, Bluu]:

*'[Representative 2, Bluu] , can you sort with [Director 1, Fourfront] I am out all day , can be emailed to the client from area [Area Sq. (Fourfront)]'*⁵⁴

3.44 At 9:47, [Representative 2, Bluu] confirmed to [Director 1, Fourfront] that Fourfront could submit the bid.⁵⁵

3.45 On the same day, at 9:48 and 13:38, [Director 1, Fourfront] replied to [Director 1, Bluu] and [Representative 2, Bluu] asking whether he was to submit a drawing that had been provided by Bluu.⁵⁶

3.46 At 14:58, [Director 1, Fourfront] submitted Fourfront's bid to [Contact, Devono].⁵⁷ This bid of £225,000 excluding VAT almost exactly matched the bid previously emailed by [Director 1, Fourfront] to [Representative 2, Bluu] and [Director 1, Bluu] for approval at 9:33 on 13 December 2006,⁵⁸ the only difference being that the submitted bid allowed for '*6-8 weeks on site*', rather than the seven weeks listed on the earlier bid.⁵⁹

3.47 It is not clear to the CMA whether Bluu submitted a bid, or whether Bluu ultimately won the Deyaar contract.⁶⁰

⁵² WAPN0007.

⁵³ WAPN0006.

⁵⁴ WAPN0010.

⁵⁵ WAPN0010.

⁵⁶ WAPN0010.

⁵⁷ WAPN0596 and WAPN0597.

⁵⁸ See paragraphs 3.41 and 3.42.

⁵⁹ WAPN0597.

⁶⁰ WAPN0015. On 13 February 2007, during an email exchange about other matters, [Director 1, Fourfront] asked [Director 1, Bluu] whether he '*got that deal done with Deeyar* [Deyaar]' (WAPN0015). The CMA was

- 3.48 [Director 1, Fourfront] confirmed in interview that he had been approached by [Director 1, Bluu] to provide a cover bid for this project and that Fourfront had done as requested.⁶¹
- 3.49 In a letter to the CMA dated 29 August 2018, Fourfront stated that it accepted that Fourfront had acted in breach of competition law in respect of this contract. Fourfront confirmed that Bluu asked Fourfront to submit a bid of £225,000, and Fourfront complied with this request.⁶²

Assessment

- 3.50 On the basis of the evidence above, the CMA makes the following findings.
- 3.51 Shortly before the CPM contacted Fourfront in relation to the tender for Deyaar, Bluu contacted Fourfront seeking a cover bid for this contract.⁶³ Fourfront confirmed to the CPM that it would bid and indicated to Bluu that it had done so, also seeking confirmation that Bluu would prepare the details of the bid for Fourfront to submit.⁶⁴
- 3.52 Bluu prepared a pricing schedule and scope of works for submission by Fourfront,⁶⁵ which Fourfront submitted as its bid for the contract.⁶⁶ Throughout the process, Fourfront and Bluu were in close contact regarding the bid to be submitted by Fourfront.⁶⁷
- 3.53 The CMA finds that there was an agreement and/or concerted practice between Fourfront and Bluu in accordance with which Fourfront submitted a cover bid to the client Deyaar at Bluu's lead and/or instigation. The object of this agreement and/or concerted practice was the restriction of competition for the Deyaar contract.

unable to contact Deyaar to obtain any information relating to this tender as Deyaar did not respond to the CMA's voluntary requests for information.

⁶¹ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 20-21.

⁶² URN2291A.

⁶³ See paragraph 3.33.

⁶⁴ See paragraphs 3.36 and 3.38.

⁶⁵ See paragraphs 3.39 and 3.40.

⁶⁶ See paragraph 3.46.

⁶⁷ See paragraphs 3.43 to 3.45.

Holloway White Allom

- **Parties:** Bluu, Fourfront and Coriolis
- **Value of contract:** £261,735⁶⁸
- **Location:** London
- **Type of contract:** Category B
- **Period:** 15 June 2011 to 27 June 2011
- **Leader and/or instigator:** Bluu

Introduction

3.54 This contract concerns a project for Holloway White Allom at Clareville House in 2011. The tender process was organised by [Contact, Doherty Baines].

Evidence

3.55 On 15 June 2011, [Director 1, Bluu] sent an email to [Director 1, Fourfront] saying:

'need a covber cost for holloway white allen [Holloway White Allom] project next 10 days can you check your system they are taking a floor @claireville house via [Contact, Doherty Baines]'.⁶⁹

3.56 On 20 June 2011, at 11:59, [Director 1, Fourfront] received an email from [Contact, Doherty Baines], asking for Fourfront's costs for the works at Clareville House for Holloway White Allom.

3.57 On the same day, at 19:07, [Director 1, Fourfront] forwarded that email to [Director 1, Bluu] asking: *'[Director 1, Bluu] - When will you have a costed spec for me to return?'*. At 19:33, [Director 1, Bluu] responded: *'Mid week'*.⁷⁰

3.58 On 20 June 2011, at 11:59 [Director, Coriolis] also received an email from [Contact, Doherty Baines] (similar to that received by Fourfront) asking for Coriolis' costs for the works at Clareville House for Holloway White Allom.⁷¹ At 12:28, [Director, Coriolis] forwarded that email on to [Director 1, Bluu] stating:

⁶⁸ WAPN1560.

⁶⁹ WAPN0026.

⁷⁰ WAPN0030.

⁷¹ WAPN0027.

'Hi [Director 1, Bluu]. Please see attached. I've also attached my headed/continuation. He's also asking when I can get back so let me know what you want me to tell him'.⁷²

- 3.59 At 12:38, [Director 1, Bluu] forwarded the email from [Director, Coriolis] to [Representative 3, Bluu], copying [Director 2, Bluu] and [Representative 4, Bluu (subsequently Director 4, Bluu)], with the message:

'[Representative 3, Bluu] area [Area Sq. (Fourfront)] and [Director, Coriolis] are cost checks for us - how long until we have our costly done so we can give then theirs'.⁷³

- 3.60 At 17:03, [Director 1, Bluu] replied to [Director, Coriolis], telling him how he should reply to [Contact, Doherty Baines]: *'Say end of the week'.⁷⁴*

- 3.61 On 27 June 2011, at 8:16, [Representative 3, Bluu] sent an email to [Director 1, Fourfront], copying [Director 1, Bluu], with the subject line *'HWA'* [Holloway White Allom]. The email read:

'[Director 1, Fourfront] here are the numbers and scope of works for you to put into your format to submit as agreed I hope it makes sense'.⁷⁵

- 3.62 Attached to that email was a document named *'[Director 1, Fourfront]'s Costs.xls'*. The document indicated a total cost of £278,393.55.⁷⁶

- 3.63 At 11:30, [Director 1, Fourfront] sent an email to [Representative 3, Bluu], copying [Director 1, Bluu], asking: *'Are you happy for me to send the attached?'⁷⁷* Attached to the email was a project summary for Holloway White Allom indicating a total cost of £278,980.56.⁷⁸

- 3.64 At 14:53, [Director 1, Fourfront] sent an email to [Contact, Doherty Baines] sending Fourfront's bid, based on an initial scope of works, indicating a total cost of £278,980.56. [Director 1, Fourfront] then forwarded that email to [Director 1, Bluu] and [Representative 3, Bluu] at 14:53 stating *'I've made the air cond change but kept ceiling as was. Good Luck'.⁷⁹*

- 3.65 On 27 June 2011, in addition to contacting Fourfront, Bluu also contacted Coriolis in respect of the Holloway White Allom contract. At 8:26,

⁷² WAPN0027.

⁷³ WAPN0027.

⁷⁴ WAPN1552.

⁷⁵ WAPN0032.

⁷⁶ WAPN0032A.

⁷⁷ WAPN1675.

⁷⁸ WAPN1676.

⁷⁹ WAPN1556 and WAPN1557.

[Representative 3, Bluu] sent an email to [Director, Coriolis] with the subject line 'HWA' [Holloway White Allom] and the following message:

*'[Director, Coriolis] as agreed please find attached the headline figures and outline scope of works for you to adapt to your format.'*⁸⁰

3.66 Attached to that email was a spreadsheet entitled '*[Director, Coriolis]'s Costs 270611.xls*'. The document had Bluu's heading and indicated a total cost of £258,207.16.⁸¹

3.67 At 9:51, [Director 1, Bluu] sent an email to [Director, Coriolis] on the same email chain that had started with [Representative 3, Bluu]'s 8:26 email:

*'Cheers mate – make sure you change order / words a bit so its look like yours'*⁸²

3.68 At 10:03, [Director, Coriolis] replied:

*'Will do – I'll stick the numbers in my template.'*⁸³

3.69 At 14:33, [Director 1, Bluu] replied:

*'All ok big boy?'*⁸⁴

3.70 At 16:53, [Director, Coriolis] replied: '*Let me know if this works [Director, Coriolis]*'.⁸⁵ Attached to the email was a file named '*HWA Cost Plan.pdf*'. The file contained a budget quotation with a Coriolis heading, indicating a total cost of £259,775.⁸⁶

3.71 On 28 June 2011, at 7:38, [Contact, Doherty Baines] sent an email to [Contact, Holloway White Allom] stating that the bids for the project were as follows:⁸⁷

— Area Sq. [Fourfront]: £278,980.56

— Bluu: £261,735.89

— Coriolis: £259,775

⁸⁰ WAPN1554.

⁸¹ WAPN1555.

⁸² WAPN1558.

⁸³ WAPN1558.

⁸⁴ WAPN1558.

⁸⁵ WAPN1558.

⁸⁶ WAPN1559.

⁸⁷ WAPN1560.

- 3.72 The CMA notes that the Fourfront and Coriolis figures correspond to the figures agreed in the above email exchanges between Bluu and Fourfront and between Bluu and Coriolis, respectively.
- 3.73 [Contact, Doherty Baines] recommended that Holloway White Allom awarded the contract to Bluu, on the basis of their knowledge of the building and the time they had already invested on the project. Holloway White Allom informed [Contact, Doherty Baines] that it was minded to award the contract to Bluu, subject to a small adjustment in price and this message was passed on by [Contact, Doherty Baines] to Bluu.⁸⁸

Assessment

- 3.74 On the basis of the evidence described above, the CMA makes the following findings.
- 3.75 Bluu provided draft cover bids to Fourfront and Coriolis. Fourfront and Coriolis made minor amendments to the proposed cover bids, which were discussed with Bluu before being submitted to the client.
- 3.76 As regards Fourfront, Bluu initially contacted Fourfront saying that it would need a cover for this project.⁸⁹ After Fourfront received the invitation to tender, it contacted Bluu asking when Bluu would have a '*costed spec for [Fourfront] to return*', thereby indicating its agreement with Bluu's request to submit a cover bid.⁹⁰ Bluu subsequently sent numbers and the scope of work to Fourfront for it to submit in relation to this project, indicating a total cost of £278,393.55.⁹¹ On the same day, after asking Bluu whether it was content for Fourfront to submit the bid to the client, Fourfront submitted its bid to [Contact, Doherty Baines] with a price of £278,980.56. Fourfront forwarded its bid to Bluu, wishing them '*good luck*'.⁹²
- 3.77 As regards Coriolis, on the same day that it received the invitation to bid for this contract it contacted Bluu, indicating that it had already agreed with Bluu that Coriolis would submit a cover bid.⁹³ Bluu subsequently sent Coriolis a spreadsheet containing a cost breakdown indicating a total cost of £258,207.16, and saying that Coriolis should adapt the spreadsheet to its

⁸⁸ WAPN1560.

⁸⁹ See paragraph 3.55.

⁹⁰ See paragraphs 3.56 and 3.57.

⁹¹ See paragraphs 3.61 and 3.62.

⁹² See paragraphs 3.63 and 3.64.

⁹³ See paragraphs 3.58 and 3.60.

format. Coriolis made a minor amendment to the bid price before submitting it to [Contact, Doherty Baines].⁹⁴

- 3.78 The fact that Bluu would be preparing cover bids for Fourfront and Coriolis to submit is also evidenced by an internal Bluu email which said that those two companies '*are cost checks for [Bluu]*' and asking '*how long until we have our costly done so we can give then theirs*'.⁹⁵
- 3.79 The CMA finds that there was (i) an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid to the client Holloway White Allom at Bluu's lead and/or instigation; and (ii) an agreement and/or concerted practice between Bluu and Coriolis in accordance with which Coriolis submitted a cover bid to the same client at Bluu's lead and/or instigation. The object of each such agreement and/or concerted practice was the restriction of competition for the Holloway White Allom contract.

⁹⁴ See paragraphs 3.65 to 3.71.

⁹⁵ See paragraph 3.59.

Newham College

- **Parties:** Bluu, Fourfront, Coriolis and Oakley
- **Value of contract:** £558,082
- **Location:** London
- **Type of contract:** Category B
- **Period:** 23 November 2012 to 17 December 2012
- **Leader and/or instigator:** Bluu

Introduction

3.80 This Infringement concerns a public sector project, namely for the design and fit-out of a special educational needs centre for the Newham College of Further Education in London (**'Focus Project'**). The tender process was managed by an external party, John Burke Associates (**'JBA'**).

Evidence

3.81 On 12 November 2012, [Representative 5, Bluu] sent an email to [Director 2, Bluu], copying [Director 1, Bluu] and [Director 3, Bluu] with the subject line *'Newham'*. It read:

'there is a meeting on Thursday to progress the project.

*We need a couple of contractor names to put forward for tender.*⁹⁶

3.82 On 19 November 2012, [Director 2, Bluu] sent an email to [Director 1, Bluu] with the subject line *'things to catch up on'*. One of the items in the list was: *'[c]ompanies to cover price Newham.'*⁹⁷

3.83 On 23 November 2012, [Director 1, Bluu] sent an email to [Director 1, Fourfront], copying in [Director 2, Bluu], saying:

*'ok client is Newham college Pm [Project Manager] is John Burke [JBA] [Director 2, Bluu] is running it from here (cc in) can you email him your contact details to pass on'.*⁹⁸

⁹⁶ WAPN0051.

⁹⁷ WAPN0053.

⁹⁸ URN0285.

- 3.84 On 26 November 2012, [Director 1, Fourfront] replied to all with his contact details.⁹⁹ On the same day [Director 1, Fourfront] forwarded [Director 1, Bluu]'s email of 23 November 2012 to [Representative 2, Fourfront] asking:

*'Are we chasing Newham College? Can you put a note don't call and refer to me - if it's not on our system can you add with the same note'*¹⁰⁰

- 3.85 On 27 November 2012, [Director 2, Bluu] forwarded an email from JBA explaining the tender process for the Focus Project to a number of individuals at Bluu. [Representative 5, Bluu] replied to all, stating: *'[Director 2, Bluu], we should have been asked to supply 2 contractor names.'*¹⁰¹

- 3.86 On 5 December 2012, [Director 2, Bluu] sent an email to [Contact, JBA] with the subject line *'Suggested contractors for Newham'*, listing contact details for three suppliers: Area Sq. (Fourfront) ([Director 1, Fourfront]), Coriolis ([Director, Coriolis]) and Oakley ([Director, Oakley]).¹⁰²

- 3.87 On 7 December 2012, [Contact, JBA] sent out invitations to tender to [Director, Oakley], [Director 1, Fourfront] and [Director 2, Bluu], copying [Representative 5, Bluu] for the Focus Project.¹⁰³

- 3.88 On 7 December 2012, at 16:42, [Director 1, Bluu] sent an email to [Representative 5, Bluu], copying [Director 3, Bluu] and [Director 2, Bluu] replying to an email chain that started with an email from JBA containing the tender document. He asked: *'Is this the one we are "bidding" against area 2 [Area Sq. (Fourfront)] +1? As discussed via [Director 2, Bluu]?' At 16:42, [Representative 5, Bluu] replied to all: 'Yes'. At 16:49, [Director 1, Bluu] also replied to all: 'Ok have reminded the other 2 bidders'. At 16:50, [Director 2, Bluu] replied to all: 'Yes 3 other bidders [Representative 3, Bluu] is running he will liaise with all, you can keep out of it'.*¹⁰⁴

- 3.89 On 7 December 2012, at 16:46, [Director 1, Bluu] sent an email to [Director 1, Fourfront], copying [Director 2, Bluu], forwarding [Contact, JBA]'s email of 7 December 2012 at 16:16 containing tender documents for the Focus Project. In the body of the email he stated:

'[Director 1, Fourfront]

This is the one I mentioned for a cover you should get email directly

⁹⁹ URN0285.

¹⁰⁰ WAPN0056.

¹⁰¹ WAPN0057

¹⁰² WAPN0058.

¹⁰³ WAPN1568, WAPN0636 and WAPN0062.

¹⁰⁴ WAPN0062.

*[Director 2, Bluu] is running it cc in'*¹⁰⁵

- 3.90 [Director 1, Fourfront] replied to [Director 1, Bluu] on the same day at 17:37, copying [Director 2, Bluu], stating:

*'All received. [Director 2, Bluu] can you call me on Monday to discuss'*¹⁰⁶

- 3.91 On 7 December 2012, at 16:47, [Director 1, Bluu] sent an email to [Director, Coriolis]. Similar to the email he had sent to Fourfront just one minute before (see paragraph 3.89), he copied [Director 2, Bluu] and forwarded [Contact, JBA]'s email of 7 December 2012 at 16:16 containing tender documents for the Focus Project. In the body of the email he stated:

'[Director, Coriolis], This is the cover tender I mentioned a couple of weeks ago, [Director 2, Bluu] is running cc in – you should get this email directly from the pm shortly.

*Liaise with [Director 2, Bluu] and he will sort'*¹⁰⁷

- 3.92 [Director, Coriolis] replied to all on 9 December 2012, saying: *'Will do. Cheers [Director 1, Bluu]'*. [Director 1, Bluu] forwarded this email chain to [Representative 3, Bluu] later that day.¹⁰⁸

- 3.93 The CMA is not in possession of a similar 7 December 2012 email from [Director 1, Bluu] to Oakley, but it is clear from an email from [Director, Oakley] to [Director 1, Bluu] that someone from Bluu had also contacted Oakley along similar lines. On 8 December 2012, [Director, Oakley] sent an email to [Representative 3, Bluu] saying:

'Hi Bud, All received.

*Let me have your info and I will fill it in'*¹⁰⁹

- 3.94 On 9 December 2012, [Director, Oakley] sent an email to [Contact, JBA] confirming Oakley's intention to submit a bid for the Focus Project. [Director, Oakley] immediately forwarded that email to [Representative 3, Bluu].¹¹⁰

¹⁰⁵ WAPN0059, WAPN0059A and WAPN0059B. The CMA infers that, by saying that [Director 2, Bluu] *'is running it'* [Director 1, Bluu] means that [Director 2, Bluu] is organising the cover bids.

¹⁰⁶ WAPN0063.

¹⁰⁷ WAPN1570.

¹⁰⁸ WAPN1570.

¹⁰⁹ WAPN1568.

¹¹⁰ WAPN1571.

- 3.95 For clarity, the CMA has separated out the analysis of the communications between Bluu and each of Fourfront, Coriolis and Oakley in the sub-sections that follow.

Contacts between Bluu and Fourfront regarding bid preparation

- 3.96 On 14 December 2012, at 9:49, [Director 2, Bluu] received by email a scanned document from a Bluu multi-function device (canon c7055i - [email address]) attaching a form of tender for the Focus Project with handwritten figures. The word 'Area 2' [Area Sq. (Fourfront)] was handwritten at the top of every page. The total lump sum tender offer was indicated as being £568,920. The document also contained handwritten figures for various elements of the tender price.¹¹¹ [Director 2, Bluu] confirmed that the handwriting on the document was his.¹¹²
- 3.97 At 10:09, [Director 2, Bluu] sent an email to [Director 1, Fourfront]. The body of the email read:

'Hope your well.

Re the Tender.

The following is required

- 1. Signed form of tender*
- 2. Completed tender summary*
- 3. Priced preliminaries*
- 4. Project cost plan showing OH&P*
- 5. Indicative schedule of rates.*

All of which are attached if you could just hand write on the email copy you were sent. [emphasis added] *If you can add*

- 6. Pre contract and contract programme*
- 7. Relevant experience of similar works plus team CV's.*

¹¹¹ WAPN0064 and WAPN0065.

¹¹² URN1454 Transcript of CMA interview with [Director 2, Bluu] dated 22 June 2018, page 61. [NB for the purposes of this non-confidential Decision: Director 2, Bluu was no longer a director of Bluu at the time of this interview.]

*Then bike on Monday morning to the address on the Tender Invitation.*¹¹³

3.98 Attached to that email was a document very similar to the one described in paragraph 3.96, containing a form of tender for the Focus Project with handwritten figures, the word 'Area 2' [Area Sq. (Fourfront)] handwritten at the top of every page, indicating the same total lump sum tender offer of £568,920.¹¹⁴

3.99 At 10:24 [Director 1, Fourfront] forwarded the tender enquiry document received from [Contact, JBA] to [Representative 3, Fourfront]. In the body of the email, he said:

[...] I need some work done today please as this tender is due in on Monday morning.

*Attached is the tender sent by the client. I will shortly send you another email which has some sections that I have completed by hand. You need to find the same pages on THIS email, print out, complete by hand incl the address, my details etc (except where I need to sign). Then put together a front cover [...]*¹¹⁵

3.100 [Director 1, Fourfront] stated that, despite what he said in this email about him having completed the document by hand, it was not his handwriting in the document he was sending to [Representative 3, Fourfront]. Rather, he assumed the handwriting was [Director 2, Bluu]'s, as the document contained the information [Director 2, Bluu] wanted Fourfront to include in the tender submission.¹¹⁶ [Director 2, Bluu] confirmed that the handwriting on the document was his.¹¹⁷

3.101 At 10:26, [Director 1, Fourfront] sent another email to [Representative 3, Fourfront] with the subject title '2nd Email about Tender'. In the body of the email he said:

*'[Representative 3, Fourfront] you need to find these pages in the earlier email and then copy what I have sent here in good hand writing. Can you leave all completed work on your desk and I will review 1st thing on Monday'*¹¹⁸

¹¹³ WAPN0067.

¹¹⁴ WAPN0067A.

¹¹⁵ WAPN0070, WAPN0071 and WAPN0072.

¹¹⁶ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 111-112.

¹¹⁷ URN1454 Transcript of CMA interview with [Director 2, Bluu] dated 22 June 2018, page 72. [NB for the purposes of this non-confidential Decision: Director 2, Bluu was no longer a director of Bluu at the time of this interview.]

¹¹⁸ WAPN0073.

- 3.102 Attached to that email was the same document that had been sent to [Director 1, Fourfront] by [Director 2, Bluu] at 10:09 that morning.¹¹⁹
- 3.103 [Director 1, Fourfront] later confirmed to the CMA in interview that Bluu had provided Fourfront with a cover price, which Fourfront submitted to the client.¹²⁰

Contacts between Bluu and Coriolis regarding bid preparation

- 3.104 Similarly to the events described at paragraph 3.96, on 14 December 2012, at 9:54, [Director 2, Bluu] received by email a scanned document from a Bluu multi-function device (canon c7055i - [email address]) attaching a form of tender for Focus Project at Newham College with handwritten figures. The word 'Coriolis' was handwritten at the top of every page. The total lump sum tender offer was indicated as being £573,384. The document also contained handwritten figures for various elements of the tender price.¹²¹ [Director 2, Bluu] confirmed that it was his handwriting on this document.¹²²
- 3.105 On 4 January 2013, [Contact, JBA] asked [Director, Coriolis] for an electronic copy of Coriolis's tender document for the Focus Project. On 8 January 2013, [Director, Coriolis] replied stating:

'... the only electronic copy that I have of our tender response is attached.

*This was completed by hand so please excuse the quality but the numbers are all correct.'*¹²³

- 3.106 Attached to [Director, Coriolis]'s email was the same document that [Director 2, Bluu] had received from the Bluu multi-function device on 14 December 2012 at 9:54.¹²⁴

Contacts between Bluu and Oakley regarding bid preparation

- 3.107 On 14 December 2012, at 11:56, [Representative 3, Bluu] sent an email to [Director, Oakley] with the subject line 'Tender', stating: *'Revised schedule of rates 1.02 was wrong on the previous schedule'*.¹²⁵

¹¹⁹ WAPN0074.

¹²⁰ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 104-105.

¹²¹ WAPN0065 and WAPN0066.

¹²² URN1454 Transcript of CMA interview with [Director 2, Bluu] dated 22 June 2018, pages 65-66. [NB for the purposes of this non-confidential Decision: Director 2, Bluu was no longer a director of Bluu at the time of this interview.]

¹²³ URN0111.

¹²⁴ URN0112 which is the same as WAPN0066.

¹²⁵ WAPN1585.

- 3.108 On 17 December 2012, at 9:34, [Director, Oakley] replied to [Representative 3, Bluu]: *'Hi [Representative 3, Bluu] Written copy of tender return. Looking at the rest now. Sorting a covering letter'*. Attached to this email was a form of tender signed by [Director, Oakley] on behalf of Oakley. The document indicated a tender offer of £505,440.¹²⁶
- 3.109 On 17 December 2012, at 10:11, [Director, Oakley] replied to [Representative 3, Bluu] in the same email chain attaching a tender submission for the Focus Project on Oakley's letterhead. The total value of the offer is indicated as being £564,940.¹²⁷
- 3.110 On 17 December 2012, at 10:23, [Director, Oakley] sent an email to [Representative 3, Bluu] in the same email chain. It stated: *'Bike arranged here in 30 mins. Will be after noon but will be there. **May improve your chances!! Good luck**'*.¹²⁸ [emphasis added]
- 3.111 The contract was awarded to Bluu for £558,082.¹²⁹

Assessment

- 3.112 On the basis of the evidence described above, the CMA makes the following findings.
- 3.113 After having discussed internally 'companies to cover price' for the Newham College Focus Project, Bluu provided to JBA a list of three suggested suppliers: Fourfront, Coriolis and Oakley.¹³⁰
- 3.114 Subsequently, Bluu contacted Fourfront and Coriolis, referring to a request for a cover for that tender and stating that [Director 2, Bluu] would be organising the cover.¹³¹ Emails from Oakley to Bluu dated 8 and 9 December 2012 indicate that Bluu was also in contact with Oakley to provide a cover bid for the project.¹³² In each case, the reply from Fourfront, Coriolis and Oakley indicated agreement with Bluu's request to provide a cover bid.¹³³
- 3.115 Bluu then went on to provide Fourfront with a filled-in tender document, including with a tender price of £568,920. On receipt of this document, [Director 1, Fourfront] instructed [Representative 3, Fourfront] to prepare a

¹²⁶ WAPN1572.

¹²⁷ WAPN1578.

¹²⁸ WAPN1585.

¹²⁹ WAPN1588, WAPN1589 and WAPN1737.

¹³⁰ See paragraphs 3.81, 3.82, 3.85, 3.86 and 3.88.

¹³¹ See paragraphs 3.83, 3.89 and 3.91.

¹³² See paragraphs 3.93 and 3.94.

¹³³ See paragraphs 3.90, 3.92 and 3.94.

tender document on behalf of Fourfront using the figures that had been received from Bluu, and Fourfront proceeded to submit this to JBA.¹³⁴

- 3.116 Bluu also provided Coriolis with a tender document filled in with [Director 2, Bluu]'s handwriting, including with a tender price of £573,384. Coriolis subsequently submitted that document to JBA as its tender bid. At a later point, Coriolis also submitted the document with handwritten figures that Bluu had created to JBA.¹³⁵
- 3.117 Likewise, Bluu provided Oakley with a tender document. Oakley initially sent to Bluu a completed tender document with a price of £505,440, but subsequently sent to Bluu a tender submission with a price of £564,940. Oakley also stated to Bluu that it was submitting the bid (*'[b]ike arranged, here in 30 mins. Will be after noon but will be there'*) and that Oakley's tender submission may *'improve [Bluu's] chances'*, which the CMA infers to mean that Oakley's cover bid may improve Bluu's chance of winning the contract. This shows that the aim was for Bluu to win the contract and for Oakley's bid to be a cover.¹³⁶
- 3.118 In a letter to the CMA dated 28 August 2018, Fourfront stated that it accepted that Area Sq. was in breach of competition law in relation to this contract.¹³⁷ Fourfront stated that it is unaware of how Area Sq. was placed on the tender list for this project, but that Bluu provided a blank cost plan to the value of £568,000 which Area Sq. completed and submitted in December 2012. Fourfront stated it has no knowledge of how many other companies submitted bids or who they were.
- 3.119 The CMA finds that there was (i) an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid to the client Newham College at Bluu's lead and/or instigation; (ii) an agreement and/or concerted practice between Bluu and Coriolis in accordance with which Coriolis submitted a cover bid to the client Newham College at Bluu's lead and/or instigation; and (iii) an agreement and/or concerted practice between Bluu and Oakley in accordance with to which Oakley submitted a cover bid to the client Newham College at Bluu's lead and/or instigation. The object of each such agreement and/or concerted practice was the restriction of competition for the Newham College contract.

¹³⁴ See paragraphs 3.96 to 3.103.

¹³⁵ See paragraphs 3.104 to 3.106.

¹³⁶ See paragraphs 3.107 to 3.110.

¹³⁷ URN2288.

Amicus Horizon

- **Parties:** Bluu and Fourfront
- **Value of contract:** £975,313¹³⁸
- **Location:** Croydon
- **Type of contract:** Category B
- **Period:** 11 April 2013 to 18 June 2013
- **Leader and/or instigator:** Fourfront

Introduction

3.120 In May 2013, Amicus Horizon Ltd (**'Amicus Horizon'**) through a CPM, Stiles Harold Williams (**'SHW'**), sought bids in relation to the design and fit-out works to its premises at Grosvenor House, Croydon.

Evidence

3.121 On 11 April 2013, [Director 1, Bluu] sent an email to [Representative 6, Bluu], containing the following instruction:

'Log only cover for [Director 1, Fourfront]'.¹³⁹

3.122 The email quoted the text of a message from [Director 1, Fourfront] to [Director 1, Bluu]:

*'[Director 1, Bluu] you are going to get an invitation to prequalify for a client called Amicus. The document will come from Stiles Harold Williams [SHW], from [Contact 1, SHW] or one of his admin team. Can you let me know when it arrives as want you to fill in questionnaire. Cheers'*¹⁴⁰

3.123 On 2 May 2013 [Representative 7, Bluu] sent an email to [Director 1, Fourfront], copying [Director 1, Bluu] attaching a copy of the pre-qualification material¹⁴¹ submitted by Bluu in relation to the contract. On 3 May 2013, at 14:17, [Director 1, Fourfront] forwarded this message to [Director 4, Fourfront] and [Director 2, Fourfront] saying:

¹³⁸ URN1816.

¹³⁹ URN1005.

¹⁴⁰ URN1005.

¹⁴¹ WAPN0096, WAPN0096A and WAPN0096B.

'Attached has been sent to Stiles Harold Williams [SHW] – can you make sure they get to the last 3??.¹⁴²

3.124 At 17:21, [Director 4, Fourfront] replied: *'[Director 2, Fourfront] – over to you to speak to the man'.¹⁴³*

3.125 In interview both [Director 1, Fourfront]¹⁴⁴ and [Director 2, Fourfront]¹⁴⁵ explained that [Director 2, Fourfront] was being asked to speak with [Contact 1, SHW][✂], to attempt to ensure that Bluu was one of the parties that would qualify to bid on the contract.

3.126 In relation to the sentence *'can you make sure they get to the last 3'*, [Director 1, Fourfront] explained:

'Can you make sure they get to the last three? That's a question, not an instruction, and when I'm asking him, [✂]... we would be thinking if Bluu and Cube [Fourfront] are two of the last three, there is an improved chance of winning by virtue of the fact that if there's ... two competitors and we have a relationship with one, that potentially could increase our opportunity to win the project'.¹⁴⁶

3.127 On 10 May 2013, [Contact 2, SHW] advised [Director 1, Bluu] and [Director 4, Bluu] by email¹⁴⁷ that tenders would be sent out *'next week'*, thereby indicating that Bluu had passed the qualification stage. [Director 1, Bluu] forwarded this message to [Director 1, Fourfront].¹⁴⁸

3.128 On 23 May 2013, at 14:02, [Contact 1, SHW] sent an email¹⁴⁹ to [Representative 7, Bluu] and [Representative 6, Bluu] stating that the tender package was being sent to Bluu by courier.¹⁵⁰ At 14:33, [Representative 7, Bluu] forwarded¹⁵¹ this to [Director 2, Bluu], [Director 1, Bluu], [Director 4, Bluu] and [Director 3, Bluu] asking how to proceed. At 14:50, [Director 2, Bluu] replied, stating that he would review the material when it arrived. [Representative 6, Bluu] immediately replied stating:

¹⁴² WAPN0099 with attachments WAPN0099A, WAPN0099B.

¹⁴³ WAPN0100.

¹⁴⁴ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 195.

¹⁴⁵ URN1469 Transcript of CMA interview with [Director 2, Fourfront] dated 6 July 2018, pages 90 to 91. [NB for the purposes of this non-confidential Decision: Director 2, Fourfront was no longer a director of Fourfront at the time of this interview.]

¹⁴⁶ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 196.

¹⁴⁷ WAPN0102.

¹⁴⁸ WAPN0102.

¹⁴⁹ WAPN0115.

¹⁵⁰ This email also states that bids were due to be submitted by 11:00 on 7 June 2013; this period was later extended by one week.

¹⁵¹ WAPN0115.

*'This is the tender via [Director 1, Fourfront] at Area S [Fourfront]'*¹⁵²

3.129 At 15:21, [Director 2, Bluu] replied:

*'Have we got to do anything with it? Are you happy to sign the Non Collusion certificate'.*¹⁵³

3.130 At 17:29, [Director 1, Bluu] forwarded this message to [Director 1, Fourfront] with the comment *'Oh! Err'*,¹⁵⁴ and attaching a copy of the non-collusion certificate.¹⁵⁵

3.131 In relation to this email, in interview [Director 1, Fourfront] said:

*'...I guess nobody wants to sign a non-collusion certificate if they are colluding.'*¹⁵⁶

3.132 When asked to comment on this in interview, [Director 2, Fourfront] said:

*'Obviously, they were getting a price from us and therefore were unhappy about signing that document.'*¹⁵⁷

3.133 There is also contemporaneous evidence that [Director 1, Fourfront] was concerned about Fourfront signing the non-collusion certificate referred to by [Director 1, Bluu] as, on 28 May 2013, he asked [Director 2, Fourfront]:

*'Have we been asked to sign one as well?'*¹⁵⁸

3.134 On 23 May 2013, at 17:59, [Director 1, Fourfront] in turn forwarded the email from [Director 1, Bluu]¹⁵⁹ to [Director 4, Fourfront] and [Director 2, Fourfront] asking what Bluu should do. On 25 May 2013, at 7:07, [Director 1, Fourfront] repeated the same question in a further email to [Director 4, Fourfront] and [Director 2, Fourfront].

3.135 At 10:13, [Director 2, Fourfront] responded:

'Non collusion, perhaps they should just ignore that until pressed.'

¹⁵² WAPN0115.

¹⁵³ WAPN0115.

¹⁵⁴ WAPN0116.

¹⁵⁵ WAPN0116A.

¹⁵⁶ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 198-199.

¹⁵⁷ URN1469 Transcript of CMA interview with [Director 2, Fourfront] dated 6 July 2018, page 73. [NB for the purposes of this non-confidential Decision: Director 2, Fourfront was no longer a director of Fourfront at the time of this interview.]

¹⁵⁸ WAPN0124.

¹⁵⁹ See paragraph 3.130.

The tender period has been extended by a week (see below), we will prepare their costs for and issue for them to top and tail.

The question remains on the site visit, do I send [Representative 4, Fourfront] in under the Bluu name, or are they happy for a representative of Bluu to just show their face on site?’¹⁶⁰

3.136 As both [Director 1, Fourfront]¹⁶¹ and [Director 2, Fourfront]¹⁶² explained in interview, [Director 2, Fourfront] was aware that Bluu did not want to expend resources on preparing a cover bid and was therefore suggesting that one of Fourfront’s staff ([Representative 4, Fourfront]) could visit the site on behalf of Bluu to lend Bluu’s bid credibility. On 26 May 2013, [Director 4, Fourfront] responded to this suggestion:

‘Somebody from Bluu needs to go. Definitely NOT from Cube [Fourfront]!’¹⁶³

3.137 On 10 June 2013, at 13:45, [Contact 1, SHW] sent an addendum to the tender documents by email to [Representative 7, Bluu] and [Representative 6, Bluu].¹⁶⁴ This was forwarded within Bluu to [Director 3, Bluu], [Representative 8, Bluu (subsequently Director 5, Bluu)],¹⁶⁵ [Director 1, Bluu] and [Director 4, Bluu]. At 14:52, [Director 4, Bluu] sent an email to this group with the message:

‘Please ignore this, it is the tender we are pricing for Area [Fourfront]’.¹⁶⁶

3.138 On 13 June 2013, at 14:10, [Representative 5, Fourfront] sent an email to [Director 1, Fourfront], copying [Director 2, Fourfront] stating:

‘[Director 1, Fourfront], please see attached form of tender and costs to forward to our friends. They need to complete and sign the FOT [form of tender].

The costs are on several tabs on an Excel spreadsheet which can be easily printed.

¹⁶⁰ WAPN0124.

¹⁶¹ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 202-205.

¹⁶² URN1469 Transcript of CMA interview with [Director 2, Fourfront] dated 6 July 2018, pages 73-75. [NB for the purposes of this non-confidential Decision: Director 2, Fourfront was no longer a director of Fourfront at the time of this interview.]

¹⁶³ WAPN0122.

¹⁶⁴ URN0606.

¹⁶⁵ [NB for the purposes of this non-confidential Decision: Director 5, Bluu was a statutory director of Bluu Solutions Limited, and not a statutory director of Bluuco Limited. However, for consistency throughout this non-confidential Decision, the descriptor “Director 5, Bluu” is used.]

¹⁶⁶ URN0606.

*Please note the tender is to be returned to the client by 11am tomorrow...there is a return label in the tender pack for tender submissions.*¹⁶⁷

3.139 Both [Director 1, Fourfront]¹⁶⁸ and [Director 2, Fourfront]¹⁶⁹ confirmed in interview that the reference to ‘*our friends*’ in this email was a reference to Bluu. At 14:16, [Director 1, Fourfront] forwarded this email to [Director 1, Bluu],¹⁷⁰ including the attachments: a completed (but unsigned) form of tender¹⁷¹ and a spreadsheet pricing schedule labelled ‘*6817 Amicus Horizon – BLUU01.xlsx*’.¹⁷² Both documents put the price of Bluu’s bid at £1,310,237.86,¹⁷³ which is the price at which Bluu later submitted its bid.¹⁷⁴

3.140 On 14 June 2013, bids were submitted by Fourfront (£1,066,719), Bluu (£1,310,237), [Competitor A] (£1,080,831) and [Competitor B] (£1,137,588).¹⁷⁵

3.141 A few days later, on 17 June 2013, at 17:15, [Contact 1, SHW] sent an email to [Representative 7, Bluu] and [Representative 6, Bluu] highlighting a possible error in Bluu’s tender submission and requesting clarification. At 17:25, [Representative 7, Bluu] forwarded this email to [Director 4, Bluu], [Representative 9, Bluu] and [Representative 10, Bluu]. [Director 4, Bluu] forwarded this email to [Director 1, Bluu] with the message:

*‘One for Area [Fourfront] to answer please’.*¹⁷⁶

3.142 At 21:18, [Director 1, Bluu] forwarded this email to [Director 1, Fourfront] with the message ‘*Can you ask [Representative 5 Fourfront]?*’.¹⁷⁷ At 21:18 [Director 1, Fourfront] forwarded this email to [Representative 5, Fourfront] and [Director 2 Fourfront].¹⁷⁸

¹⁶⁷ WAPN1596.

¹⁶⁸ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 202-205.

¹⁶⁹ URN1469 Transcript of CMA interview with [Director 2, Fourfront] dated 6 July 2018, page 75. [NB for the purposes of this non-confidential Decision: Director 2, Fourfront was no longer a director of Fourfront at the time of this interview.]

¹⁷⁰ WAPN0130.

¹⁷¹ WAPN0130A.

¹⁷² WAPN0131.

¹⁷³ See paragraph 3.140.

¹⁷⁴ See paragraph 3.140.

¹⁷⁵ URN1816.

¹⁷⁶ WAPN0155.

¹⁷⁷ WAPN0155.

¹⁷⁸ WAPN0155.

3.143 [Director 1, Fourfront] explained in interview that Bluu was not able to respond to the query as it was Fourfront that prepared the bid that Bluu had submitted.¹⁷⁹

3.144 At 21:52, [Director 2, Fourfront] responded to [Director 1, Fourfront] to say that Bluu should ignore the request for clarification.¹⁸⁰ He further explained, in an email of 21:55, that Bluu would actually need to increase their bid by £49,000 to resolve the error.¹⁸¹

3.145 At 22:02, [Director 1, Fourfront] responded to [Director 1, Bluu]¹⁸² stating:

*'I think that it was a deliberate error – you need to increase your cost by £49k...hope that makes sense!'*¹⁸³

3.146 On 18 June 2013, [Director 4, Bluu] forwarded this email to [Representative 10, Bluu] asking him to deal with the issue, to which [Representative 10, Bluu] responded that he had already done so the previous day.¹⁸⁴ In fact [Representative 10, Bluu] had been contacted by [Representative 5, Fourfront] on 17 June 2013, as [Representative 5, Fourfront] explained in an email to [Director 1, Fourfront] on 18 June 2013, at 11:54, in response to the query forwarded from Bluu.¹⁸⁵

*'Not sure if this is now resolved. I sent [Representative 10, Bluu] of Bluu an email yesterday explaining this query. To be clear a named subcontractor sent everyone an incorrect quote so we all had the same question from [Contact 1, SHW]. I will ring [Representative 10, Bluu] now to ensure they understand.'*¹⁸⁶

3.147 At 12:13, [Representative 5, Fourfront] wrote to [Director 2, Fourfront] and [Director 1, Fourfront]:

*'I have just spoken to [Representative 10, Bluu] of Bluu and he has dealt with it perfectly.'*¹⁸⁷

3.148 Following further negotiation with Fourfront and [Competitor A], the two lowest bidders, Fourfront was awarded the contract for the sum of £975,313.¹⁸⁸

¹⁷⁹ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 207.

¹⁸⁰ WAPN0171.

¹⁸¹ WAPN0171.

¹⁸² See paragraph 3.142.

¹⁸³ WAPN0167.

¹⁸⁴ WAPN0167.

¹⁸⁵ See paragraph 3.144.

¹⁸⁶ WAPN0169.

¹⁸⁷ WAPN0171.

¹⁸⁸ URN1816.

Assessment

- 3.149 On the basis of the evidence above, the CMA makes the following findings.
- 3.150 Prior to the pre-qualification stage for the contract, Fourfront approached Bluu with a view to seeking a cover bid. As requested by Fourfront, Bluu submitted pre-qualification material to the CPM and was successful in progressing to the tender stage and confirmed this to Fourfront.¹⁸⁹
- 3.151 On receipt of the tender invitation from Amicus Horizon, the contract was immediately identified within Bluu as one where Bluu would submit a cover bid, the details of which would be supplied to it by Fourfront.¹⁹⁰
- 3.152 A number of internal emails show that Fourfront discussed various issues relating to Bluu's submission, including whether Bluu should sign a non-collusion certificate as part of its bid submission.¹⁹¹
- 3.153 Fourfront prepared bidding documents for submission by Bluu and sent these to Bluu for submission to Amicus Horizon.¹⁹² The price of the bid actually submitted by Bluu matched the figures supplied to it by Fourfront.¹⁹³
- 3.154 Following the submission of bids, Bluu and Fourfront remained in close contact; Fourfront instructed Bluu on how to respond to enquiries raised by the CPM in relation to the content of Bluu's bid.¹⁹⁴
- 3.155 In a letter to the CMA dated 28 August 2018, Fourfront stated that it accepted that Cube was in breach of competition law in relation to this contract. Fourfront acknowledged that it provided Bluu with a figure of £1.31 million for submission to Amicus Horizon; it stated that its own bid was £1.04 million.¹⁹⁵
- 3.156 The CMA finds that there was an agreement and/or concerted practice between Fourfront and Bluu in accordance with which Bluu submitted a cover bid to the client Amicus Horizon at Fourfront's lead and/or instigation. The object of this agreement and/or concerted practice was the restriction of competition for the Amicus Horizon contract.

¹⁸⁹ See paragraphs 3.122 to 3.127.

¹⁹⁰ See paragraphs 3.128.

¹⁹¹ See paragraphs, 3.133 to 3.136.

¹⁹² See paragraphs 3.138 and 3.139.

¹⁹³ See paragraphs 3.139 and 3.140.

¹⁹⁴ See paragraphs 3.141 to 3.147.

¹⁹⁵ URN2288.

Klesch (Wigmore Street)

- **Parties:** Bluu and Fourfront
- **Value of contract:** £230,118.85¹⁹⁶
- **Location:** London
- **Type of contract:** Category A
- **Period:** 28 May 2013 to 8 October 2013
- **Leader and/or instigator:** Bluu

Introduction

3.157 This contract involves the dilapidation works in relation to Klesch & Company Limited's ('**Klesch**') former headquarters at 105 Wigmore Street, London. Collins McKay was the CPM, upon recommendation from [Contact, BC Commercial].

Evidence

3.158 On 24 May 2013, [Representative 11, Bluu] sent an email to [Director 1, Bluu], copying [Director 4, Bluu], stating:

*'[✂] Plan is for us to write the spec and then issue out.'*¹⁹⁷ [emphasis added]

3.159 At 19:02, [Director 1, Bluu] replied: '*Call you in a mo yes area [Area Sq. (Fourfront)] will be fine*'.¹⁹⁸

3.160 On 28 May 2013, at 11:38, [Director 1, Bluu] warned [Director 1, Fourfront] that Fourfront would be receiving an invitation to tender from '*our client Klesch*' and that Bluu would be providing Fourfront with numbers for the bid. The email read:

'You will be getting a call from this guy [Contact, Collins McKay] for a CAT A refurb of 105 Wigmore st single floor our client klesch is moving out –

¹⁹⁶ URN1919.

¹⁹⁷ WAPN1591.

¹⁹⁸ WAPN1591.

*Call may go to Cube [Fourfront] so watch out, **will give you the numbers***.¹⁹⁹ [emphasis added]

- 3.161 At 11:55, [Director 1, Fourfront] circulated Bluu's email to individuals at Cube (Fourfront) and Area Sq. (Fourfront), asking them to let him know when the invitation to bid arrived and warning them against wasting time preparing a bid:

*'Gents – keep your eyes peeled and let me know if it turns up – **don't waste time bidding***' [emphasis added]²⁰⁰

- 3.162 On 7 June 2013, [Director 4, Bluu] sent an email to [Director 1, Bluu] saying that the client would be sending an invitation to tender to Fourfront, and that [Director 1, Fourfront] should be warned as the invitation would not be sent to him directly. The email had the subject line '*Klesch - 105 Wigmore Delaps work*' and stated:

'... [X] [the CMA presumes [Contact] of Klesch] wants an alternative cost so he will be going to Area / Cube [Fourfront] for costs, it won't be going to [Director 1, Fourfront] directly so can you give him the heads up that it's on his way please'.²⁰¹

- 3.163 On the same day, [Director 1, Bluu] forwarded that email to [Director 1, Fourfront] with the message '*Heads up*'.²⁰²

- 3.164 On 16 August 2013, [Director 1, Fourfront] emailed [Director 1, Bluu] asking him to liaise with [Director 2, Fourfront] in relation to the Klesch tender. The email read:

'I'm in Canada, Klesch has come in, can you liaise with [X] of Cube [Fourfront] [Director 2, Fourfront], he is about as dodgy as you!!!'.²⁰³

- 3.165 In interview, [Director 2, Fourfront] stated:

'[Director 1, Fourfront] advised me the client had a relationship with Bluu and wanted to use Bluu. I said, "I wanted to win this job, because I want a relationship with the project manager to build up future business". He said, "That's not happening. Bluu are going to win this job". But the client wanted

¹⁹⁹ WAPN1592.

²⁰⁰ WAPN1592.

²⁰¹ URN0291.

²⁰² URN0291.

²⁰³ WAPN0178.

it for compliance to have at least two bids in there. [...] From memory we did put a price in'.²⁰⁴

3.166 On 20 August 2013, at 8:25, [Director 4, Bluu] sent an email to [Director 2, Fourfront] with subject line 'Klesch' saying: *'Many thanks for the chat today, cost plan attached'.²⁰⁵* Attached to his email was a document titled *'Klesch, 5th floor, 105 Wigmore Street / Budget Cost Plan, revision REV B dated 07/06/2013'* containing a cost plan for the project. The total fit-out cost was £134,924.15.²⁰⁶

3.167 At 16:29, [Representative 5, Fourfront] sent an email to [Director 4, Bluu] with the subject line 'Klesch' saying: *'I will be looking after this one for Cube [Fourfront]. Can you let me have an unpriced cost schedule in Excel if possible?'* [Director 4, Bluu] replied by sending a document containing Bluu's cost plan and the message *'Hope this helps'.²⁰⁷*

3.168 On 21 August 2013, at 08:36, [Director 4, Bluu] sent an email to [Representative 5, Fourfront] asking:

'I assume[Contact, CPM] has asked you to quote against our "Budget Cost Plan, revision REV B dated 07/06/2013

The only reason I ask is that we have priced this job 6 times, in various different formats and the PM is a little out of the loop'.²⁰⁸

3.169 At 9:01, [Representative 5, Fourfront] replied: *'That the one we have'.²⁰⁹*

3.170 On 23 August 2013 the CPM sent an email to Klesch providing the results of the tender. The CPM's email indicated that Fourfront's tender price (£130,239.20) was almost £5,000 cheaper than Bluu's (£134,924.15).²¹⁰

3.171 However, an internal email discussion within Bluu shows that Bluu believed that the difference between the two tender prices was smaller than portrayed by the CPM. On the same day as the CPM's email to Klesch (23 August 2013), [Representative 11, Bluu] sent an email to [Director 1, Bluu] and [Director 4, Bluu] complaining that Cube (Fourfront) had submitted a bid that was *'5k below'* Bluu and that the CPM had not been *'terribly helpful'*. In

²⁰⁴ URN1469 Transcript of CMA interview with [Director 2, Fourfront] dated 6 July 2018 at pages 24 to 27. [NB for the purposes of this non-confidential Decision: Director 2, Fourfront was no longer a director of Fourfront at the time of this interview.]

²⁰⁵ WAPN0179.

²⁰⁶ WAPN0179A.

²⁰⁷ WAPN0182 and WAPN0182A.

²⁰⁸ WAPN0185.

²⁰⁹ WAPN0185.

²¹⁰ URN1918.

response, [Director 4, Bluu] stated: *'they [the CMA presumes Fourfront] are £1,500.00 cheaper than us, [S<].*²¹¹

3.172 Subsequently, while there were further price negotiations with the client,²¹² there was also further contact between Bluu and Fourfront in which they discussed their revised cost plans and prices, and which led Fourfront to submit a much higher cover bid.

3.173 On 27 August 2013, Bluu asked Fourfront to *'send us a PDF of your quote please'*.²¹³

3.174 [Director 2, Fourfront]'s phone records show Fourfront's contact with Bluu in relation to Klesch in this period:²¹⁴

- 12 September 2013, at 16:13, from [Director 1, Bluu] to [Director 2, Fourfront]: *'[Director 2, Fourfront] just checking you got my VM [voice message] re 105 Wigmore? Thanks [Director 1 Bluu]'*
- 12 September 2013, at 16:16, from [Director 2, Fourfront] to [Director 1, Bluu]: *'[Director 1, Bluu], yes picked that up, yes happy to wait for your costs. [Director 2, Fourfront]'*
- 18 September 2013, at 9:54, from [Director 2, Fourfront] to [Director 1, Bluu]: *'[Director 1, Bluu], we are being chased? [Director 2, Fourfront]'*
- 18 September 2013, at 9:55, from [Director 1, Bluu] to [Director 2, Fourfront]: *'I'll get [Director 4, Bluu] to call you sorry thought he had'*
- 18 September 2013, at 17:57, from [phone number] (possibly [Director 4, Bluu]) to [Director 2, Fourfront]: *'Hi [Director 2, Fourfront], costs for the Klesch project will be with you by close of play on Friday, regards [S<, presumably Director 4, Bluu]'*

3.175 On 18 September 2013, [Director 4, Bluu] disclosed Bluu's cost plan to [Director 2, Fourfront]: *'Further to your conversation with [Director 1, Bluu], please see attached the Klesch cost plan'*. The cost plan, labelled *'revision REV B dated 18/09/2013'* indicated a total cost of £194,907.07.²¹⁵ [Director 2, Fourfront] replied to [Director 4, Bluu], *'What are we going in at?'* [Director 4, Bluu] replied, *'This is **your** sell price'*²¹⁶ [emphasis added].

²¹¹ URN0304.

²¹² URN0309 and URN0310.

²¹³ WAPN0189.

²¹⁴ URN2910 and URN2907.

²¹⁵ WAPN0190 and WAPN0190A.

²¹⁶ WAPN0194.

- 3.176 In its letter to the CMA of 28 August 2018, Fourfront confirmed that it submitted a bid of £194,000 to the client at Bluu's request in September 2013, consistent with the email exchange between [Director 2, Fourfront] and [Director 4, Bluu] of 18 September 2013.²¹⁷
- 3.177 Bluu eventually submitted a revised bid to Klesch on 8 October 2013 labelled '*revision REV D dated 08/10/2013*'.²¹⁸ Bluu submitted a further revised bid on 22 October 2013 '*revision REV E dated 22/10/13*' and was awarded the contract for a total sum of £230,118.85. The costs for a number of items in Bluu's final bid were significantly higher than those in its previous bids, which suggests that the scope of works continued to change over time (see paragraph 3.168).²¹⁹

Assessment

- 3.178 On the basis of the evidence described above, the CMA makes the following findings.
- 3.179 Bluu contacted Fourfront ([Director 1, Fourfront]) to warn it that it would be receiving an invitation to tender from Klesch and to advise Fourfront that Bluu would give it numbers for the cover bid to be submitted to the client.²²⁰
- 3.180 [Director 1, Fourfront] warned his colleagues not to bid for this contract and asked to be informed when they received the invitation to tender.²²¹ An internal email discussion at Bluu also emphasises the importance of [Director 1, Fourfront] being made aware that the invitation to tender would be sent to Fourfront (as it was not expected that the invitation to tender would be sent to him directly).²²²
- 3.181 Once the invitation to tender was received, [Director 4, Bluu] and [Director 2, Fourfront] had a discussion about the project, and on the same day [Director 4, Bluu] provided [Director 2, Fourfront] with Bluu's future tender price. Following a request from Fourfront, Bluu also provided Fourfront with an unpriced cost schedule.²²³

²¹⁷ URN2288.

²¹⁸ URN0148.

²¹⁹ URN1919 and URN0318. In Bluu's quote of 8 October 2013, costs in relation to raised flooring, ceilings, and HVAC and plumbing works were between eight to fifteen times more than those set out in Bluu's quote dated 7 June 2013. Other costs in relation to works for wall, ceiling finishes and decorations, builders work, demolitions and floor finishes had also increased.

²²⁰ See paragraph 3.160.

²²¹ See paragraphs 3.161 and 3.165.

²²² See paragraphs 3.162 and 3.163.

²²³ See paragraphs 3.166 and 3.167.

3.182 Furthermore, Bluu and Fourfront discussed their bids in the period between when the revised bids were submitted and the award of the contract to Bluu.²²⁴ Fourfront admitted that in September 2013, it submitted a £194,000 cover bid at Bluu's request.

3.183 The CMA finds that there was an agreement and/or concerted practice between Fourfront and Bluu in accordance with which Fourfront submitted a cover bid to the client Klesch at Bluu's lead and/or instigation. The object of this agreement and/or concerted practice was the restriction of competition for the Klesch contract.

²²⁴ See paragraph 3.172.

EasyJet

- **Parties:** Bluu and Fourfront
- **Value of contract:** £1,575,000²²⁵
- **Location:** Gatwick
- **Type of contract:** Category B
- **Period:** 21 November 2014 to 16 January 2015
- **Leader and/or instigator:** Fourfront

Introduction

3.184 In late 2014, EasyJet Airline Company Limited (**'EasyJet'**) sought bids in relation to the fit-out of its new training facility at Concorde House, Gatwick. It initially approached 11 potential bidders, of whom only two submitted bids: Bluu and Fourfront.²²⁶

Evidence

3.185 EasyJet sent an invitation to tender for its new training facility to [Representative 12, Bluu], on 21 November 2014, at 15:58. She forwarded it to [Director 1, Bluu], who in turn forwarded it to [Director 4, Bluu] at 17:10 stating:

*'Cover , for area [Area Sq. (Fourfront)]'.*²²⁷

3.186 [Director 4, Bluu] replied:

*'OK I assume they will do everything for us?'*²²⁸

3.187 On 28 November 2014, [Director 4, Bluu], commenting on a notification that the deadline for the EasyJet tender had been extended to 15 December 2014,²²⁹ sent an email to [Director 1, Bluu], stating:

²²⁵ URN1911.

²²⁶ URN1911.

²²⁷ URN0683.

²²⁸ URN0683.

²²⁹ URN0402.

'if [~~X~~] [the CMA presumes [Director 1, Fourfront], given subsequent correspondence] can put together a full proposal document, including costs, we can cut and paste this into a bluu document'.²³⁰

- 3.188 An email from [Representative 6, Fourfront] to [Representative 7, Fourfront] on 4 December 2014 at 10:37 with the subject '*Alternative plans*' and copying the email address '*easyjetinternal@[Fourfront email address]*', demonstrates that Fourfront prepared the details of the bid to be submitted by Bluu in accordance with Bluu's intentions as outlined in the above Bluu emails:

'Just to be clear, these are the plans for the Bluu submission'.²³¹

- 3.189 Later that day, at 17:48, [Representative 6, Fourfront] sent another email to the email address '*easyjetinternal@[Fourfront email address]*', but addressing [Representative 7, Fourfront], with the subject line '*Bluu plans*' and attaching '*2nd and 3rd floor plans for pricing*'.²³²

- 3.190 [Director 1, Fourfront] and [Director 5, Fourfront] subsequently discussed the mechanics of preparing the bid to be submitted by Bluu in an email exchange with the subject '*easyJet*'. On 5 December 2014, [Director 5, Fourfront] asked [Director 1, Fourfront]:

'How do they [Bluu] want the costs ? Is it best for them to send us their typical blank excel spreadsheet for me to populate (although, they are probably not keen on sending us that !), or shall I just create a version to send over to them to put in their format. They will get everything on Wednesday next week with submissions being by email the following Monday. They need to complete the standard PQQ that was included in tender docs, accounts, references etc'.²³³

- 3.191 [Director 1, Fourfront] replied on 8 December 2014 at 12:27:

'I guess we should send them a blank spreadsheet for them to import in their own way but I will ask [Director 1, Bluu] either way'.²³⁴

- 3.192 [Director 5, Fourfront] asked for further clarification at 12:28:

²³⁰ URN0402.

²³¹ WAPN0230.

²³² WAPN0232.

²³³ WAPN0236.

²³⁴ WAPN0236.

'Okay - can you also ask how he wants the programme – we will send him a PDF and Power Project version but he will need to personalise it so will depend on what Programming software they use'.²³⁵

- 3.193 On the same day [Director 5, Fourfront], [Representative 6, Fourfront] and [Representative 8, Fourfront] discussed the draft Bluu cover bid '*visuals*' (that is, artistic impressions of the finished project) in an email exchange with the subject line '*Bluu visuals*'.²³⁶ [Representative 8, Fourfront] commented that the visuals are '*[t]oo good*', to which [Director 5, Fourfront] replied:

'That's the point – it needs to look fussier and more detailed to make it more expensive'.²³⁷

- 3.194 On 9 December 2014, [Director 1, Bluu] sent a Bluu cost template to [Director 1, Fourfront]. At 16:53 on the same day, [Director 1, Fourfront] forwarded this template to [Director 5, Fourfront], who forwarded it to [Director 6, Fourfront] on 10 December 2014.²³⁸

- 3.195 Further internal Fourfront correspondence on 10 December 2014 demonstrates that Fourfront continued to work on the cover bid for Bluu.²³⁹ For example, at 7:55, [Director 5, Fourfront] sent an email to [Director 3, Fourfront] stating: '*Am working from home this morning as I have to crack out the Bluu cost plan for Easyjet and I need no distractions*'.²⁴⁰

- 3.196 When asked about this email in interview, [Director 3, Fourfront] confirmed that [Director 5, Fourfront]'s email indicated that he was producing a document for Bluu to submit as part of its bid for the EasyJet contract. When asked whether it would be the norm in this situation (i.e. when a cover bid is being provided) for Area Sq. (Fourfront) to produce the cover bid for Bluu to submit, [Director 3, Fourfront] explained that a lot of resources go into producing a price and a company that did not have any interest in winning the contract would need guidance or help to produce the cost plan.²⁴¹

- 3.197 Also on 10 December 2014, at 10:05, [Director 5, Fourfront]) sent an email attaching a cost plan labelled '*EasyJet Gatwick bluu.xls*'²⁴² to [Director 6, Fourfront], copying [Representative 7, Fourfront] and stating:

²³⁵ WAPN0236.

²³⁶ WAPN0237.

²³⁷ WAPN0237.

²³⁸ WAPN1618, WAPN1622.

²³⁹ WAPN0247, WAPN0243, WAPN0252.

²⁴⁰ WAPN0243.

²⁴¹ URN1473 Transcript of CMA interview with [Director 3, Fourfront] dated 12 July 2018 pages 43-45.

²⁴² WAPN1617.

*'Can you check through and ensure no obvious errors that lead back to us or our bid...we need to ensure no trace of author source on the properties of the spreadsheet.'*²⁴³

3.198 At 14:55 [Director 5, Fourfront] sent a further email²⁴⁴ to the same recipients with an attachment labelled '*Bluu cost plan Gatwick.xls*' with the message '*Please review this version as it is now populated in their format*'.²⁴⁵ The attachment was in the same format as the cost template sent by Bluu to Fourfront on 9 December 2014.²⁴⁶

3.199 On 11 December 2014, [Director 5, Fourfront] sent an email to [Director 1, Bluu] informing him that a memory stick was on its way to Bluu's offices:

*'...memory stick with everything coming over to you within 45 mins for your attention. All needs to be sent to client on Monday – just needs you to top and tail.'*²⁴⁷

3.200 On 12 December 2014, at 15:44, [Representative 13, Bluu] sent an email to [Director 4, Bluu], [Representative 3, Bluu], [Director 1, Bluu] and [Director 3, Bluu], with the subject line '*easyJet*', attaching a zip file labelled '*Area2.zip*' accompanied by the message '*...contents from USB attached*'.²⁴⁸ The CMA infers from the title and timing of the email, and from the name of the file, that the file '*Area2.zip*' contained the contents of the memory stick sent by Fourfront to Bluu the previous day.

3.201 One of the documents contained in the zip file '*Area2.zip*' was a file labelled '*Bluu cost plan Gatwick Final.xls*', which showed the fitting out cost as £2,268,010.86.²⁴⁹ The document was in the same format as the blank template sent by Bluu to Fourfront²⁵⁰ and the document of the same name circulated internally within Fourfront.²⁵¹

3.202 In interview, [Director 1, Fourfront] admitted that Fourfront had supplied Bluu with the price at which it intended Bluu to submit a bid to EasyJet.²⁵²

3.203 On 12 December 2014, at 16:21, [Representative 13, Bluu] sent a further internal email containing a series of questions to the same recipients

²⁴³ WAPN1616.

²⁴⁴ WAPN1623.

²⁴⁵ WAPN1624.

²⁴⁶ See paragraph 3.194.

²⁴⁷ WAPN0253.

²⁴⁸ WAPN0260.

²⁴⁹ WAPN0261.

²⁵⁰ See paragraph 3.194.

²⁵¹ See paragraph 3.198.

²⁵² URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 64-65.

([Director 4, Bluu], [Representative 3, Bluu], [Director 1, Bluu] and [Director 3, Bluu]) about how to complete the tender response to EasyJet. Her final question was:

*'Please can you also clarify what we need to do with the information provided by area2 [Area Sq. (Fourfront)]. Assuming you need it putting into an additional document.'*²⁵³

3.204 On 12 December 2014, at 11:55, Fourfront submitted its bid to EasyJet.²⁵⁴ On 15 December, at 16:20, [Director 5, Fourfront] sent an email to [Director 4, Bluu] and [Director 1, Bluu] enquiring whether Bluu had submitted its bid. On the same day, at 16:31, Bluu submitted its bid.²⁵⁵ The final bid submitted by Bluu was £2.268 million, i.e. the same figure that was included in the '*Bluu cost plan Gatwick Final.xls*' provided by Fourfront to Bluu.²⁵⁶

3.205 At 17:26, [Director 4, Bluu] sent an email to [Director 5, Fourfront] in which he confirmed that the Bluu submission was sent to the client at 4.30pm via email.²⁵⁷

3.206 On 6 January 2015, [Director 5, Fourfront] sent an email to [Director 4, Bluu] to inform him that Fourfront and Bluu were the only companies to submit bids for the EasyJet contract. The email stated:

*'would you believe out of 10 tenderers, only 2 responded and you've guessed it, it's us! We may need to meet this week as I understand interviews may be early next week and they will need to interview at least 2 for their procurement team to be content.'*²⁵⁸

3.207 At 17:56 on the same day, [Director 4, Bluu] forwarded this email to [Director 1, Bluu], appearing to express concern at the prospect of Bluu having to meet with EasyJet regarding its bid.²⁵⁹ At 18:13, [Director 1, Bluu] forwarded this email chain to [Director 1, Fourfront] asking:

*'Is he [Director 5, Fourfront] kidding!?''*²⁶⁰

3.208 On 7 January 2015, [Director 1, Fourfront] replied with:

²⁵³ WAPN0264.

²⁵⁴ WAPN0750.

²⁵⁵ WAPN0775.

²⁵⁶ URN1911. EasyJet informed the CMA that Bluu's final bid was £2.268 million.

²⁵⁷ WAPN0269.

²⁵⁸ URN0227.

²⁵⁹ URN0226.

²⁶⁰ WAPN0277.

*'I think so... I'll call you later!'*²⁶¹

3.209 On 8 January 2015, [Contact 1, EasyJet] sent an email to [Representative 13, Bluu] and [Representative 3, Bluu] indicating that EasyJet was reviewing Bluu's submission and would provide feedback to Bluu and ask it to revise its designs. [Representative 3, Bluu] forwarded the email, at 12:10, to [Director 4, Bluu] and [Director 1, Bluu] asking *'How is this being covered?'*. At 12:13, [Director 4, Bluu] replied *'[Director 1, Bluu] is in dialogue with [Director 1, Fourfront] and we have a plan!'*²⁶²

3.210 On 13 January 2015, at 14:21, [Contact 1, EasyJet] sent an email providing extensive feedback to Bluu on their bid and asked them to resubmit their designs, drawings and commercials by Friday 16 January 2015.²⁶³ EasyJet also invited Bluu to present their revised design to key stakeholders at EasyJet on Friday 23 January 2015. [Representative 3, Bluu] appeared displeased with this email from EasyJet because at 14:28 he forwarded it to [Director 1, Bluu] and [Director 4, Bluu] stating:

*'Off to your cunning plan. Think I may be taken ill on the 23rd'*²⁶⁴

3.211 At 14:34, [Director 1, Bluu] forwarded this email to [Director 1, Fourfront] expressing his discontent:

*'This is getting to be a joke !! Im off end of next week and start of the week after so I can't do it - We need to not be called for interview somehow.'*²⁶⁵
[emphasis in the original]

3.212 At 14:42, [Director 1, Fourfront] forwarded this email to [Director 5, Fourfront], who replied at 16:02 stating:

*'I have spoken to [✂] [Contact 2, EasyJet]²⁶⁶ and believe that the right way forward is for [Director 1, Bluu] to wait until Friday afternoon then email [Contact 1, EasyJet] and explain that due to recent success in wining some large, complex projects, they are no longer able to meet the timescales of the project and are therefore withdrawing from the tender process...'*²⁶⁷

3.213 On 16 January 2015, at 13:23, [Representative 3, Bluu] wrote to [Contact 1, EasyJet] to inform EasyJet that Bluu was withdrawing from the bidding

²⁶¹ WAPN0277.

²⁶² WAPN1628.

²⁶³ WAPN0282

²⁶⁴ WAPN0282.

²⁶⁵ WAPN1631.

²⁶⁶ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 62.

²⁶⁷ WAPN1631.

process, adopting a similar justification to that suggested by [Director 5, Fourfront]:

'...further to your request for amend proposals I am afraid that we will have to reluctantly withdraw from the bidding process.

*This is due to being awarded several large projects in the last 7 days which means we are no longer able to resource your project to the level required and you as a company deserve.'*²⁶⁸

3.214 At 14:25, [Contact 1, EasyJet] responded to [Representative 3, Bluu] with:

*'I am disappointed to hear that Bluu Co have decided to decline from this RFP process...I would ask that Bluu Co, as a gesture, **refrain from making public their withdrawal from this contract** until we have finalised it, so as to ensure the integrity of the final stages of our RFP'*²⁶⁹ (emphasis added)

3.215 At 15:48, [Representative 3, Bluu] forwarded this email chain to [Director 1, Bluu] who in turn, at 15:51, forwarded it to [Director 1, Fourfront] (contrary to the client's request).²⁷⁰

3.216 EasyJet selected Fourfront as the successful bidder for the contract.²⁷¹

Assessment

3.217 On the basis of the evidence above, the CMA makes the following findings.

3.218 On receipt of the tender invitation from EasyJet, the contract was immediately identified within Bluu as one where Bluu would submit a cover bid, the details of which would be supplied to it by Fourfront.²⁷²

3.219 Fourfront discussed internally the mechanics of preparing the bid, including how Fourfront would present the bid that Bluu was to submit.²⁷³ Bluu supplied Fourfront with its own costs template in order that Fourfront could insert the details for Bluu's submission.²⁷⁴

²⁶⁸ WAPN0286. See paragraph 3.212.

²⁶⁹ WAPN0286.

²⁷⁰ WAPN0286.

²⁷¹ URN1911.

²⁷² See paragraphs 3.185, 3.186 and 3.187.

²⁷³ See paragraphs 3.190 to 3.192.

²⁷⁴ See paragraph 3.194.

- 3.220 Fourfront prepared bidding documents for Bluu, including design plans and costs breakdowns,²⁷⁵ which were intended to appear as though they had been prepared by Bluu, taking care to ensure that these documents contained no indication that they had in fact been prepared by Fourfront.²⁷⁶ The bid for submission by Bluu was intended to be credible but higher in price than Fourfront's.²⁷⁷
- 3.221 Fourfront supplied the cover bid it had prepared to Bluu,²⁷⁸ which Bluu then submitted as its own to EasyJet,²⁷⁹ and confirmed to Fourfront that it had done so.²⁸⁰
- 3.222 Following the submission of bids, there were further contacts between Fourfront and Bluu regarding the coordination of their approach to anticipated discussions with EasyJet in relation to their respective bids and ensuring Fourfront would win the bid.²⁸¹ For example, when EasyJet subsequently invited Bluu to discuss its submissions in more detail,²⁸² Bluu discussed its intended response with Fourfront²⁸³ and on 16 January 2015, adopting the justification proposed by Fourfront,²⁸⁴ Bluu withdrew from the bidding process,²⁸⁵ and informed Fourfront that it had done so.²⁸⁶ Fourfront subsequently won the bid.
- 3.223 It is clear that EasyJet sought to protect the integrity of its bidding process and was under the impression that this integrity had not been compromised. When Bluu withdrew from the process, EasyJet asked it not to make this fact public, because if Bluu did so this may impact on the conduct of the other bidder.²⁸⁷ That other bidder was Fourfront, the instigator of Bluu's cover bid. Both parties maintained the pretence of being independent bidders until the end.
- 3.224 In a letter to the CMA dated 28 August 2018, Fourfront stated that it accepted that Area Sq. was in breach of competition law in relation to this contract. Fourfront acknowledged that it provided Bluu with a figure of £2.2 million for

²⁷⁵ See paragraphs 3.188, 3.189, 3.195 to 3.198.

²⁷⁶ See paragraph 3.197 and 3.198.

²⁷⁷ See paragraph 3.193.

²⁷⁸ See paragraphs 3.199 to 3.202.

²⁷⁹ See paragraphs 3.204.

²⁸⁰ See paragraph 3.205.

²⁸¹ See paragraph 3.206 to 3.209.

²⁸² See paragraph 3.210.

²⁸³ See paragraph 3.211 and 3.212.

²⁸⁴ See paragraph 3.212.

²⁸⁵ See paragraph 3.213.

²⁸⁶ See paragraph 3.215.

²⁸⁷ See paragraph 3.214.

submission to EasyJet, while its own bid was £1.57 million, and that it ‘*assisted*’ with the preparation of Bluu’s bid.²⁸⁸

- 3.225 The CMA finds that there was an agreement and/or concerted practice between Fourfront and Bluu in accordance with which Bluu submitted a cover bid to the client EasyJet at Fourfront’s lead and/or instigation. The object of this agreement and/or concerted practice was the restriction of competition for the EasyJet contract.

²⁸⁸ URN2288.

Dechert

- **Parties:** Bluu and Fourfront
- **Value of contract:** £[REDACTED]²⁸⁹
- **Location:** London
- **Type of contract:** Category B
- **Period:** 24 March 2015 to 17 April 2015
- **Leader and/or instigator:** Bluu

Introduction

3.226 In March 2015, Dechert LLP (**‘Dechert’**) sought bids via a CPM, DTZ, for a project at its London offices.

Evidence

3.227 Before issuing an invitation to tender for the Dechert project, DTZ sent out a pre-qualification questionnaire in or around January 2015. In interview [Director 1, Fourfront] stated that he believed he may have had a conversation with [Director 1, Bluu] about this contract around the time the pre-qualification questionnaire was sent out. He described the arrangement between Bluu and Fourfront in relation to this contract as *‘pay back for EasyJet’*, meaning that Fourfront agreed to submit a cover bid for Bluu on this contract as compensation for Bluu having submitted a cover bid for Fourfront on the EasyJet contract in January 2015.²⁹⁰

3.228 On 24 March 2015, at 9:57, [Contact, DTZ] sent an invitation to tender to [Director 5, Fourfront].²⁹¹ At 12:16, [Director 5, Fourfront] forwarded that email to [Director 1, Fourfront], copying [Director 3, Fourfront]:

*‘Have you spoken to [Director 1, Bluu] in this regard? How does he want us to play this? He will either have to do all the work for us to submit or we will have to decline - it is vital that we retain a professional response and courtesy to DTZ as we may be asked to tender in future...’*²⁹²

²⁸⁹ URN1866. This was Bluu’s winning bid.

²⁹⁰ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 140-141, 144-145.

²⁹¹ WAPN1639.

²⁹² WAPN1639.

3.229 Subsequent to this, [Director 1, Fourfront] did indeed speak to [Director 1, Bluu], as he explained in an email to [Director 5, Fourfront], copying [Director 3, Fourfront] dated 25 March 2015, at 12:33:

*'Spoken to [Director 1, Bluu] and he will do the work. Can you send confirmation that we will bid the project. May just have to send someone to site to at least look interested'.*²⁹³

3.230 [Director 1, Fourfront] explained in interview that Fourfront wished to ensure that any cover bid it submitted nevertheless appeared credible in terms of quality and presentation, in order that Fourfront's reputation with the CPM was not damaged. According to [Director 1, Fourfront], Fourfront's relationship with DTZ was particularly important because it is a market leading surveying practice that would likely provide Fourfront further work in the future.²⁹⁴

3.231 On 2 March 2015, [Director 5, Fourfront] and [Director 1, Fourfront] exchanged further emails, discussing when they would be free to meet [Director 5, Bluu] of Bluu.²⁹⁵ [Director 5, Fourfront] responded to one of these emails, copying [Director 1, Bluu] and indicating that he could meet [Director 5, Bluu] *'mid morning on Tuesday'*. [Director 1, Bluu] responded, copying [Director 5, Bluu]:

*'Thx [Director 5, Fourfront]. [Director 5, Bluu] can you confirm'.*²⁹⁶

3.232 On 7 April 2015, Fourfront requested an extension to the deadline for submitting the bid, which DTZ initially refused.²⁹⁷ [Director 5, Fourfront] forwarded the refusal to [Representative 14, Bluu] with the message *'FYI'*.²⁹⁸ However, DTZ subsequently confirmed, on 9 April 2015, that the period would be extended by one week (to 20 April 2015) *'in response to representations by the tendering contractors'*.²⁹⁹

3.233 On 17 April 2015, at 10:40, [Representative 14, Bluu] sent an email to [Director 5, Fourfront]³⁰⁰ attaching a project plan³⁰¹ with the title *'Dechert LLP'*. On the plan it was stated that it had been *'drawn by Area 2 [Area Sq. (Fourfront)]'*, as well as a pricing schedule.³⁰² The total figure on the pricing

²⁹³ WAPN1640.

²⁹⁴ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 144.

²⁹⁵ WAPN1649. The subject line of this exchange (*'Dechert LLP...'*) indicates that the discussion concerned the Dechert contract.

²⁹⁶ WAPN0295.

²⁹⁷ WAPN1653.

²⁹⁸ WAPN1655.

²⁹⁹ WAPN1818.

³⁰⁰ WAPN1657.

³⁰¹ WAPN1658.

³⁰² WAPN1659.

schedule sent by Bluu to Fourfront matches the actual bid submitted by Fourfront on 24 March 2015 (£[REDACTED]).³⁰³

3.234 Dechert received bids from Bluu of £[REDACTED], from [Competitor C] of £[REDACTED] and Fourfront of £[REDACTED]. The contract was awarded to Bluu.³⁰⁴

Assessment

3.235 On the basis of the evidence above, the CMA makes the following findings.

3.236 Prior to the invitation to tender for the Dechert contract being issued, Fourfront and Bluu agreed that Fourfront would submit a cover bid for Bluu on this contract as *'pay back for EasyJet'*, meaning that Fourfront agreed to submit a cover bid for Bluu on this contract as compensation for Bluu having submitted a cover bid for Fourfront on the EasyJet contract in January 2015.³⁰⁵ On receipt of the tender invitation, there was an internal discussion within Fourfront confirming that the Dechert contract was one for which Fourfront would submit a cover bid for Bluu, provided that Bluu supplied it with the details of the bid for submission.³⁰⁶

3.237 Internal Fourfront emails show that [Director 1, Fourfront] had a discussion with [Director 1, Bluu] in which they expressly agreed that Bluu would provide Fourfront with details of the cover bid to be submitted.³⁰⁷

3.238 On 17 April 2015, Bluu did supply Fourfront with the details of the bid, specifically a project plan and detailed pricing schedule totalling £[REDACTED].³⁰⁸ Fourfront submitted this same amount as its bid for the contract.³⁰⁹

3.239 In a letter to the CMA dated 28 August 2018, Fourfront stated that it admitted that Area Sq. acted in breach of competition law in relation to this contract. It stated that Area Sq. completed the pre-qualification questionnaire *'as a professional favour to Bluu'*. Fourfront further stated that Area Sq. received a *'blank costs plan from Bluu for £[REDACTED] which was submitted to DTZ as a tender submission'*.³¹⁰

3.240 The CMA finds that there was an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid to the client Dechert at Bluu's lead and/or instigation. The object of

³⁰³ URN1866.

³⁰⁴ URN1866.

³⁰⁵ See paragraph 3.227.

³⁰⁶ See paragraphs 3.228.

³⁰⁷ See paragraphs 3.228 and 3.229.

³⁰⁸ See paragraph 3.233.

³⁰⁹ See paragraph 3.234.

³¹⁰ URN2288.

this agreement and/or concerted practice was the restriction of competition for the Dechert contract.

Hamilton Fraser Insurance Solutions (HFIS)

- **Parties:** Bluu, Fourfront and Loop
- **Value of contract:** £420,000³¹¹
- **Location:** Borehamwood (Hertfordshire)
- **Type of contract:** Category B
- **Period:** 22 April 2015 to 17 May 2015
- **Leader and/or instigator:** Fourfront

Introduction

3.241 In early 2015 HFIS sought bids via a CPM, JLM Management Solutions ('JLM'), in relation to the fit-out of its new premises in Borehamwood.³¹² The contract was eventually awarded to Fourfront on 1 June 2015 for £420,000.³¹³

Evidence

3.242 Following previous correspondence between Fourfront and JLM regarding the project,³¹⁴ on 22 April 2015 [Director 1, Fourfront] sent an email to [Contact, JLM], listing Loop and Bluu as '*companies that would appreciate being considered for the HFIS tender*'. He stated that the contact for Loop was [Director 3, Loop] and for Bluu it was [Director 1, Bluu].³¹⁵

3.243 In interview, [Director 1, Fourfront] stated:

*'we put forward the names of Bluu and Loop to JLM. JLM went out to those guys to tender, they also went out to another two companies that the client spoke to. We told Bluu and Loop what number to go in at.'*³¹⁶

3.244 For clarity, the CMA has separated out the analysis of the communications between Fourfront and each of Bluu and Loop in the sub-sections that follow.

³¹¹ URN2288.

³¹² URN1803

³¹³ WAPN1056.

³¹⁴ WAPN0944.

³¹⁵ WAPN0296.

³¹⁶ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 147-148.

Communications between Fourfront and Bluu

- 3.245 On two occasions (22 April 2015 and 5 May 2015) [Director 1, Bluu] sent emails to [Director 4, Bluu] referring to the HFIS project and stating in the body of the emails: 'cover for area [Area Sq. (Fourfront)]'.³¹⁷
- 3.246 [Director 4, Bluu] replied to the 5 May 2015 email stating: '... *Do we need to be seen to go on site?*...'.³¹⁸ In interview, [Director 4, Bluu] explained that the reason for his question was because [Director 1, Bluu] had told him that [✂] was aware that Bluu would be providing a cover for Fourfront. [Director 4, Bluu] noted however that he did not know whether that was true.³¹⁹
- 3.247 On 6 May 2015, at 11:29, [Director 1, Fourfront] sent an email to [Director 4, Bluu], replying to an email chain that had started with the invitation to tender sent by [Contact, JLM] to Bluu, asking:
- 'can you send a holding email [to the client] to say that you have received [the invitation to tender] and will be submitting. We will send something across to you on 14th May for submission'.*³²⁰
- 3.248 On 7 May 2015, at 7:24, [Director 4, Bluu] replied to [Director 1, Fourfront]'s email stating: 'OK will do, thanks [Director 1, Fourfront]'.³²¹ [Director 4, Bluu] stated in interview that in this email he was confirming the arrangement that Fourfront would be providing a cover for Bluu to submit to the client.³²²
- 3.249 On 14 May 2015, [Representative 10, Fourfront] sent an email to [Director 1, Fourfront], copying [Representative 11, Fourfront], with the subject line '*HF1 Borehamwood*' saying: '[...] *please see attached two Cost Plans for forwarding on.*'³²³ Attached to the email were two cost plans, one indicating a project total of £498,846.79³²⁴ and the other £486,896.59.³²⁵
- 3.250 On 15 May 2015, at 9:42, [Director 1, Fourfront] replied:

³¹⁷ URN0247 and URN0338.

³¹⁸ URN0338.

³¹⁹ URN1461 Transcript of CMA interview with [Director 4, Bluu; Representative 1, JLL] dated 29 June 2018, page 231. [NB for the purposes of this non-confidential Decision: Director 4, Bluu; Representative 1, JLL was no longer a director of Bluu nor a representative of JLL at the time of this interview.]

³²⁰ URN0230.

³²¹ URN0230.

³²² URN1461 Transcript of CMA interview with [Director 4, Bluu; Representative 1, JLL] dated 29 June 2018, page 23. [NB for the purposes of this non-confidential Decision: Director 4, Bluu; Representative 1, JLL was no longer a director of Bluu nor a representative of JLL at the time of this interview.]

³²³ WAPN1010.

³²⁴ WAPN1011.

³²⁵ WAPN1012.

*'I am nervous about sending this is only because they are so similar. When we get feedback from proposals there are always big differences i.e. £20-£30k on mechanical etc- it looks like we have just applied a slightly different margin to the costs. Can you re-do the £486 proposal so that it looks like it has been by someone having a completely diff view of things. E.g. what is the chance that all 3 companies would exclude items 12-15 in prelims, both incl costs for project manager etc.'*³²⁶

3.251 In interview, [Director 1, Fourfront] stated that he asked [Representative 10, Fourfront] to re-do one of the cost plans because Fourfront was trying to create an illusion for the client that the bids had been prepared independently. He stated: *'I mean they're too close – that's ridiculous. To make it look as if somebody else has thought about it there needs to be some clear water between the two.'*³²⁷

3.252 On 15 May 2015, at 9:43, [Director 1, Fourfront] sent an email to [Director 4, Bluu], copying [Director 1, Bluu], with the subject line 'HFIS'. The email read:

*'Can you submit this with your own covering letter etc - feel free to make any minor changes to your own format but the number needs to be there or there about ...'*³²⁸

3.253 Attached to the email was a cost plan indicating a project total of £498,846.79³²⁹ – the same figure as that indicated in one of the cost plans that had been circulated internally by [Representative 10, Fourfront] (see paragraph 3.249).

3.254 Shortly after that, [Director 1, Fourfront] sent an email to [Director 4, Bluu], copying in [Director 1, Bluu], asking him to discard the document he had submitted and that he would send the correct version shortly.³³⁰

3.255 [Director 4, Bluu] submitted Bluu's bid for the HFIS project to JLM on 18 May 2015. The total price quoted was £503,923.01.³³¹ In its letter to the CMA of 28 August 2018, Fourfront admitted that it had asked Bluu to submit a bid to JLM of £503,000, which is consistent with the bid actually submitted by Bluu on 18 May 2015.³³²

³²⁶ WAPN0313.

³²⁷ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 158.

³²⁸ WAPN0310.

³²⁹ URN0311.

³³⁰ URN0231.

³³¹ URN0341 and URN0342.

³³² URN2288.

Communications between Fourfront and Loop

3.256 On 15 May 2015 (Friday), at 12:48, [Director 1, Fourfront] sent an email to [Director 3, Loop]'s personal email address. It stated:

*'Can you submit by Monday morning – feel free to change to suit your style, and include tender form etc'.*³³³

3.257 Attached to that email was a cost plan for HFIS indicating a total cost of £491,181.48.³³⁴

3.258 At 18:40, [Director 3, Loop] replied: *'will do'*.³³⁵

3.259 On 17 May 2015, at 21:03, [Director 1, Fourfront] forwarded the invitation to tender from [Contact, JLM] to [Director 3, Loop]'s personal email address, and asked: *'[Director 3, Loop] – this is the tender info that was sent out by JLM – I assume that you received the same?'*³³⁶ Shortly after that, at 21:22, [Director 3, Loop] responded: *'Got it...[Director 1, Loop] will send'*.³³⁷

3.260 In interview, [Director 3, Loop] stated:

*'my recollection is, we were contacted by both [Director 1, Fourfront] of Area Sq., [✂] to ask if we'd be prepared to submit a cover price, check price, for this project. My recollection is that they already had various tenderers, but one had pulled out, and the client needed a composite number of returns for their assessment process. So I think we were provided with a spreadsheet, to check, and to resubmit as a Loop document'.*³³⁸

3.261 [Director 3, Loop] stated that Loop was told by Area Sq. that the client was *'aware of the process'*.³³⁹ However, the CMA considers that HFIS was not aware that it would be receiving cover bids. In particular:

(a) In an email exchange dated 5 and 6 May 2015, [Contact] ([✂] of HFIS) told [Contact, JLM] that HFIS wished to *'widen the net of tenderers as much as I can'*. He also stated: *'happy to go with Area [Fourfront] but if*

³³³ URN1523.

³³⁴ URN1524.

³³⁵ URN2689.

³³⁶ URN1520.

³³⁷ URN1520

³³⁸ URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018, page 94.

³³⁹ URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018, page 100-103.

*another company comes in cheaper than them, and we are comfortable with the quote, then Area [Fourfront] will have to sharpen their pen!*³⁴⁰

- (b) In an email exchange dated 2 June 2015, [✂] [Director 1, Fourfront] discussed a draft response to concerns raised by HFIS in relation to the procurement process. The draft response to the client stated:

[...] the tender process was designed to ensure all invitees quoted 'apples for apples' to help identify who offered best value [...]

*[...] our recommendation was for you to appoint them [Fourfront] – especially as prior to the tender process you had told me they were your preferred option and that in the event they didn't come back with the lowest price, you wanted me to go back to them to give them another shot. In fact, that wasn't necessary anyway, as they did come back with the lowest price.'*³⁴¹

- (c) In preparing the cover bids that would be submitted by Bluu and Loop, Fourfront was careful to create an illusion for the client that the bids had been prepared independently (see paragraphs 3.249 to 3.251).
- (d) In interview, [Director 1, Fourfront] confirmed his understanding that HFIS was not aware that it would be receiving cover prices.³⁴² Indeed, [Director 1, Fourfront] stated that the fact that HFIS had invited two other suppliers ([Competitor D] and another small contractor) to pitch for the project had thrown a '*spanner in the works*' because it would make it more difficult for Fourfront to win the contract.³⁴³

Assessment

3.262 On the basis of the evidence above, the CMA finds that Fourfront prepared cover bids for Bluu³⁴⁴ and Loop³⁴⁵ to submit. After emails between Fourfront and Bluu and Fourfront and Loop, Bluu and Loop submitted those cover bids to the client.³⁴⁶ There is no evidence that the client was aware that it was receiving cover bids from Bluu and Loop.³⁴⁷ An internal Fourfront email exchange demonstrates Fourfront's intention to deceive the client.³⁴⁸

³⁴⁰ WAPN1007, WAPN1009.

³⁴¹ WAPN1087, WAPN1085, WAPN1074.

³⁴² URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 149.

³⁴³ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 155 and WAPN0300.

³⁴⁴ See paragraphs 3.245, and 3.252 to 3.255.

³⁴⁵ See paragraphs 3.256 to 3.259.

³⁴⁶ See paragraphs 3.252 to 3.255 and 3.256 to 3.259.

³⁴⁷ See paragraph 3.261.

³⁴⁸ See paragraphs 3.250 and 3.251.

Moreover, Fourfront [§] discussed a draft response to the client that made out that the tender process was designed for the client to identify who offered best value and that Fourfront had submitted the lowest bid, when in fact it had orchestrated the submission of two cover bids that were higher than its own.³⁴⁹

3.263 In a letter to the CMA dated 28 August 2018, Fourfront stated that:

- (a) In March 2015 Area Sq. was approached by JLM to work on the project. After several meetings it was agreed that Area Sq. would prepare an outline design and scope of works. This would then be used by JLM to go to market and obtain tenders from competitors.
- (b) Area Sq. recommended to JLM that Bluu and Loop were given the opportunity to tender.³⁵⁰ In May 2015, Area Sq. submitted a bid for £483,000, and advised Bluu to submit a bid at £503,000 and Loop to submit a bid at £491,000. JLM also received a bid from [Competitor D]. After subsequent negotiation Area Sq. was awarded the contract in June 2015 for £420,000.
- (c) It accepts that Area Sq. was in breach of competition law in relation to this contract.³⁵¹

3.264 The CMA finds that there was (i) an agreement and/or concerted practice between Fourfront and Bluu in accordance with which Bluu submitted a cover bid to HFIS at Fourfront's lead and/or instigation; and (ii) an agreement and/or concerted practice between Fourfront and Loop in accordance with which Loop submitted a cover bid to HFIS at Fourfront's lead and/or instigation. The object of each such agreement and/or concerted practice was the restriction of competition for the HFIS contract.

³⁴⁹ See paragraph 3.261(b).

³⁵⁰ See also WAPN0296.

³⁵¹ URN2288. See also URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 147 to 149.

Visium

- **Parties:** Bluu and Loop
- **Value of contract:** £525,063³⁵²
- **Location:** London
- **Type of contract:** Category B
- **Period:** 16 July 2015 to 6 August 2015
- **Leader and/or instigator:** Bluu

Introduction

3.265 In July 2015, Visium Asset UK LLP (**‘Visium’**) sought bids for the fit-out of its premises in Charles House, 5-11 Regents Street, London. Visium appointed Sam Stock Associates (**‘SSA’**) to act as the CPM. The design for the fit-out was prepared by Area Sq. (Fourfront) but it subsequently dropped out of the process.³⁵³ The evidence suggests that Bluu, Loop, [Competitor E] and Fourfront were each involved in the bidding process at some stage.³⁵⁴

Evidence

3.266 On 16 July 2015, at 12:43, [Director 1, Bluu] sent an email to [Director 4, Bluu] and [Representative 12, Bluu] which said:

*‘Ok **Loop will cover** but we have to do the work and they will badge it **don’t tell** [X] [the CMA presumes [Contact, SSA]].’³⁵⁵ [emphasis added]*

3.267 [Director 4, Bluu] responded at 12:53:

‘When does [Director 3, Loop] need it, Monday 3rd August?’³⁵⁶

³⁵² WAPN1877.

³⁵³ WAPN1841.

³⁵⁴ WAPN1833 and WAPN1841. Visium went into liquidation in July 2017 and therefore did not respond to the CMA’s request for information.

³⁵⁵ URN1408. The CMA infers that this email relates to the Visium contract because, earlier in the chain of emails, [Director 1, Bluu] asked [Representative 12, Bluu] for [Contact, Visium]’s contact details, and because 3 August (2015) is the date when Loop submitted its bid to Visium.

³⁵⁶ URN1408.

3.268 Shortly after that, [Director 1, Bluu] sent an email to [Director 4, Bluu], copying [Representative 12, Bluu] and [Director 6, Bluu] asking [Representative 12, Bluu] to call [Director 3, Loop].³⁵⁷ [Director 4, Bluu] replied to all saying:

'[Director 6, Bluu], we now have a plan that Loop have done so just some sketches needed and a simple design scheme please'.³⁵⁸

3.269 On 22 July 2015, at 11:15, [Representative 15, Bluu] sent [Director 1, Bluu] Loop's layout for the Visium contract.³⁵⁹ She said:

'Please see attached layout by Loop for Visium.'³⁶⁰

3.270 On the same day, at 16:24, [Representative 15, Bluu] sent [Director 1, Bluu] a design plan for the Visium contract to be passed on to Loop.³⁶¹ She explained:

*'Hi [Director 1, Bluu], Please find attached a layout for Visium (dwg and pdf) **to pass on to Loop**. This is based on their original plan, with a few tweaks to meet the brief.'³⁶² [emphasis added]*

3.271 [Director 1, Bluu] sent that email on to [Director 3, Loop] asking if it *'is ok?'*³⁶³

3.272 At 19:23, [Director 3, Loop] sent the design plan prepared by Bluu for Loop to [Director 2, Loop] saying:

'Ok so this is what they've done for us. Would you mind just popping to see it with [X] [the CMA presumes [Contact, Visium]³⁶⁴ tomorrow and separately emailing it to [X] [the CMA presumes [Contact, SSA]]'³⁶⁵

3.273 On 29 July 2015, at 8:08, [Director 3, Loop] sent an email to [Director 1, Loop]:

*'Visium Cover bid - I mentioned this last week but just as a reminder, we will get **Bluu's cost plan** tomorrow and we need either you or [X] to do a quick **cover spreadsheet to issue to the client on Friday**. There is then a pitch which we need to attend (with our cost plan and a layout and sketch*

³⁵⁷ URN1408. [NB for the purposes of this non-confidential Decision: Director 6, Bluu was a statutory director of Bluu Solutions Limited, and not a statutory director of Bluuco Limited. However, for consistency throughout this non-confidential Decision, the descriptor "Director 6, Bluu" is used.]

³⁵⁸ URN1408.

³⁵⁹ WAPN1873 and WAPN1874.

³⁶⁰ WAPN1873.

³⁶¹ URN1409 and URN1410.

³⁶² URN1409.

³⁶³ URN2711. The time at which this email was sent is not apparent from the document.

³⁶⁴ See WAPN1226.

³⁶⁵ URN2727 and URN2728.

*design that **Bluu are doing for us**) on Tuesday at 4pm. Bit of a grind but we've got to do this as its a [Contact, SSA] job.'*³⁶⁶ [emphasis added]

3.274 Later that day, at 11:47, [Director 3, Loop] shared with [Representative 12, Bluu] some comments which [Director 2, Loop] had received in a meeting with [Contact] of the client Visium.³⁶⁷

3.275 On 30 July 2015, at 17:47, [Representative 12, Bluu] sent [Director 3, Loop] (copying [Director 4, Bluu]) a floor plan for the Visium contract with a Loop logo on it.³⁶⁸ This was followed on 31 July 2015, at 11:26, by an email [Director 4, Bluu] sent to [Director 3, Loop] containing a Visium cost plan with a summary of costs totalling £559,652.95 and furniture totalling £81,926.³⁶⁹ At 12:15, [Director 3, Loop] sent this on to [Director 1, Loop].³⁷⁰

3.276 In interview, [Director 1, Loop] told the CMA that Loop provided a cover bid for Bluu. He explained:

*'my involvement in that would have just been to put together that cover bid in terms of pricing document...and I've obviously sent that to someone but whether I sent it direct to Bluu I can't recall. Whether I sent it to [Director 3, Loop] to forward on I can't recall but it's a cover bid'.*³⁷¹

3.277 On 31 July 2015, at 15:54, Bluu submitted its space plan, scope of works and costs, programme and technical drawings to Visium indicating that Bluu would attend a pitch presentation on 4 August 2015.³⁷² Later that day, at 14:54, [Director 6, Bluu] sent a Visium design plan to [Director 3, Loop].³⁷³

3.278 On 3 August 2015, Loop submitted its cost plan to Visium totalling £555,067.95, i.e. very close to the summary of costs sent by Bluu to Loop on 31 July 2015, and furniture totalling £81,926.15, i.e. exactly the same amount as the summary of costs sent by Bluu to Loop on 31 July 2015 but for 15 pence.³⁷⁴

3.279 On 4 August 2015, Bluu gave a pitch presentation to Visium.³⁷⁵ The evidence shows that Bluu's bid, submitted on or around 6 August 2015, amounted to

³⁶⁶ WAPN0368.

³⁶⁷ WAPN1226. The CMA has not seen the comments that were sent.

³⁶⁸ URN1414 and URN1413.

³⁶⁹ URN1414 and URN1415.

³⁷⁰ URN2731.

³⁷¹ URN1448 Transcript of CMA interview with [Director 1, Loop] dated 27 April 2018, pages 150-151.

³⁷² WAPN1875. The value of the bid is not clear from the evidence available to the CMA.

³⁷³ WAPN1226 and WAPN1226A.

³⁷⁴ URN2898 and URN2899.

³⁷⁵ WAPN1872.

£525,063.90 (including furniture) and that the client considered Bluu's proposal to be too expensive.³⁷⁶ Bluu was not successful in winning the Visium contract.³⁷⁷

3.280 In interview, [Director 3, Loop] confirmed that Loop provided a cover bid for the Visium contract. He explained that he was told by [Contact, SSA] – whether via Bluu or by [Contact, SSA] directly – to provide a cover bid because Bluu was going to be appointed by the client.³⁷⁸ However, the CMA has seen no evidence confirming this. Furthermore, [Director 1, Bluu] explicitly told his colleagues at Bluu that [Contact, SSA] should not be made aware that Loop would be submitting a cover bid.³⁷⁹ [Director 3, Loop] was also misinformed about Bluu being the preferred choice of the customer, as Bluu did not win the contract.

Assessment

3.281 On the basis of the evidence above, the CMA finds that Bluu and Loop agreed that Bluu would prepare and provide to Loop a cover bid for Loop to submit to Visium. Loop then submitted the cover bid to Visium.

3.282 Internal Bluu discussions demonstrate that Bluu's plan was that Loop would provide a cover bid for this contract, that Loop's bid would be prepared by Bluu, and that the CPM should not be made aware of the arrangement.³⁸⁰ Bluu initially sent a design plan to Loop, followed by a cost plan,³⁸¹ both of which Loop intended to submit to the client and use in its pitch for the contract.³⁸² Loop also attended a meeting with Visium, but proceeded to share its notes from that meeting with Bluu.³⁸³ [Director 1, Loop] and [Director 3, Loop] confirmed that Loop submitted a cover bid for the Visium contract.³⁸⁴ Bluu's own bid was lower than Loop's cover bid.³⁸⁵

3.283 The CMA finds that there was an agreement and/or concerted practice between Bluu and Loop in accordance with which Loop submitted a cover bid to the client Visium at Bluu's lead and/or instigation. The object of this

³⁷⁶ WAPN1877, WAPN1844 and WAPN1848.

³⁷⁷ URN1417.

³⁷⁸ URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018 page 148.

³⁷⁹ See paragraph 3.266.

³⁸⁰ See paragraphs 3.266 to 3.270.

³⁸¹ See paragraphs 3.270 and 3.275.

³⁸² See paragraphs 3.272 and 3.273.

³⁸³ See paragraph 3.274.

³⁸⁴ See paragraphs 3.276 and 3.280.

³⁸⁵ See paragraphs 3.278 and 3.279.

agreement and/or concerted practice was the restriction of competition for the Visium contract.

Cheniere Energy

- **Parties:** Bluu and Fourfront
- **Value of contract:** approximately £4,300,000³⁸⁶
- **Location:** London
- **Type of contract:** Category B³⁸⁷
- **Period:** 6 November 2015 to 30 November 2015
- **Leader and/or instigator:** Bluu

Introduction

3.284 In November 2015, Cheniere Energy sought bids through a CPM, Office Consultancy (London) Limited ('**OCL**'), for works at Park House, London. OCL had previously advised Bluu that they would only be approaching three other contractors for tenders.³⁸⁸

Evidence

3.285 On 6 November 2015, [Contact, OCL] sent tender documents by email to [Director 2, Bluu].³⁸⁹ [Director 2, Bluu] forwarded the email to [Director 1, Bluu], who responded:

'Talk to me. I day had a call from [Director 1, Fourfront]'.³⁹⁰

3.286 On the same day, OCL sent tender documents by email to [Representative 12, Fourfront], who forwarded these internally to [Director 3, Fourfront], [Director 1, Fourfront] and [Representative 13, Fourfront].³⁹¹ On 9 November 2015, at 9:08, [Representative 13, Fourfront] responded to that group:

'While we may not want to pursue [Contact, OCL] going forward...We need to play the game somehow, thoughts?'³⁹²

3.287 At 10:33, [Director 1, Fourfront] responded:

³⁸⁶ WAPN0382.

³⁸⁷ WAPN1245.

³⁸⁸ WAPN1245.

³⁸⁹ WAPN1248.

³⁹⁰ WAPN1248.

³⁹¹ WAPN1250.

³⁹² WAPN1250.

*'We need to keep to a minimum, and I guess just go to site...and then wait for the number to put forward'*³⁹³

3.288 On 27 November 2015, at 12:31, [Director 1, Fourfront] sent a text message to [Director 2, Bluu] saying:

*'[Director 2, Bluu]/[Director 1, Bluu] what's happening with Chenierie [Cheniere Energy] we were expecting stuff today and nothing coming through until Monday that makes it impossible to submit by 12 noon???'.*³⁹⁴

3.289 [Director 2, Bluu] replied at 14:10:

*'[Director 1, Fourfront] we will have cost document done over weekend, for you to just brand up on Monday morning.'*³⁹⁵

3.290 In interview, [Director 2, Bluu] confirmed that this message meant that Bluu would be sending material to Fourfront, to which Fourfront would add Area Sq. (Fourfront) branding for onward submission to the client. Commenting on this arrangement, he acknowledged that it was *'very unlikely'* that the customer would know that Bluu had compiled the figures for Fourfront's submission and that this was not *'something you would typically want to share with your customer'*.³⁹⁶

3.291 On 30 November 2015, at 6:45, [Director 2, Bluu] sent an email to [Director 1, Bluu]³⁹⁷ attaching an excel spreadsheet³⁹⁸ labelled *'CSA Chenierie [Cheniere Energy] PH – Nov 15.xlsx'* containing a costs breakdown which according to the body of the email was intended to be sent to Fourfront. The spreadsheet was headed *'AREA 2'*. Page 1 of the spreadsheet contained a summary of the total costs and provides a total of £4,418,390.32, plus £287,195.37 for *'Overheads & profit @ [X]'*. The cover email provided a summary of the difference in cost between Bluu's bid and the figures to be sent for submission by Fourfront:

'[Director 1, Bluu]

Attached is version to send to [Director 1, Fourfront]

³⁹³ WAPN1250.

³⁹⁴ URN2909.

³⁹⁵ URN2909.

³⁹⁶ URN1454 Transcript of CMA interview with [Director 2, Bluu] dated 22 June 2018, pages 113-114. [NB for the purposes of this non-confidential Decision: Director 2, Bluu was no longer a director of Bluu at the time of this interview.]

³⁹⁷ WAPN0382.

³⁹⁸ WAPN0383.

This is about [X]% over our base price

They are at £4.7m inc [X]% declared

We are at £4.3m with [X]% declared

...

*If you could send to [Director 1, Fourfront] please, ask him to logo up and send with covering email at 12.*³⁹⁹

3.292 The CMA understands this email to mean that the cost prepared by Bluu for submission by Fourfront would total around £4.7 million, of which [X] per cent would be margin and overheads (i.e. Fourfront's proposed charges for undertaking the work), while Bluu's own submission would quote a total project cost of around £4.3 million, of which [X] per cent would be margin and overheads.⁴⁰⁰

3.293 At 7:01 [Director 1, Bluu] sent an email from his personal email account to [Director 1, Fourfront]⁴⁰¹ attaching the spreadsheet that had been sent to him by [Director 2, Bluu]⁴⁰² labelled 'CSA *Chenerie* [Cheniere Energy] *PH – Nov 15.xlsx*'⁴⁰³ with the message 'Needs a covering note and to be "logo'd up" & sent by midday'.⁴⁰⁴

3.294 At 07:56, [Director 2, Bluu] sent⁴⁰⁵ an updated version of the spreadsheet labelled 'CSA *Chenerie* [Cheniere Energy] *PH – Nov 15.xlsx*', with £700 added to costs,⁴⁰⁶ to [Director 1, Bluu], who, at 9:51, forwarded this to [Director 1, Fourfront] with the message '*Finla version*'.⁴⁰⁷

3.295 In interview, [Director 1, Fourfront] confirmed that Fourfront submitted a cover bid to Cheniere Energy for this contract and that the figures included in its bid were those that Bluu had asked Fourfront to submit to the client.⁴⁰⁸

3.296 When asked in interview about why he would spend significant time preparing and submitting a cover bid, [Director 1, Fourfront] stated: '*I know it's ridiculous*

³⁹⁹ WAPN0382.

⁴⁰⁰ This accords with the explanation given by [Director 2, Bluu] in interview (URN1454 Transcript of CMA interview with [Director 2, Bluu] dated 22 June 2018, pages 105-106). [NB for the purposes of this non-confidential Decision: Director 2, Bluu was no longer a director of Bluu at the time of this interview.]

⁴⁰¹ WAPN0384.

⁴⁰² See paragraph 3.291.

⁴⁰³ WAPN0385.

⁴⁰⁴ WAPN0384.

⁴⁰⁵ WAPN0386.

⁴⁰⁶ WAPN0387.

⁴⁰⁷ WAPN0386.

⁴⁰⁸ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 45-46.

isn't it? There was nothing in it for us. [...] [I did it] because I have a good relationship with [Director 1, Bluu], he is you know somebody I call a friend and it's a huge mistake'.⁴⁰⁹ [Director 1, Fourfront] explained that he believed Bluu had asked for a cover price because 'they [Bluu] felt that they were in prime position to win the project and so they were looking to ensure one price was more expensive than theirs'.⁴¹⁰

Assessment

3.297 On the basis of the evidence above, the CMA makes the following findings.

3.298 Bluu and Fourfront agreed in November 2015 that Fourfront would submit a cover bid for the Cheniere Energy contract, for which Bluu would provide the details.⁴¹¹

3.299 A series of text messages shows that Bluu and Fourfront maintained regular contact regarding the preparation of the cover bid.⁴¹² Bluu produced⁴¹³ and supplied Fourfront with a pricing schedule,⁴¹⁴ which Fourfront submitted to the client.⁴¹⁵

3.300 The bid prepared by Bluu for submission by Fourfront was intended to be less attractive to the client than Bluu's own bid because it provided for both higher overall costs, and a higher allocation for the contractor's profit and overheads.⁴¹⁶

3.301 In a letter to the CMA dated 28 August 2018, Fourfront admitted that Area Sq. had acted in breach of competition law in respect of this contract. Fourfront confirmed that Area Sq. agreed to submit a bid of £4.7 million, which was the figure supplied to it by Bluu.⁴¹⁷

3.302 The CMA finds that there was an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid to the client Cheniere Energy at the lead and/or instigation of Bluu.

⁴⁰⁹ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 51.

⁴¹⁰ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 47-48. In its representations dated 15 March 2019, Fourfront noted that this project did not take place and therefore neither Bluu nor Fourfront won this contract.

⁴¹¹ See paragraphs 3.285 to 3.289.

⁴¹² See paragraphs 3.288 and 3.289.

⁴¹³ See paragraph 3.291.

⁴¹⁴ See paragraphs 3.293 and 3.294.

⁴¹⁵ See paragraph 3.295.

⁴¹⁶ See paragraph 3.291 and 3.393.

⁴¹⁷ URN2288.

The object of this agreement and/or concerted practice was the restriction of competition for the Cheniere Energy contract.

Damac

- **Parties:** Loop and JLL
- **Value of contract:** £1,124,116.33⁴¹⁸
- **Location:** London
- **Type of contract:** Category B
- **Period:** 12 April 2016 to 19 May 2016
- **Leader and/or instigator:** N/A

Introduction

3.303 This Infringement concerns a tender issued by the Damac Group (**‘Damac’**) regarding the fit-out of its office space and residential show flat at 100 Brompton Road, London.⁴¹⁹

3.304 By the time of this Infringement, Bluu had been acquired by Jones Lang LaSalle Incorporated, and thus we refer to JLL throughout this section (rather than Bluu).

Evidence

3.305 On 7 April 2016, at 15:16, [Representative 2, JLL] (a surveyor in JLL’s tenancy arm) introduced [Director 4, Loop] to [Contact 1, Damac] by email.⁴²⁰ Sometime prior to 11 April 2016, [Representative 2, JLL] (JLL’s tenancy arm) also informed [Representative 3, JLL] of the Damac contract.⁴²¹

3.306 On 12 April 2016, at 21:07, [Director 4, Loop] sent an email to [Director 3, Loop] and [Director 2, Loop], titled *‘Damac’*, stating:

*‘They [Damac] are talking to us, Bluu [JLL] and one other. They asked for 3...Perhaps a conversation with Bluu [JLL]!? The third contractor are smaller than us or Bluu [JLL].’*⁴²²

⁴¹⁸ URN1819. This was Loop’s revised winning bid.

⁴¹⁹ [NB for the purposes of this non-confidential Decision: In its confidentiality representations prior to publication of the Decision dated 9 May 2019, Damac stated that the tender was issued by Vauxhall Cross Property Limited, part of the Damac Group.]

⁴²⁰ WAPN1285. There were no recipients listed on this email, but emails later in the chain suggests that these were the recipients, either directly, or in copy.

⁴²¹ WAPN1331. On 13 April 2016, [Representative 3, JLL] informed others at JLL that [Representative 2, JLL] had contacted him about the Damac contract and that he had attended a meeting with Damac on 11 April 2016.

⁴²² WAPN0404.

3.307 Later that day at 21:24, [Director 2, Loop] replied to [Director 4, Loop], copying [Director 3, Loop] stating:

*'Let's do deal with Bluu [JLL]. I think. Gggrrrr can't decide.'*⁴²³

3.308 At 21:42, [Director 3, Loop] replied [Director 2, Loop] and [Director 4, Loop] stating:

*'YEP, EITHER WAY / US [Loop] OR THEM...[JLL]. I'VE LEFT A MESSAGE FOR [✂] [Director 1, JLL (previously Director 1, Bluu)]⁴²⁴, HE IS AWAY BUT WILL SPEAK IN THE AM.'*⁴²⁵

3.309 In a series of emails on 13 April 2016,⁴²⁶ [Director 4, Loop], [Director 3, Loop] and [Director 2, Loop] discussed the commercial risks of bidding for the contract. During this exchange, at 8:27, [Director 3, Loop] reiterated that he had a call scheduled with [Director 1, JLL]:

*'I've got a call with [Director 1, JLL] later to discuss.'*⁴²⁷

3.310 At 8:54, [Director 2, Loop] responded to [Director 3, Loop] stating:

*'...But the decision is (after speaking with [Director 1, JLL]) let [✂]⁴²⁸ price and programme it for us with subbie quotes and submit to client...'*⁴²⁹

3.311 Also on 13 April 2016, at 13:03, [Director 1, JLL] sent an email to [Representative 1, JLL (previously Director 4, Bluu)] and others (all JLL), to ask whether JLL was going to bid for Damac.⁴³⁰ [Representative 1, JLL] responded to all on the chain at 13:10, stating that it was *'...in the hands of [Representative 3, JLL]...'*⁴³¹ At 13:13, [Director 1, JLL] responded to [Representative 1, JLL]:

'Why? It's just us and loop full spec tender

⁴²³ WAPN0420.

⁴²⁴ In their interview evidence, [Director 2, Loop] and [Director 3, Loop] confirmed that the reference in the Loop internal emails to '[✂]' was to [Director 1, JLL]. URN1443 Transcript of CMA interview with [Director 2, Loop] dated 27 April 2018, page 91 and URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018, page 183.

⁴²⁵ WAPN0406.

⁴²⁶ WAPN0420.

⁴²⁷ WAPN0408.

⁴²⁸ [✂] URN1439 Transcript of CMA interview with Andrew Locke (Loop)[Director 3, Loop] dated 27 April 2018, page 94.

⁴²⁹ WAPN0420.

⁴³⁰ WAPN0426.

⁴³¹ WAPN0424.

*Can [Representative 4, JLL] pick up **we can work with loop on it.***⁴³²
[emphasis added]

3.312 At 14:21, [Contact 2, Damac] sent the tender opportunity for the Damac contract to [Representative 3, JLL].⁴³³ [Representative 3, JLL] forwarded this email internally to a group including [Director 1, JLL], [Representative 1, JLL] and [Director 2, JLL (previously Director 3, Bluu)]. Later emails exchanged between [Director 1, JLL], [Representative 1, JLL], [Director 2, JLL] show that these individuals were unhappy that [Representative 3, JLL] had been introduced to Damac without their knowledge.⁴³⁴

3.313 On 14 April 2016, at 13:18, [Director 2, JLL] sent an email with the subject heading '*Damac / [Representative 3, JLL]*' to [Director 1, JLL], asking [Director 1, JLL] to call him, and stating:

'...it isn't trad. Loop in the frame + 1 other unknown.

*Suggest we let him [Representative 3, JLL] run with it?*⁴³⁵

3.314 At 16:38, [Representative 3, JLL] emailed [Contact 2, Damac] to confirm JLL's interest in bidding for the project.⁴³⁶

3.315 On 15 April 2016, at 9:51, [Representative 3, JLL] emailed [Representative 1, JLL] asking whether he had heard '*anything back from [Director 1, JLL] about Damac and loop?*'⁴³⁷

3.316 At 9:57, [Representative 1, JLL] replied to [Representative 3, JLL], stating that Loop was pitching for Damac, but that they did not know who the third potential bidder was. [Representative 1, JLL] went on to say in his reply:

*'Let's do our best work to win this one and not worry about the competition too much.'*⁴³⁸

3.317 On 18 April 2016, at 14:04, in response to an email from [Representative 1, JLL] regarding Damac's demand that work commence within 2 days of the project being awarded, [Director 1, JLL] replied:

*'That's IF we win IT :)'*⁴³⁹

⁴³² WAPN0426.

⁴³³ WAPN1337.

⁴³⁴ WAPN1337.

⁴³⁵ WAPN0427.

⁴³⁶ WAPN0438.

⁴³⁷ WAPN0430.

⁴³⁸ WAPN0430.

⁴³⁹ WAPN0437.

3.318 In interview [Representative 1, JLL] explained that he had been asked by [Director 1, JLL] to liaise with [Director 1, Loop] in relation to cost plans and that the purpose of this was for JLL to submit a bid that would ‘allow Loop to win’ the project. [Representative 1, JLL] stated that he was unhappy about this arrangement as he managed a sales person ([Representative 3, JLL]) who was keen to win the project and was not aware of the arrangement with Loop.⁴⁴⁰

3.319 On 25 April 2016, at 8:29, [Director 3, Loop] emailed [Director 2, Loop], [Director 1, Loop], [Director 4, Loop], and [Director 5, Loop],⁴⁴¹ stating:

‘...[Director 1, Loop] just a quickie, did you [✂] manage to unlock the DAMAC spreadsheet as we’ve got to get that filled in (twice!) today?’⁴⁴²
[emphasis added]

3.320 At 9:13,⁴⁴³ [Director 3, Loop] emailed [Director 2, Loop], copying [Director 1, Loop], [Director 5, Loop] and [Director 4, Loop], stating:

*‘Can we **discuss the cover bids for this** [Damac] and [...] after the meeting, don’t want others internally to know?’⁴⁴⁴* [emphasis added]

3.321 On 26 April 2016, at 16:36, [Director 1, Loop] used his personal email account to email [Director 1, JLL]’s personal email account, attaching a file labelled ‘DAMAC - BLUU .PDF’.⁴⁴⁵ This cost document contained a cost breakdown, totalling £1,741,447.93.⁴⁴⁶ The CMA notes that this is close to JLL’s ultimate bid of £1,729,754. The covering email stated:

‘Hi [Director 1, JLL]...Here is the cost document for you to issue to Damac. 12 week programme...Any queries give me a call!’⁴⁴⁷

⁴⁴⁰ URN1461 Transcript of CMA interview with [Director 4, Bluu; Representative 1, JLL] dated 29 June 2018, pages 90 to 94. [NB for the purposes of this non-confidential Decision: Director 4, Bluu; Representative 1, JLL was no longer a director of Bluu nor a representative of JLL at the time of this interview.]

⁴⁴¹ WAPN1372. There were no recipients listed on this email, but the email chain suggests that these were the recipients, either directly, or in copy from later emails in this email chain.

⁴⁴² WAPN1372.

⁴⁴³ The email is time stamped 8:13:48 +0000, which the CMA understands indicates that the time was 8:13:48 GMT (9:13 BST). The email is sent in response to an email time stamped 9:02.

⁴⁴⁴ WAPN0467. The CMA infers that the reference to ‘this’ is a reference to the Damac tender, as the prior email in the chain, sent from [Director 2, Loop] specifically references ‘Damac.’

⁴⁴⁵ WAPN0527A.

⁴⁴⁶ WAPN0527A.

⁴⁴⁷ WAPN0525, WAPN0528. Recipients were visible on WAPN0528 and the time of the email and attachment are visible on WAPN0525.

3.322 At 17:17,⁴⁴⁸ [Director 1, Loop] forwarded this email to [Representative 1, Loop]’s business email address,⁴⁴⁹ attaching a document titled ‘*DAMAC – BLUU . PDF*’, which the CMA presumes was the same document sent to [Director 1, JLL] at 16:36.

3.323 In interview, [Director 1, Loop] confirmed that Loop had prepared two pricing documents and sent one of these to JLL for submission to Damac as a cover bid. In interview, [Director 2, Loop] also confirmed that Loop ‘*did clearly do a cover for it* [Damac].’⁴⁵⁰

3.324 On 26 April 2016, at 17:51, [Director 1, JLL] replied from his personal email account to [Director 1, Loop]’s personal email account:

*‘cam you give me a buzz need breakdown if poss mech design juts helps us internally ‘fend off’ nosey salesman :)’*⁴⁵¹

3.325 At 17:53, [Director 1, Loop] forwarded [Director 1, JLL] email from his personal email account to [Representative 1, Loop], stating:

‘Just got this. Will call [Director 1, JLL] when off tube and let you know what he needs.

*Is the mech broken down on their one or a lump?’*⁴⁵²

3.326 At 17:55, [Representative 1, Loop] replied:

*‘Its just a one liner in the BOQ [bill of quantities] – there was no requirement for a breakdown but can put something together.’*⁴⁵³

3.327 At 17:56, [Director 1, Loop] responded from his personal email account to [Representative 1, Loop]:

*‘We just need to send [Director 1, JLL] the breakdown of you have it? **Make it add up to the number we put in theirs.** Is that easily done?!?’*⁴⁵⁴
[emphasis added]

⁴⁴⁸ There were some discrepancies in the times of emails. WAPN0528 suggests that the time of this email was 18:16, although the timing of later emails in the chain suggest this was more likely to be 17:17.

⁴⁴⁹ WAPN0527.

⁴⁵⁰ URN1443 Transcript of CMA interview with [Director 2, Loop] dated 27 April 2018, page 96.

⁴⁵¹ WAPN0526. The CMA infers that the ‘nosey salesman’ in question was [Representative 3, JLL] – see paragraph 3.318.

⁴⁵² WAPN0526.

⁴⁵³ WAPN0523.

⁴⁵⁴ WAPN0524.

- 3.328 At 17:50, [Representative 1, Loop] sent the requested cost breakdown, labelled ‘*DAMAC – MECH*’⁴⁵⁵ to [Director 1, Loop] by email.⁴⁵⁶ The total cost of £113,010.05 listed in this document matches the total of items B, F, J, and K on page B/20 of the ‘*DAMAC – BLUU . PDF*’ document sent by [Director 1, Loop] to [Director 1, JLL] on 26 April 2016.⁴⁵⁷
- 3.329 Loop submitted its cost proposal to the client late on 26 April 2016.⁴⁵⁸ JLL intended to submit its cost proposal on the same day.⁴⁵⁹ On 29 April 2016, [Representative 3, JLL] and others from JLL attended a meeting with Damac.⁴⁶⁰
- 3.330 On 3 May 2016, [Representative 3, JLL] emailed [Representative 5, JLL] and [Representative 6, JLL] regarding a set of action points following on from the meeting on 29 April 2016 with Damac, which included considering options to reduce JLL’s costs. This email was forwarded to [Director 1, JLL], who forwarded this (via his personal email account) to [Director 3, Loop]’s personal email account.⁴⁶¹
- 3.331 Formal bids were submitted in mid-May 2016. On 15 May 2016, JLL submitted a bid of £1,729,754, and Loop submitted a bid of £1,167,023. On 16 May 2016, [Competitor F] submitted a bid of £1,117,263. On 19 May 2016, [Competitor G] submitted a bid for £1,097,658, and Loop submitted a revised bid of £1,124,116. Loop was awarded the contract on 23 May 2016.⁴⁶²
- 3.332 On 16 February 2017, at 16:10, in an email chain with the subject line ‘*DAMAC*’, [Director 3, Loop] wrote to [Director 1, Loop], copying [Contact, Advisor to Loop], [Director 4, Loop], [Director 2, Loop] and [Director 5, Loop]:
- ‘[Director 1, JLL] is still expecting a fee but I will manage him..... may take a big lunch and a small brown envelope!*
- (I didn't say that [Contact, Advisor to Loop]!)’⁴⁶³*
- 3.333 At 17:20, [Director 1, Loop] replied:⁴⁶⁴

⁴⁵⁵ WAPN0528A.

⁴⁵⁶ WAPN0528.

⁴⁵⁷ See paragraph 3.321.

⁴⁵⁸ WAPN1400, WAPN1410, WAPN1416.

⁴⁵⁹ WAPN1397, WAPN0527.

⁴⁶⁰ URN2749.

⁴⁶¹ URN2749.

⁴⁶² URN1819. [NB for the purposes of this non-confidential Decision: In its confidentiality representations prior to publication of the Decision dated 9 May 2019, Damac stated that this contract was entered into by Loop and Vauxhall Cross Property Limited.]

⁴⁶³ URN2760.

⁴⁶⁴ URN2760. The list of recipients of this email is hidden.

'We have given him £8.860 so far – I thought that would be all of it and we were going to stick any more on another job where he had some left?'

3.334 On 17 February 2017, at 17:18, [Director 3, Loop] replied to [Director 1, Loop] only:

*'That's true..., I know he still has in his mind he's due £20k but I'll manage him'*⁴⁶⁵

3.335 Loop Interiors London LLP submitted [REDACTED]. [REDACTED], Loop explained, citing this email chain, that *'Loop also paid [Director 1, JLL] a "loser's fee" for the project which was still being negotiated in February 2017 (see for example [URN2760])'*.⁴⁶⁶

Assessment

3.336 On the basis of the evidence above, the CMA makes the following findings.

3.337 On receipt of the tender, Loop identified the contract as one on which it might be possible to reach an arrangement for a cover bid with JLL.⁴⁶⁷

3.338 Following a discussion between JLL and Loop, these parties agreed that JLL would submit a cover bid, the details of which would be prepared by Loop.⁴⁶⁸

3.339 Within JLL, the salesman managing the bid process was not aware of any arrangement with Loop. However, his superiors ([Representative 1, JLL] and [Director 1, JLL]) at JLL liaised with Loop to produce a costs proposal that was significantly more expensive than that which Loop intended to submit, with the aim of assisting Loop in winning the contract, whilst concealing this arrangement from others within JLL.⁴⁶⁹

3.340 Loop prepared two costs proposals, one of which it supplied to JLL to submit to Damac.⁴⁷⁰ JLL continued to liaise with Loop regarding the detail of the proposal it had prepared prior to submitting it to Damac.⁴⁷¹

⁴⁶⁵ URN2760.

⁴⁶⁶ URN3016. At the time the CMA conducted voluntary interviews with Loop's witnesses, this email chain (URN2760) had not yet been provided to the CMA. Loop submitted [REDACTED], including this statement, after it had identified email chain URN2760 and after the interviews with Loop's witnesses had been conducted.

⁴⁶⁷ See paragraphs 3.306 to 3.309.

⁴⁶⁸ See paragraphs 3.310, 3.311 and 3.318.

⁴⁶⁹ See paragraphs 3.311, 3.313, 3.315, 3.316, 3.317, 3.318 and 3.324.

⁴⁷⁰ See paragraphs 3.319, 3.321, 3.322 and 3.323.

⁴⁷¹ See paragraphs 3.324 to 3.328.

- 3.341 JLL's bid for the Damac contract was around the same level as the costs proposal provided to it by Loop.⁴⁷²
- 3.342 In exchange for his agreeing to submit (via JLL) a cover bid for the Damac contract, Loop made a compensation payment to [Director 1, JLL] of at least £8,860.⁴⁷³
- 3.343 The CMA finds that there was an agreement and/or concerted practice between Loop and JLL in accordance with which JLL submitted a cover bid to Damac and in exchange for which Loop paid [Director 1, JLL] a compensation payment. The object of this agreement and/or concerted practice was the restriction of competition for the Damac contract.

⁴⁷² See paragraphs 3.322 and 3.331.

⁴⁷³ See paragraph 3.332 to 3.334.

DAI

- **Parties:** JLL, Fourfront and Loop
- **Value of contract:** approximately £591,373⁴⁷⁴
- **Location:** Hemel Hempstead (Hertfordshire)
- **Type of contract:** Category B
- **Period:** 16 May 2016 to 31 May 2016
- **Leader and/or instigator:** Fourfront

Introduction

3.344 In 2016, DAI Europe Limited (**'DAI'**) tendered for the fit-out of their premises in Westside, Hemel Hempstead. DAI shortlisted six companies, three of which were recommended by the DAI's CPM, JLM Management Solutions (**'JLM'**): Fourfront, JLL and Loop; only these three companies were selected to bid for the contract.

Evidence

3.345 For clarity, the CMA has separated out the analysis of the communications between Fourfront and each of JLL and Loop in the sub-sections that follow.

Collusion between Fourfront and JLL

3.346 On 16 May 2016, at 9:21, [Representative 11, Fourfront] forwarded to [Director 1, JLL] an email from [Contact, JLM]. [Contact, JLM]'s email, which was dated 6 May 2015, included a link to download a package of files titled '*Invitation to Tender – Hemel Hempstead, HP3 9TD*'.⁴⁷⁵ This email from [Representative 11, JLL] to [Director 1, JLL] had the subject line '*DAI tender*' and he stated:

'I Believe [Director 1, Fourfront] has discussed the enclosed with you?

*Did you ever receive the formal invite to tender from [Contact, JLM]? She's tried re sending...'*⁴⁷⁶

⁴⁷⁴ URN1898.

⁴⁷⁵ WAPN0544.

⁴⁷⁶ WAPN0544.

3.347 [Director 1, JLL] replied at 9:26:

*'...never got it. What do I need to do ?'*⁴⁷⁷

3.348 [Representative 11, Fourfront] replied to [Director 1, JLL] at 10:03 with the following instructions:

'If you could acknowledge receipt of info ... We'll fill in cost plan for you and get this to you by close of play on 27th May. Just need you to fill in tender return and issue everything electronically by 10.0am on 30th May.

*Appreciate your assistance.*⁴⁷⁸

3.349 Separately, also on 16 May 2016, at 10:12, [Director 1, Fourfront] forwarded to [Director 1, JLL] the same link from JLM. [Director 1, Fourfront] asked [Director 1, JLL]:

*'can you look at the link below and reply to say that you will be submitting'*⁴⁷⁹

3.350 In interview, [Director 1, Fourfront] stated: *'once we found out who the tender list was, we reached out.'*⁴⁸⁰

3.351 At 10:13, [Director 1, JLL] confirmed [Director 1, Fourfront] that he would reply as instructed, and explained that he never received *'the first one'*.⁴⁸¹ The CMA understands this to mean that [Director 1, JLL] did not recall receiving the original invitation to tender from JLM.⁴⁸² Shortly after that, at 10:15, [Director 1, JLL] forwarded this message internally to [Representative 1, JLL], copying [Representative 7, JLL] with instructions to send a reply on his behalf.⁴⁸³

3.352 At 10:31, [Representative 1, JLL] sent an email to [Contact, JLM], copying [Director 1, JLL], asking her to resend the link to the original tender as it was no longer accessible (due to it having expired on 13 May 2016). [Director 1, JLL] subsequently forwarded this email to [Director 1, Fourfront],⁴⁸⁴ showing that JLL had complied with his request.

⁴⁷⁷ WAPN0548.

⁴⁷⁸ WAPN0548.

⁴⁷⁹ WAPN0550.

⁴⁸⁰ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 161.

⁴⁸¹ WAPN0551.

⁴⁸² The original email was in fact received by [Director 1, JLL] on 6 May 2016 (URN0370).

⁴⁸³ WAPN0554

⁴⁸⁴ WAPN0552.

3.353 On 20 May 2016, [Representative 1, JLL] informed [Director 1, JLL] by email that he had sent two emails to JLM but received no response. [Director 1, JLL] forwarded this message to [Director 1, Fourfront].⁴⁸⁵

3.354 In an email⁴⁸⁶ dated 27 May 2016, at 15:17, [Representative 1, JLL] submitted JLL's tender to JLM, comprising JLL's form of tender⁴⁸⁷ and detail costs breakdown,⁴⁸⁸ both of which show the price of JLL's bid to be £619,146.28. [Director 1, Fourfront] said in interview that Fourfront had provided JLL with a figure of '619 [£619,000]' for submission as its bid.⁴⁸⁹

Collusion between Fourfront and Loop

3.355 On 16 May 2016, at 10:17, [Director 1, Fourfront] forwarded the email he had received from [Contact, JLM] with a link to the '*Invitation to Tender – Hemel Hempstead, HP3 9TD*' to [Director 3, Loop] asking:

'[Director 3, Loop]-for now can you just confirm receipt of tender back to JLM'.⁴⁹⁰

3.356 [Director 3, Loop] replied at 11:05 with:

'Done'.⁴⁹¹

3.357 In the meantime, a Fourfront internal email shows that they had received some intelligence on 18 May 2016 that the contract would be awarded to Fourfront. [Representative 14, Fourfront] wrote to [Representative 11, Fourfront] saying:

'Info from [X]⁴⁹² today - apparently this one will be awarded to us'.⁴⁹³

3.358 [Representative 11, Fourfront] replied:

'Yes we've managed to get ourselves into a nice managed situation'.⁴⁹⁴

⁴⁸⁵ WAPN0554.

⁴⁸⁶ URN0376.

⁴⁸⁷ URN0377.

⁴⁸⁸ URN0378.

⁴⁸⁹ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, page 162. The CMA notes that these figures are different from the figure provided by DAI for JLL's bid (£623,876) – see paragraph 3.344 and URN1898.

⁴⁹⁰ WAPN0553.

⁴⁹¹ WAPN0553.

⁴⁹² The CMA infers this is a reference to [Contact, Sketch Studios], an employee of Sketch Studios, an affiliate of Fourfront.

⁴⁹³ WAPN1439.

⁴⁹⁴ WAPN1439.

3.359 On 27 May 2016, [Director 1, Fourfront] sent an email⁴⁹⁵ to [Director 3, Loop] and [Director 1, Loop] with two attachments. The first attachment was an excel spreadsheet labelled 'Cost Plan Rev B TENDER 2.xlsx',⁴⁹⁶ containing a breakdown of costs for the DAI contract. The total cost as set out in this document was £634,506.40.⁴⁹⁷ The second attachment was a blank form of tender document for the DAI contract.⁴⁹⁸ The covering email stated:

*'Can you submit by Tuesday at 10am. Please complete form of tender, state 9 week programme'.*⁴⁹⁹

3.360 On 31 May 2016, [Director 1, Loop] responded to [Director 1, Fourfront]'s email of 27 May 2016:⁵⁰⁰

'Is this spreadsheet OK to send as is (with perhaps a loop logo added)? I will PDF it obviously.

Or do I need to change the order of sections etc? I assume the numbers are already correct and OK to send?

Let me know and I will work on it now and send in!'

3.361 [Director 1, Fourfront] said in interview that Fourfront gave cover prices to JLL and Loop to submit to the client 'to try and improve [Fourfront's] chances of winning the project'.⁵⁰¹

Contract award

3.362 DAI stated that it received a bid of £591,373 from Fourfront, a bid of £623,876 from JLL, and a bid of £608,516 from Loop.⁵⁰² Based on cost and the recommendation from JLM, DAI chose Fourfront as the successful bidder for the contract.⁵⁰³

Assessment

3.363 On the basis of the evidence above, the CMA makes the following findings.

⁴⁹⁵ URN2691.

⁴⁹⁶ URN2692.

⁴⁹⁷ The CMA notes that this figure does not precisely match the information provided by DAI that Loop's bid was of £608,516 (see paragraph 3.362)

⁴⁹⁸ URN2693.

⁴⁹⁹ URN2691.

⁵⁰⁰ See paragraph 3.359.

⁵⁰¹ URN1466 Transcript of CMA interview with [Director 1, Fourfront] dated 2 July 2018, pages 162-163.

⁵⁰² URN1898.

⁵⁰³ URN1898.

- 3.364 Around the time the tender was sent out, Fourfront had discussions with JLL⁵⁰⁴ and Loop⁵⁰⁵ regarding this contract indicating an agreement with each of JLL and Loop that they would be providing cover bids for this tender.⁵⁰⁶
- 3.365 Following the receipt of the tender invitation, Fourfront and JLL were in close contact regarding the submission of a cover bid by JLL, based on figures that would be supplied by Fourfront.⁵⁰⁷ During this period, Fourfront received some intelligence that it was likely to be awarded the contract.⁵⁰⁸ JLL submitted a bid for the contract on 27 May 2016 using figures supplied to it by Fourfront. The amount of the bid⁵⁰⁹ is consistent with information provided by Fourfront as to the figures it supplied to JLL for submission as JLL's bid.⁵¹⁰
- 3.366 Fourfront also supplied Loop with figures for a cover bid to be submitted by Loop.⁵¹¹
- 3.367 In a letter to the CMA dated 28 August 2018, Fourfront stated that it admitted that Area Sq. acted in breach of competition law in relation to this contract. Fourfront provided JLL and Loop (which it believed were the only other bidders) with costs of £619,000 and £634,000 respectively, which it intended they would submit to the CPM, while Area Sq. submitted a bid of £591,000 (though it was later awarded the contract for the sum of £600,000).⁵¹²
- 3.368 The CMA finds that there was (i) an agreement and/or concerted practice between Fourfront and JLL in accordance with which JLL submitted a cover bid to the client DAI at the lead and/or instigation of Fourfront; and (ii) an agreement and/or concerted practice between Fourfront and Loop in accordance with which Loop submitted a cover bid to the client DAI at the lead and/or instigation of Fourfront. The object of each such agreement and/or concerted practice was the restriction of competition for the DAI contract.

⁵⁰⁴ See paragraph 3.346.

⁵⁰⁵ See paragraphs 3.355, 3.356.

⁵⁰⁶ See paragraphs 3.349, 3.350, 3.355, 3.356 and 3.367.

⁵⁰⁷ See paragraphs 3.346 to 3.350, 3.352 and 3.353.

⁵⁰⁸ See paragraphs 3.357, 3.358.

⁵⁰⁹ See paragraph 3.354.

⁵¹⁰ See paragraph 3.354 and 3.367.

⁵¹¹ See paragraphs 3.359 to 3.361 and 3.367.

⁵¹² URN2288.

Kokoba and Redefine

- **Parties:** Loop and ThirdWay
- **Value of contract:** £184,000⁵¹³ (Kokoba) and £313,501.95⁵¹⁴ (Redefine)
- **Location:** London
- **Type of contract:** Category B
- **Period:** 22 May 2017 to 23 June 2017 (Kokoba), and 31 May 2017 to 19 June 2017 (Redefine)
- **Leader and/or instigator:** Loop

Introduction and background

3.369 This Infringement involves two contracts for two separate clients.

3.370 In 2017, Kokoba Limited (**'Kokoba'**) sought bids for the Category B fit-out of their new premises, originally anticipated to be at 24 Wenlock Road, London.⁵¹⁵ ThirdWay had completed the Category A fit-out for the landlord of those premises and so became aware of the opportunity for the Category B fit-out. The commercial property agent, [Commercial property agent], contacted Loop and another fit-out company, [Competitor H], about preparing a bid. [Competitor I], another fit-out company that was already known to Kokoba from previous work, was also approached for a bid.⁵¹⁶

3.371 At around the same time, RDI REIT Limited (previously known as Redefine) (**'Redefine'**) sought bids for the Category B fit-out of their premises in 33 Regent Street, London. Loop and ThirdWay were both invited to bid for the fit-out work. [Competitor J] was also approached by Redefine about the work but were then unable to arrange follow-up meetings and so dropped out of the process.⁵¹⁷

3.372 Separately, ThirdWay and Loop had been in discussions regarding a potential acquisition of Loop by ThirdWay in the period 2016 to early 2017. An

⁵¹³ URN1888. This was [Competitor I]'s winning bid of £184,000 (excluding VAT and design fee).

⁵¹⁴ URN1779. This was Loop's winning bid, exclusive of VAT. Final cost of project was £368,193.00, as there were some changes to the project.

⁵¹⁵ Kokoba subsequently changed plans and moved to 15-19 Baker's Row, London.

⁵¹⁶ URN1888.

⁵¹⁷ URN1779.

acquisition was never agreed, and the discussions appear to have come to an end in early 2017.⁵¹⁸

Evidence relating to Kokoba (Wenlock Road)

3.373 On 22 May 2017, at 14:49, [Director 3, Loop] sent a text message to [Director 1, ThirdWay] saying:

*'Just spoke to [Commercial property agent] too..... he wants us to quote this wenlock road job, but do you want to do a **crappy plan and exorbitant cost for us**'.*⁵¹⁹ [emphasis added]

3.374 Shortly after that, at 15:55, [Director 3, Loop] sent an email to [Representative 2, Loop], [Director 5, Loop] and [Representative 3, Loop] in which he said:

*'I've now caught up with [Commercial property agent] on all 3 projects ... Wedlock [Wenlock (Kokoba)] - the client is in deep discussions with 3rd way [ThirdWay] as they did the Cat A and he thinks it will go to them. **We may need to do a check price but ill know later in the week**'.*⁵²⁰ [emphasis added]

3.375 On 26 May 2017, ThirdWay submitted costs for the Kokoba project (which appear to be a revised version of previously submitted costs), totalling £285,164.42 (or £251,634.92 after value engineering).⁵²¹

3.376 On 30 May 2017, at 9:44, [Commercial property agent] sent an email to [Director 3, Loop] with details of the project and explaining that Kokoba wanted [Commercial property agent] to recommend another contractor as ThirdWay's costs were too high.⁵²² [Director 3, Loop] subsequently forwarded this email to [Director 2, ThirdWay], who sent it on internally within ThirdWay.⁵²³

3.377 Also on 30 May 2017, at 11:01, [Director 3, Loop] sent a text message to [Director 1, ThirdWay] saying:

⁵¹⁸ URN1483 Transcript of CMA interview with [Director 1, ThirdWay] dated 6 September 2018 page 30.

⁵¹⁹ URN2903 Line 15.

⁵²⁰ WAPN0567.

⁵²¹ URN2468 and URN2470. In interview, [Director 1, ThirdWay] stated that the initial cost summary for the project was of around £312,000 (URN1483 Transcript of CMA interview with [Director 1, ThirdWay] dated 6 September 2018 page 83).

⁵²² WAPN0575.

⁵²³ URN2452.

'need to hay about this wenlock road job for [Commercial property agent] as we are happy to take a dive on this if you want but the client wants to speak to me today??? Cheers'.⁵²⁴ [emphasis added]

3.378 On 1 June 2017, [Director 3, Loop] called [Director 2, ThirdWay] at 8:11 and they spoke for approximately three minutes.⁵²⁵ A few hours later, at 10:57, [Director 2, ThirdWay] sent a group text message to [Director 3, Loop] and [Director 1, ThirdWay] saying:

'If you could email over the wenlock road plan we will get going on that'.⁵²⁶

3.379 At 11:04 [Director 3, Loop] replied:

'I'm trying to matey but files are too big until I get to the office and hook up to our wifi...'.⁵²⁷

3.380 At 13:00, [Director 3, Loop] sent [Director 2, ThirdWay] the basic plans for Kokoba that he had received from [Commercial property agent].⁵²⁸ [Director 2, ThirdWay] sent these on to [Representative 1, ThirdWay] saying:

*'This is what we need another plan for. **It needs to be rubbish and ultimately not work.**'⁵²⁹ [emphasis added]*

3.381 The CMA understands this to be a request for [Representative 1, ThirdWay] to produce a more detailed but poor-quality design plan for Loop to submit to Kokoba. In interview, when asked why he instructed [Representative 1, ThirdWay] to produce a plan of poor quality, [Director 2, ThirdWay] stated:

*'...in my opinion, **it would've assisted us in winning** because our design would look better than the one that we were sending on.'⁵³⁰ [emphasis added]*

3.382 On 6 June 2017, at 14:11, [Director 3, Loop] sent a text message to [Director 2, ThirdWay]:

⁵²⁴ URN2903 Line 12.

⁵²⁵ URN2902.

⁵²⁶ URN2904 Line 3.

⁵²⁷ URN2904 Line 2.

⁵²⁸ URN2457.

⁵²⁹ URN2457.

⁵³⁰ URN1489 Transcript of CMA interview with [Director 2, ThirdWay] dated 7 September 2018 page 54. However, [Director 2, ThirdWay] also stated: '*as far as I'm aware, there was not a rubbish or, ultimately, not working space plan produced*' (URN1489 Transcript of CMA interview with [Director 2, ThirdWay] dated 7 September 2018 page 58).

'Hi mate how did you presentation go⁵³¹ and also have you got our layout ready for Wenlock road [Kokoba] as the guy there has chased?'.⁵³²
[emphasis added]

3.383 Later that afternoon, at 17:41, [Director 2, ThirdWay] sent an email to [Director 3, Loop]'s personal email address saying:

'Please see attached the plan – can you get your guys to drop some of your blocks in (tea point etc) so its not the same, we have changed the desks etc'.⁵³³

3.384 On 7 June 2017, at 8:05, [Director 3 Loop] asked [Director 2, ThirdWay] if he had got 'a cost plan together yet?'.⁵³⁴ [Director 2, ThirdWay] confirmed that he would send 'our summary sheet'.⁵³⁵

3.385 At 10:35, [Director 3, Loop] forwarded the CAD (computer-aided design) plans that he had received from [Director 2, ThirdWay] (with the chain of emails deleted) to [Representative 3, Loop] saying:

'[Representative 3, Loop], can you badge this up with Loop title block and send back to me as a PDF please?'.⁵³⁶

3.386 On 8 June 2017 at 9:23, [Director 3, Loop] sent a text message to [Director 2, ThirdWay]:

'Sent on plans, have you got a budget summary yet matey. ? I think if I send that and maybe your guys could just put a couple of mood images together we'll just send that in by email!'.⁵³⁷

3.387 At 10:33, [Director 2, ThirdWay] asked [Representative 2, ThirdWay] to send him the costs summary sheet for Kokoba 'in PDF asap'.⁵³⁸ [Representative 2, ThirdWay] replied with 'version A and B enclosed'.⁵³⁹ The attached "Version A" shows a full costs document indicating a total cost of £312,060.68 and the attached "Version B" shows a full costs document indicating a total cost of £285,164.42. Version B also offered cheaper options for certain specifications, totalling £251,634.92.⁵⁴⁰ The CMA notes that Version B is the

⁵³¹ The CMA infers that that first part of this text message refers to the Redefine contract – see paragraph 3.415.

⁵³² URN2905 Line 41

⁵³³ URN2462 and URN2463. [Director 2, ThirdWay]'s original email did not include the attachment and he re-sent it on 7 June 2017 at 9:21.

⁵³⁴ URN2462.

⁵³⁵ URN2462.

⁵³⁶ URN2686.

⁵³⁷ URN2905 Line 27.

⁵³⁸ URN2492.

⁵³⁹ URN2492.

⁵⁴⁰ URN2489 and URN2490.

same as the bid that ThirdWay submitted on 26 May 2017 (see paragraph 3.375).

3.388 [Director 2, ThirdWay] replied to [Representative 2, ThirdWay] at 10:52 with:

*'I just need the summary sheet on a separate PDF, the £312k one'*⁵⁴¹

3.389 At 11:37, [Director 2, ThirdWay] sent the summary of costs amounting to £312,060.68 to [Director 3, Loop]'s personal email address.⁵⁴²

3.390 Three minutes later⁵⁴³, [Director 2, ThirdWay] sent a text message to [Director 3, Loop] to confirm that he had sent over costs to him.⁵⁴⁴

3.391 [Director 3, Loop] replied with two messages at 10:40:

'On it....cheers matey'

*'Is this your cost or **what you want us to go in at**.'*⁵⁴⁵ [emphasis added]

3.392 [Director 2, ThirdWay] replied at 10:40 and 11:10 with:

*'Ours'.*⁵⁴⁶

*'I you can go 10% over'*⁵⁴⁷

3.393 Later on 8 June 2017, at 12:28, [Director 3, Loop] forwarded the summary sheet he had received from [Director 2, ThirdWay] to [Director 1, Loop] saying:

*'Here's the cost summary which we need to do something wit !! Will chat you through it'*⁵⁴⁸

3.394 On 12 June 2017, at 11:05, [Director 3, Loop] sent the following text message to [Director 2, ThirdWay]:

*'...we'll be submitting our costs on Neon [Kokoba] later...'*⁵⁴⁹

⁵⁴¹ URN2492.

⁵⁴² URN2770 and URN2771.

⁵⁴³ While this text message appears to have been sent at 10:39, the CMA believes this discrepancy to be due to time zones given that [Director 2, ThirdWay] confirmed he was in Belgium.

⁵⁴⁴ URN2905 Line 26.

⁵⁴⁵ URN2905 Lines 20 and 21.

⁵⁴⁶ URN2905 Line 19.

⁵⁴⁷ URN2905 Line 18.

⁵⁴⁸ URN2770 and URN2771.

⁵⁴⁹ URN2905 Line 16. Kokoba is part of the same group as the Neon Foundation.

3.395 [Director 2, ThirdWay] followed up with two text messages to [Director 3, Loop] at 11:06:

'Ok cool, we have heard nothing further from them but presume they are waiting on you'.

'I am a little worried there is one other - but we can't control that.'⁵⁵⁰
[emphasis added]

3.396 On 13 June 2017, at 08:30, [Director 1, Loop] sent [Director 3, Loop] a Loop contract sum analysis for the Kokoba contract amounting to £346,608.63.⁵⁵¹ The CMA notes that this figure amounts to approximately 10 per cent more than £312,060 (shown in ThirdWay's summary of costs sent to Loop), as per [Director 2, ThirdWay]'s instruction described in paragraph 3.392.

3.397 Also on 13 June 2017, at 14:06, [Director 3, Loop] called [Director 2, ThirdWay] and they spoke for approximately 3 minutes.⁵⁵² Shortly after that, at 15:34, [Director 3, Loop] sent Loop's cost summary to Kokoba, amounting to £294,617.34.⁵⁵³ The CMA considers it is likely that, during the call at 14:06, [Director 3, Loop] and [Director 2, ThirdWay] discussed Loop putting in a bid that was lower than that indicated in the document referred to in paragraph 3.396. The CMA notes that this lower bid, at £294,617.34, was still significantly higher than the bid of £285,164.42 (or £251,634.92 after value engineering) that ThirdWay submitted to Kokoba (see paragraph 3.375).

3.398 On 13 June 2017, at 13:11, [Director 2, ThirdWay] sent an email to Kokoba asking for an update on the project and stating: *'I understand your budget constraints and have looked further at the value engineering which could represent further savings'*. On 14 June 2017, Kokoba replied saying: *'It's fair to say we're trying to spend quite a lot less than £250k on the fit-out before furniture'*.⁵⁵⁴

3.399 On 19 June 2017, [Director 2, ThirdWay] and [Director 3, Loop] exchanged the following text messages:

(a) [Director 2, ThirdWay] to [Director 3, Loop] at 7:07:

'Did you get any feedback on kokoba? He is coming in to see me at 2.30'.⁵⁵⁵

⁵⁵⁰ URN2905 Lines 14 and 15.

⁵⁵¹ URN2684 and URN2685.

⁵⁵² URN2902.

⁵⁵³ URN2687 and URN2688.

⁵⁵⁴ URN2502.

⁵⁵⁵ URN2905 Line 12.

(b) [Director 3, Loop] to [Director 2, ThirdWay] at 10:52:

*'He said he was going to mull our costs over and would get back to us!!! As we are more expensive, I think if you get to the right price with him he'll just Ron with you!!!'*⁵⁵⁶ [emphasis added]

(c) [Director 2, ThirdWay] to [Director 3, Loop] at 10:57:

*'I hope so'*⁵⁵⁷

3.400 Later on 19 June 2017, at 12:03, [Director 2, ThirdWay] submitted a revised cost plan to Kokoba, totalling £217,033.76, stating that this was:

*'...a low as it can go while protecting the quality of the build and design'*⁵⁵⁸

3.401 Kokoba told the CMA that it received bids from four companies: [Competitor I] (£184,000), Loop (£295,000), [Competitor H] (£183,000) and ThirdWay (£217,000).⁵⁵⁹ Kokoba ultimately chose [Competitor I] as the successful bidder for the contract.⁵⁶⁰

3.402 On 23 June 2017, at 10:32, [Director 2, ThirdWay] sent a text message to [Director 3, Loop] saying:

*'They have gone with the cheap people'*⁵⁶¹

3.403 [Director 3, Loop] replied at 11:21 with:

*'Shame!! We did our best eh!'*⁵⁶²

3.404 In interview, [Director 3, Loop] said that, because of the client's limited budget, Loop and ThirdWay thought it was unlikely that either of them would win the Kokoba contract. According to him, Loop and ThirdWay therefore agreed to submit a quote for the job which they knew would be in excess of the client's budget; this way they both 'saved face' with the property agent, with whom they both wished to retain a good relationship.⁵⁶³ [Director 3, Loop] also said that Loop agreed to submit a bid that was slightly higher than ThirdWay's, but that this was not done in order for ThirdWay to have a better chance of

⁵⁵⁶ URN2905 Line 11.

⁵⁵⁷ URN2905 Line 8.

⁵⁵⁸ URN2502.

⁵⁵⁹ URN1888.

⁵⁶⁰ URN1888. Kokoba confirmed that [Competitor I], the winner of the Wenlock Road job, carried out the fit-out work at the new premises at 15-19 Baker's Row.

⁵⁶¹ URN2905 Line 3.

⁵⁶² URN2905 Line 2.

⁵⁶³ URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018 page 259 and 328.

winning the job. Rather, according to [Director 3, Loop], the objective was that the bids *'didn't look a million miles apart'*.⁵⁶⁴

- 3.405 However, in interview [Director 1, ThirdWay] stated that ThirdWay had *'negotiated with them [Kokoba] and worked for them for probably about six, seven months, before we were unsuccessful in the bid for the project'*,⁵⁶⁵ suggesting that ThirdWay was interested in winning the contract.

Evidence relating to Redefine (Regent Street)

- 3.406 The opportunity to bid for fit-out works for Redefine arose at a similar time to Kokoba.

- 3.407 On 31 May 2017, the day after [Director 3, Loop] reiterated his offer to ThirdWay of submitting a cover bid on Kokoba, he sent a group message to [Director 1, ThirdWay] and [Director 2, ThirdWay] at 10:54:

*'Guys. Just realised we are up against each other on Redefine too. We have a pretty good relationship there apparently so would you like to do the same as the [Commercial property agent] one [the CMA presumes the Kokoba contract] and we'll do a poor plan for you??'*⁵⁶⁶ [emphasis added]

- 3.408 [Director 2, ThirdWay] responded to the group at 10:57 with:

'I know nothing of this project, but will come back asap. If you could email over the wenlock road plan [that is, the Kokoba plan] we will get going on that'.⁵⁶⁷

- 3.409 Following another text message from [Director 3, Loop] at 11:04 about the Kokoba contract (see paragraph 3.379 above), [Director 2, ThirdWay] replied to the group with:

'...I will dig around about redefine'.⁵⁶⁸

- 3.410 As set out in paragraph 3.378, there was a phone call between [Director 2, ThirdWay] and [Director 3, Loop] on 1 June 2017.⁵⁶⁹

⁵⁶⁴ URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018 page 265.

⁵⁶⁵ URN1483 Transcript of CMA interview with [Director 1, ThirdWay] dated 6 September 2018 page 85.

⁵⁶⁶ URN2904 Line 4.

⁵⁶⁷ URN2904 Line 3.

⁵⁶⁸ URN2904 Line 1.

⁵⁶⁹ URN2902.

3.411 On 1 June 2017, at 11:48, [Director 3, Loop] forwarded a chain of emails between Loop and Redefine to [Representative 2, Loop] and said:

*'[Representative 2, Loop] please confirm we haven't submitted costs yet? Please liaise with me before we do as **we may have some inside track**'.*⁵⁷⁰ [emphasis added]

3.412 On 2 June 2017, at 19:43, [Representative 2, Loop] sent Loop's draft contract sum analysis for Redefine to [Director 3, Loop] and [Director 2, Loop] showing a total price of £335,969.38.⁵⁷¹

3.413 On 5 June 2017, both Loop and ThirdWay gave pitch presentations to Redefine.⁵⁷² That morning, before the pitch presentations, [Director 3, Loop] and [Director 2, ThirdWay] engaged in a text message conversation:⁵⁷³

(a) [Director 3, Loop] to [Director 2, ThirdWay] at 7:59 and 8:26:

*'Morning! We will have our costs ready in the next hour **then we need to chat** as we have our presentation at 2.30 today matey!'*⁵⁷⁴ [emphasis added]

*'**We are coming out around £300-330k** including the showers, just teeeeking the document as we speak so will have final figure in an hour or so.....what about you??'*⁵⁷⁵ [emphasis added]

(b) [Director 2, ThirdWay] to [Director 3, Loop] at 8:27:

*'Almost the same'.*⁵⁷⁶

(c) [Director 3, Loop] to [Director 2, ThirdWay] at 8:28:

⁵⁷⁰ WAPN1502.

⁵⁷¹ WAPN1498 and WAPN1499.

⁵⁷² URN1779 and URN2510.

⁵⁷³ In interview, [Director 3, Loop] initially said that he thought some of these text messages related to Kokoba rather than Redefine. However, he later considered that they may relate to Redefine (see URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018 pages 275, 278 and 281). The CMA finds that, on balance, the text messages more likely relate to the Redefine contract because [Director 3, Loop]'s initial message at 7:59 refers to the '*presentation at 2.30 today*' and both Loop and ThirdWay were due to attend a pitch presentation for Redefine later that day. In addition, the urgency with which [Director 3, Loop] and [Director 2, ThirdWay] were attempting to '*agree final figures*' suggests that they needed to agree them that morning (i.e. prior to the pitch presentations).

⁵⁷⁴ URN2905 Line 55.

⁵⁷⁵ URN2905 Line 54.

⁵⁷⁶ URN2905 Line 53.

'Ok, let me know where you end up in costs, I reckon so long as we go in within £5k of each other, their selection will be made on team and design!?'⁵⁷⁷ [emphasis added]

(d) [Director 2, ThirdWay] to [Director 3, Loop] at 8:29:

*'I think we will be **just over 300** - but we are including margin for you as well.'⁵⁷⁸ [emphasis added]*

(e) [Director 3, Loop] to [Director 2, ThirdWay] at 8:40:

*'Can you chat in about an hour **then we can agree final figures?**'⁵⁷⁹ [emphasis added]*

(f) [Director 2, ThirdWay] to [Director 3, Loop] at 8:40:

'Yes, I have an 11am so call at 10.45'⁵⁸⁰

(g) At 9:51, [Director 2, ThirdWay] called [Director 3, Loop] and they spoke for approximately one minute.⁵⁸¹

(h) [Director 3, Loop] to [Director 2, ThirdWay] at 9:52:

'We are £318, go in just over £320 I reckon'.⁵⁸²

(i) [Director 2, ThirdWay] to [Director 3, Loop] at 9:53:

'Ok cool'.⁵⁸³

3.414 Following ThirdWay's pitch presentation, still on 5 June 2017 at 18:04, [Representative 3, ThirdWay] sent a spreadsheet to Redefine containing two costs plans: one totalling £323,085.95 (that is, '*just over £320*', as Loop requested) and another totalling £276,30.95.⁵⁸⁴

3.415 On 6 June 2017, [Director 3, Loop] and [Director 2, ThirdWay] exchanged further text messages to give each other feedback on their presentations.⁵⁸⁵

⁵⁷⁷ URN2905 Line 50.

⁵⁷⁸ URN2905 Line 49.

⁵⁷⁹ URN2905 Line 48 and URN1439 Transcript of CMA interview with [Director 3, Loop] dated 27 April 2018 page 282 and 283.

⁵⁸⁰ URN2905 Line 47.

⁵⁸¹ URN2902.

⁵⁸² URN2905 Line 43.

⁵⁸³ URN2905 Line 42.

⁵⁸⁴ URN2528 and URN2529.

⁵⁸⁵ URN2905 Line 28 to 41.

3.416 On 8 June 2017, [Director 3, Loop] followed up with a text message to [Director 2, ThirdWay]:

*'Any chat from redefine?'*⁵⁸⁶

3.417 [Director 2, ThirdWay] replied at 9:27 to say that he would check.⁵⁸⁷

3.418 On 12 June 2017, at 9:48, [Director 3, Loop] sent a group text message to [Director 2, ThirdWay] and [Director 2, Loop]:

*'[Director 2, ThirdWay], I've copied [Director 2, Loop] so [Director 2, Loop] can liaise with you on Redefine. We've been down to 1 of 2 . Leave you two to liaise'*⁵⁸⁸

3.419 [Director 2, ThirdWay] also followed up with a text message only to [Director 3, Loop] on 12 June 2017 at 11:05:

*'Ok ta, I think it is us and you left'*⁵⁸⁹

3.420 [Director 3, Loop] replied almost immediately at 11:05:

*'Love it when a plan comes together.... we'll be submitting our costs on Neon [Kokoba] later...'*⁵⁹⁰ [emphasis added]

3.421 The CMA notes that this message shows how, at least from Loop's perspective, the arrangements with ThirdWay for Kokoba and Redefine were closely linked.

3.422 On 13 June 2017, [Contact, Redefine] emailed [Representative 3, ThirdWay] saying that they were up against Loop and:

*'We were impressed with each presentation and have taken ideas from both to create the attached plan, the next stage is costing...'*⁵⁹¹

3.423 Between 12 and 17 June 2017, there were six phone calls lasting between 24 seconds and just over 3 minutes (and two missed calls) between [Director 2, Loop] and [Director 2, ThirdWay].⁵⁹² There was also a phone call between [Director 3, Loop] and [Director 2, ThirdWay] on 13 June 2017.⁵⁹³

⁵⁸⁶ URN2905 Line 25.

⁵⁸⁷ URN2905 Line 24

⁵⁸⁸ URN2906.

⁵⁸⁹ URN2905 Line 17.

⁵⁹⁰ URN2905 Line 16.

⁵⁹¹ URN2538.

⁵⁹² URN2908.

⁵⁹³ URN2902.

- 3.424 When asked about these calls in interview, [Director 2, Loop] claimed that [Director 2, Loop] may have called [Director 2, ThirdWay] simply to express [Director 2, Loop]'s disappointment that Redefine had shared Loop's design with other contractors. [Director 2, Loop] said they agreed on one of the calls that the client's budget was '*ridiculously low*'. [Director 2, Loop] also thought that the calls may also have related to another commercial matter between Loop and ThirdWay.⁵⁹⁴
- 3.425 However, as the quotation in paragraph 3.418 shows, on 12 June 2017 [Director 3, Loop] asked [Director 2, Loop] to '*liaise with [Director 2, ThirdWay] on Redefine*'. The context within which he made this request was clear: '*We've been down to 1 of 2 . Leave you two to liaise*'. The six phone calls took place directly after [Director 3, Loop]'s request. Therefore, the CMA considers it likely that at least some of the calls between [Director 2, Loop] and [Director 2, ThirdWay] in the period between 12 and 17 June 2018 also related to the Redefine contract.
- 3.426 When asked about the calls with [Director 2, Loop] in interview, [Director 2, ThirdWay] said:
- 'It's likely [Director 2, Loop] was trying to get information out of me that would've helped [Director 2, Loop]'s bid, I think.'*⁵⁹⁵
- 'I am relatively sure it's [Director 2, Loop] trying to position [Director 2, Loop] to win the project [Redefine] and I'm relatively sure it's me telling [Director 2, Loop] to jog on'*⁵⁹⁶
- 3.427 On 19 June 2017, at 10:57, [Director 2, ThirdWay] sent a text message to [Director 3, Loop] stating: '*You are ahead on redefine I think as well do **this is working***' [emphasis added].⁵⁹⁷
- 3.428 [Director 3, Loop] replied at 10:59 with:
- '**Love it when a plan comes together!** Please liaise with [Director 2, Loop] on Redefine matey...*⁵⁹⁸ [emphasis added]
- 3.429 The CMA notes that these two text messages were exchanged as part of a text message chain that also related to the Kokoba contract (see paragraph 3.399), thereby indicating that [Director 2, ThirdWay] and [Director 3, Loop]

⁵⁹⁴ URN1443 Transcript of CMA interview with [Director 2, Loop] dated 27 April 2018 page 113.

⁵⁹⁵ URN1489 Transcript of CMA interview with [Director 2, ThirdWay] dated 7 September 2018 page 98.

⁵⁹⁶ URN1489 Transcript of CMA interview with [Director 2, ThirdWay] dated 7 September 2018 page 102.

⁵⁹⁷ URN2905 Line 8.

⁵⁹⁸ URN2905 Line 7.

considered that the purpose of the arrangement was for ThirdWay to win the Kokoba contract and for Loop to win the Redefine contract.

- 3.430 Furthermore, these two text messages demonstrate that, regardless of whether or not [Director 2, ThirdWay] told [Director 2, Loop] to '*jog on*' (see paragraph 3.426), Loop and ThirdWay continued to liaise with each other in relation to Redefine, expressing to each other that their plan was working and that it ultimately came together.
- 3.431 On 19 June 2017, at 11:54, [Representative 3, ThirdWay] submitted a revised cost plan to Redefine totalling approximately £288,000.⁵⁹⁹
- 3.432 Redefine informed the CMA that it received final bids from Loop (£313,501.95) and ThirdWay (£306,634.43) on 5 July 2017. It did not receive any other bids for this contract. Loop was chosen as the successful bidder.⁶⁰⁰

Assessment

- 3.433 On the basis of the evidence above, the CMA makes the following findings.
- 3.434 Loop was approached to bid for the fit-out work for Kokoba.⁶⁰¹ Having learned that ThirdWay had completed the Category A works on the premises and that the property agent believed that ThirdWay would likely win the contract, Loop approached ThirdWay and offered to submit a cover bid.⁶⁰²
- 3.435 Following receipt of an email from the property agent stating that Kokoba wanted a quote from another contractor because ThirdWay's costs were too high, Loop forwarded that email to ThirdWay and again offered to submit a cover bid.⁶⁰³ Internal Loop correspondence also confirms that Loop was considering providing a '*check price*' for this contract.⁶⁰⁴
- 3.436 Following a request from ThirdWay, Loop sent to ThirdWay the basic plans it had received from the property agent.⁶⁰⁵ [Director 2, ThirdWay] forwarded those basic plans to a colleague at ThirdWay and instructed him to produce a 'rubbish' design and cost plan for Loop to submit to the client that would '*ultimately not work*', in order to assist ThirdWay in winning the contract.⁶⁰⁶ Later, Loop asked ThirdWay for a layout plan for Kokoba as it was being

⁵⁹⁹ URN2538 and URN2534.

⁶⁰⁰ URN1779.

⁶⁰¹ See paragraph 3.370.

⁶⁰² See paragraphs 3.373 and 3.374.

⁶⁰³ See paragraphs 3.376 and 3.377.

⁶⁰⁴ See paragraph 3.374.

⁶⁰⁵ See paragraphs 3.378 to 3.380.

⁶⁰⁶ See paragraphs 3.380 and 3.381.

chased by the client.⁶⁰⁷ ThirdWay sent a design plan to Loop, and instructed Loop to amend it '*so it is not the same*'.⁶⁰⁸

3.437 Following requests by Loop, ThirdWay also shared with Loop its summary cost plan for the Kokoba contract. After confirming to Loop that it had sent the costs, ThirdWay also explained that the document contained ThirdWay's costs and instructed Loop to submit costs 10 per cent higher.⁶⁰⁹

3.438 Loop confirmed to ThirdWay that it would be submitting its costs to Kokoba. In reply, ThirdWay expressed apprehension that there may be another bidder involved in the process, noting however that this was something they '*can't control*'.⁶¹⁰

3.439 After Loop circulated internally a summary of costs that, as per ThirdWay's instructions, amounted to approximately 10 per cent more than the summary of costs that ThirdWay had sent to Loop,⁶¹¹ there was another telephone conversation between Loop and ThirdWay, and Loop subsequently submitted its cover bid to Kokoba.⁶¹²

3.440 After having submitted their bids, ThirdWay and Loop exchanged text messages in which they discussed ThirdWay's prospects of winning the Kokoba contract. In particular, ThirdWay expressed its hope that it would win the contract, and Loop said that, because Loop's bid was more expensive, if ThirdWay '*get to the right price*' the client would choose them.⁶¹³ ThirdWay subsequently submitted significantly lower costs to the client, but ultimately did not win the contract.⁶¹⁴

3.441 In interview, [Director 3, Loop] said that Loop and ThirdWay agreed to submit quotes for the job which they knew would be in excess of the client's budget because they thought it was unlikely either of them would win.⁶¹⁵

3.442 However, the CMA does not consider it credible that ThirdWay did not wish to, or believed it was very unlikely to, win the Kokoba contract. The CMA notes in particular the contemporaneous and witness evidence about the efforts ThirdWay put into working with the client and into organising a cover bid for Loop (see paragraphs 3.398 and 3.405); the fact that the property agent told Loop that ThirdWay would likely secure the contract (see paragraph 3.374);

⁶⁰⁷ See paragraph 3.382.

⁶⁰⁸ See paragraph 3.383.

⁶⁰⁹ See paragraphs 3.384 and 3.386 to 3.392.

⁶¹⁰ See paragraphs 3.394 and 3.395.

⁶¹¹ See paragraph 3.392.

⁶¹² See paragraphs 3.396 and 3.397.

⁶¹³ See paragraph 3.399(b).

⁶¹⁴ See paragraph 3.400 to 3.403.

⁶¹⁵ See paragraph 3.404.

the fact that ThirdWay significantly reduced its initial price in an effort to secure the contract (see paragraph 3.400); the exchanges between ThirdWay and Loop in which ThirdWay expressed interest in winning the contract (see paragraphs 3.395, 3.399 and 3.403); and [Director 2, ThirdWay]'s witness evidence that producing a '*rubbish*' plan would assist ThirdWay in winning the contract (see paragraphs 3.380 and 3.381). Furthermore, there is no contemporaneous evidence suggesting that ThirdWay did not wish to, or believed it was very unlikely to, win the Kokoba contract. In any event, even if neither party was interested in winning the contract, this does not detract from the fact that, by colluding on the bids that Loop and ThirdWay would submit for this contract, Loop and ThirdWay deprived the customer of the opportunity to obtain competitive bids.⁶¹⁶

3.443 The opportunity to bid for fit-out works for Redefine arose at a similar time to Kokoba. Loop learned that ThirdWay was also bidding for Redefine and suggested that they come to a similar arrangement as for Kokoba but the reverse, this time with Loop providing ThirdWay a cover bid to submit.⁶¹⁷ ThirdWay confirmed that it would '*dig around*' about this contract and '*come back [to Loop] asap*'.⁶¹⁸

3.444 On the morning just before their pitch presentations to Redefine, Loop and ThirdWay engaged in a text message conversation. In the course of those discussions, Loop and ThirdWay exchanged information about their cost calculations and about the price estimates that they would each include in their pitch presentations. Loop then suggested they speak later to agree on final figures. Loop informed ThirdWay of the price it ultimately put forward to the client, and asked ThirdWay to put forward a price that was slightly (£2,000) higher, to which ThirdWay agreed.⁶¹⁹

3.445 After the pitch presentations to Redefine, Loop and ThirdWay continued to communicate about their bids.⁶²⁰ When informed that only ThirdWay and Loop remained as bidders, and that Loop was on course to win the contract, Loop and ThirdWay expressed their belief that this was as a result of their arrangement in relation to the two contracts (Kokoba and Redefine).⁶²¹

3.446 The CMA finds that there was one overall agreement and/or concerted practice between Loop and ThirdWay, relating to both the Kokoba and Redefine contracts. The CMA finds that, in accordance with this agreement

⁶¹⁶ *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, at paragraph 251.

⁶¹⁷ See paragraph 3.406 and 3.407.

⁶¹⁸ See paragraphs 3.408 and 3.409.

⁶¹⁹ See paragraph 3.413.

⁶²⁰ See paragraphs 3.415 to 3.417 and 3.423 to 3.426.

⁶²¹ See paragraphs 3.419, 3.420, 3.427 and 3.428.

and/or concerted practice, at the lead and/or instigation of Loop (i) Loop submitted a cover bid for the contract with Kokoba and (ii) Loop and ThirdWay exchanged commercially sensitive information, including future pricing information, in relation to the Redefine contract. The object of this overall agreement and/or concerted practice was the restriction of competition for the Kokoba and Redefine contracts.

4. Market definition

Purpose of, and framework for, assessing the relevant market

- 4.1 When applying the Chapter I prohibition, the CMA is only obliged to define the relevant market where it is not possible, without such a definition, to determine whether the agreement and/or concerted practice is liable to affect trade in the UK, and whether it has as its object or effect the prevention, restriction or distortion of competition.⁶²²
- 4.2 No such obligation arises in this case because each of the Infringements involves an agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition and was by its very nature liable to affect trade and competition in the UK.
- 4.3 The objective of this section therefore is to identify the market or markets affected by each Infringement for the purpose of determining the appropriate level of any financial penalty.⁶²³ The relevant turnover, for penalties purposes, is the turnover derived from sales in the relevant market affected by each Infringement.⁶²⁴
- 4.4 The Competition Appeal Tribunal ('CAT') and the Court of Appeal have accepted that it is not necessary for the CMA to set out the precise relevant market definition in order to assess the appropriate level of the penalty.⁶²⁵ Rather, the CMA must be '*satisfied on a reasonable, and properly reasoned basis, of what is the relevant product market affected by the infringement*'.⁶²⁶ To this end, it is also relevant to consider the '*commercial reality*', insofar as it '*can reasonably be shown that the products so grouped were "affected" by the infringement*'.⁶²⁷ The CMA considers that this principle also applies when assessing the relevant geographic markets.

⁶²² Case T-62/98 *Volkswagen AG v Commission*, ECLI:EU:T:2000:180, paragraph 230; Case T-29/92 *SPO and Others v Commission*, ECLI:EU:T:1995:34, paragraph 74.

⁶²³ The CMA's approach to market definition in this case is without prejudice to the CMA's discretion to adopt a different market definition in any subsequent case in light of the relevant facts and circumstances in that case, including the purposes for which the market is defined.

⁶²⁴ Paragraph 2.11 of CMA's [guidance as to the appropriate amount of a penalty](#) (CMA73, 18 April 2018) (the '**Penalties Guidance**').

⁶²⁵ *Argos and Littlewoods v OFT* and *JJB Sports v OFT* [2006] ECWA Civ 1318, at paragraphs 169 to 173 and 189 and *Argos and Littlewoods v OFT* [2005] CAT 13 at paragraph 178.

⁶²⁶ *Argos and Littlewoods v OFT* and *JJB Sports v OFT* [2006] ECWA Civ 1318, at paragraph 170.

⁶²⁷ *Argos and Littlewoods v OFT* and *JJB Sports v OFT* [2006] ECWA Civ 1318, at paragraphs 170-173 and 228.

Relevant product markets

- 4.5 As explained in Section 3 above, the CMA considers that all the Infringements took place in the supply of non-residential fit-out services in the UK. Within this sector, non-residential fit-out services can be divided between ‘Category A’ and ‘Category B’ services.

Category A

- 4.6 For the Infringement relating to the Klesch contract, the focal product for the market definition exercise is the supply of Category A services. Starting with this focal product, the CMA has considered whether there are reasons to define the market:

- (a) more broadly by also including Category B services; or
- (b) more narrowly by distinguishing between sub-types of Category A services (Design and Build, Detail and Build, and Traditional Build).

- 4.7 The CMA does not consider that the market should be defined more broadly to include Category B services, for the following reasons:

- (a) On the demand side, customers would not be able to substitute Category A services for Category B services. The characteristics of Category A services are distinct from Category B services. Category A services include the installation of components such as air conditioning, raised floors, and lighting. Generally, landlords procure these services to refurbish a property with all the necessary infrastructure to prepare it for the rental market. Category B services, on the other hand, include installing partition walls to form meeting rooms and aesthetic features such as carpets, feature lighting and decorations. Generally, tenants procure these services to turn the rented property into a functional space.⁶²⁸
- (b) On the supply side, suppliers who provide exclusively Category B services could not easily supply Category A services. Category B specialists looking to supply Category A services would face significant

⁶²⁸ In several witness interviews, the CMA asked interviewees to describe Category A and Category B services. The descriptions provided were generally consistent across interviewees. For example, [Director 3, Loop] described Category A as ‘*generally the, the work that landlord will do [to] a building, to make it ready to let*’ and Category B as ‘*the tenant’s fit-out*’ (URN1439). [Representative 1, Bluu] described Category A services as ‘*the basic standard of a building that a landlord would put the building in condition to rent: so, basically, an empty building, it’s got air conditioning in, ceilings, windows et cetera, a raised floor, but no specific things necessarily like carpet or partitions et cetera*’ and described Category B services as ‘*what we would then be designing and putting into the building on behalf of our client*’ (URN1451).

barriers, including more complex routes to market, larger contracts with lower margins, more stringent regulations, and different staff expertise required.⁶²⁹

- 4.8 The CMA recognises that there are some companies within this sector that are active in supplying both Category A and Category B services. Further, suppliers who focus solely on Category B services can sometimes supply a Category A service, such as installing a raised floor, as part of what otherwise would be a Category B project.⁶³⁰ While a supplier of only one of these services would face significant barriers to establishing themselves as a supplier in the adjacent market, suppliers do occasionally carry out projects that contain elements of both services.⁶³¹ The CMA does not consider this sufficient to suggest that the market should be defined more broadly to include Category B services.
- 4.9 The CMA considers that the market should not be defined more narrowly, by segmenting Design and Build, Detail and Build and Traditional Build models, for the following reasons:
- (a) From a customer's perspective, the Design and Build model has the benefit of giving the customer a single point of contact and typically means projects can be delivered within faster timescales and greater certainty on costs.⁶³² Traditional Build tends to be used for larger, more complex projects where some flexibility is needed.⁶³³ Detail and Build is halfway between the two models and is typically used to deliver medium-sized projects.⁶³⁴ However, despite these differences, customers have the

⁶²⁹ ThirdWay outlined seven distinctions between Category A and Category B services: the routes to market; the size of contracts; the competitors; the building process; the supply chains; the operational costs; and the resources required (URN2872).

⁶³⁰ For example, Coriolis provides mostly Category B services for tenants under a design and build contract. However, on occasion, this has also involved Category A work, such as a new suspended ceiling (URN2830). Loop, a predominantly Category B supplier, also explained that it '*does not generally undertake Category A type projects. Loop would consider making an exception if the Landlord required Loop's design services to enhance the building (for instance altering the reception areas, loos and showers) or if there was a Category B opportunity for Loop in conjunction with the Category A...*' (URN2882).

⁶³¹ For example, Fourfront told the CMA that there would be no barriers for a Category A business to undertake Category B work. However, this would be different if the intent was for the business to fundamentally change its entire business model (URN2888).

⁶³² ThirdWay told the CMA that '*most customers, whether in Category A or Category B have developed a preference for Design and Build contracts where there is a single point of accountability covering the design and construction work sitting with the contractor*' (URN2872) and Fourfront explained that Design and Build is a faster route to market (URN2888).

⁶³³ For example, in his witness interview, [Director 1, ThirdWay] says that Traditional Build '*works very well on large infrastructure projects because it's just inevitable that you're going to have that flex and go into contingency, but as projects get smaller and people want more cost certainty*' (URN1483).

⁶³⁴ Loop told the CMA that it is common for Category A services to be procured via Traditional Build or Detail and Build, particularly where the projects are larger in value (URN2882). Similarly, Fourfront told the CMA that customers with larger projects tend to use Traditional Build and customers with medium-size projects tend to use

flexibility to procure Category A services under whichever model they prefer, and would be able to switch between them in response to price rises in one model.⁶³⁵

- (b) On the supply side, suppliers of Category A services face relatively low barriers to switching between the three models.⁶³⁶

4.10 In the light of the above, the CMA finds that Category A is the relevant product market for the Infringement in relation to the Klesch contract.

Category B

4.11 For the Infringements relating to the Deyaar, Holloway White Allom, Newham College, Amicus Horizon, EasyJet, Dechert, Visium, Cheniere Energy, Damac, DAI, Kokoba and Redefine contracts, the focal product is the supply of Category B services. Starting with this focal product, the CMA has considered whether there are reasons to define the market:

- (a) more broadly by also including Category A services; or
- (b) more narrowly by distinguishing between sub-types of Category B services (Design and Build, Detail and Build, or Traditional Build).

4.12 The CMA does not consider that the market should be defined more broadly to include Category A services, for the following reasons:

- (a) On the demand side, customers would not be able to substitute Category B services for Category A services. This is because, as set out above, the characteristics of Category A services are sufficiently distinct from the characteristics of Category B services.
- (b) On the supply side, there would be significant barriers for a supplier of Category A services to enter the market for Category B services. Category A specialists are accustomed to working in a process-driven

Detail and Build (URN2888). In his witness interview, [Director 1, Loop] described 'a *halfway house between traditional contracting and design and build and that's called detail and build*' (URN1448 Transcript of CMA interview with [Director 1, Loop] dated 27 April 2018, page 52).

⁶³⁵ Fourfront told the CMA that Category A services were historically procured through the Traditional Build model. However, customers now ordinarily procure via Design and Build and Detail and Build models, though Traditional Build is still used by some (URN2888). Similarly, ThirdWay told the CMA that 9 years ago, Category A services under the Design and Build model was an exception. Whereas, ThirdWay now provide Category A services under the Design and Build model unless a customer requests another model is used (URN2872).

⁶³⁶ For example, in [Director 1, Fourfront]'s interview, the CMA asked whether the three models can be used to deliver each of Category A and Category B. [Director 1, Fourfront] responded: '*Correct, correct*'. (URN1466). Similarly, ThirdWay stated that '*there is fluidity between the three models and no particular costs associated with switching between the different fit-out models*' in providing Category A services (URN2872).

environment on projects that span several years.⁶³⁷ Conversely, Category B projects are typically carried out within the space of a few weeks and focus on delivery of functional, well-designed spaces with stricter budget constraints.⁶³⁸

- (c) There have been past examples of Category A suppliers attempting to compete for the supply of Category B services by acquiring a Category B business. These examples show that suppliers who have acquired a Category B business have not been able to establish a successful business in the Category B market.⁶³⁹ Alternatively, Category A suppliers could restructure their business to establish themselves as a Category B supplier. However, this is likely to be a time-consuming and costly process.⁶⁴⁰

4.13 As explained above, the CMA recognises that there are some companies within this sector that are active in supplying both Category A and Category B services and that suppliers who focus solely on one of these services will sometimes carry out projects that contain elements of both.⁶⁴¹ However, the CMA does not consider this sufficient to suggest that the market should be defined more broadly to include Category A services.

4.14 The CMA finds that the Category B market should not be defined more narrowly, by segmenting Design and Build, Detail and Build and Traditional Build models, for the following reasons:

- (a) On the demand side, customers of Category B services are generally tenants with limited knowledge of fit-out work. These customers generally prefer the Design and Build model, where they deal with and get guidance from a single supplier.⁶⁴² While there is a tendency to choose Design and Build for Category B services, this tends to be for smaller projects. Larger projects are generally procured under the Traditional Build model and

⁶³⁷ According to Loop, ThirdWay and Oakley, there are multiple barriers for Category A suppliers looking to supply Category B services. These include substantial overhead costs associated with developing the capability for the design element of the work, recruitment or staff training costs to cope with the different type of work, and shorter timescales (URN2882, URN2872, URN2864).

⁶³⁸ See footnote 637.

⁶³⁹ Several Category A specialists have tried to acquire a Category B business and failed to maintain a successful business in the faster-paced Category B market. The estimated cost of acquiring an existing Category B business with £10 million turnover per year would be £7 to 8 million plus operating costs of around £1.5 million per year (URN2872).

⁶⁴⁰ ThirdWay estimated that restructuring a Category A business to specialise in Category B services would cost between £[redacted] to £[redacted]. It would then take an additional [redacted] to accrue a return on the investment and another [redacted] to become an established competitor in the market (URN2872).

⁶⁴¹ See the footnotes to paragraph 4.8 above.

⁶⁴² For example, Oakley stated that Category B services tend to be delivered under the Design and Build model because customers of Category B services do not tend to have knowledge of the requirements for these services and need additional guidance (URN2864).

medium projects under the Detail and Build model.⁶⁴³ However, customers have the flexibility to procure Category B services under any of the three service models and, therefore, demand side switching is relatively easy.⁶⁴⁴

- (b) On the supply side, the barriers faced by suppliers of Category B services in switching between the three models are relatively low.⁶⁴⁵ In some cases, the model chosen may even end up resembling one of the other two models in practice. For example, the Design and Build model may be chosen to deliver a project, but in practice the supplier may take responsibility for the design provided by a third-party architect and this would then resemble the Detail and Build or Traditional Build model.⁶⁴⁶ In view of the above, it is relatively easy for suppliers to switch between delivering under any of the three models.

- 4.15 The CMA therefore finds that Category B is the relevant product market for the Infringements relating to the Deyaar, Holloway White Allom, EasyJet, Dechert, Visium, Cheniere Energy, Damac, DAI, Kokoba and Redefine contracts.

Dilapidations

- 4.16 The CMA considered whether the relevant markets should be segmented according to whether the project relates to dilapidations, where the repairs required during or at the end of a tenancy or lease are carried out.
- 4.17 Dilapidations may be carried out for a tenant when, for example, there is a clause at the end of their contract to return the property to its original condition. These services may also be carried out for landlords after a tenant has moved out.
- 4.18 Dilapidations are commonly carried out as part of a wider project. These projects can involve the supply of Category A or Category B services and can be completed under any of the three service models. Most companies in the sector can carry out dilapidations, meaning that they can easily switch

⁶⁴³ For example, Coriolis told the CMA that '*the differentiator is the scale of the contract [and] not type of work*' (URN2830).

⁶⁴⁴ For example, Fourfront told the CMA that Category B projects '*are undertaken by all three procurement routes. The determining factors are speed, size of project, whether it is desired to have a single point of responsibility or to spread project risk across multiple parties, involvement of professional teams amongst many other factors*' (URN2888).

⁶⁴⁵ Coriolis, ThirdWay, Loop and Fourfront all told the CMA that Category B services can be delivered under any of the three service models (URN2830, URN2872, URN2882 and URN2888).

⁶⁴⁶ See URN2872.

between projects that do and do not include dilapidations. Accordingly, there is no justification for further segmentation of the market.⁶⁴⁷

- 4.19 The CMA finds that dilapidations are part of Category A and Category B services.
- 4.20 The CMA has therefore included turnover from dilapidations when determining, for the purposes outlined in paragraph 4.3, the turnover achieved in the supply of Category A non-residential fit-out services, and the turnover achieved in the supply of Category B non-residential fit-out services.

Relevant geographic market

- 4.21 For the purposes of determining the relevant turnover for each of the Infringements, the CMA finds that the relevant geographic market for the services supplied is the area covered by London and the Home Counties.
- 4.22 Each of the Infringements concerned took place in London and the Home Counties.⁶⁴⁸ Starting with this focal area, the CMA has considered whether there are reasons to define the market:
- (a) more broadly by also including services provided elsewhere in the UK; or
 - (b) more narrowly by defining one geographic market as London and another geographic market as the Home Counties.
- 4.23 On the demand side, customers did not mention geographic location of the supplier as being a key factor in how they select a supplier. The CMA considers that the relevant geographic area is likely to be driven by supply side factors.
- 4.24 On the supply side, the CMA notes that some of the Addressees serve locations elsewhere in the UK, which suggests a geographic market that is wider than London and the Home Counties.⁶⁴⁹ However, most Addressees make the majority, or all, of their turnover from projects based in London.⁶⁵⁰

⁶⁴⁷ Loop, ThirdWay, Coriolis, Oakley and Fourfront told the CMA that there were limited, or no costs associated with Category A or Category B specialists providing dilapidations. See responses from Loop (URN2882), ThirdWay (URN2872), Coriolis (URN2830), Oakley (URN2864) and Fourfront (URN2888).

⁶⁴⁸ The Home Counties are defined as Berkshire, Buckinghamshire, Essex, Hertfordshire, Kent, Surrey, and East & West Sussex.

⁶⁴⁹ See footnote 650 for an explanation of turnover in different geographic areas.

⁶⁵⁰ Five of the parties provided information on turnover to the CMA for the years preceding the respective Infringements. Two parties, Coriolis and Oakley, made [X] per cent of turnover from the London area, two parties (Loop and ThirdWay) made an average of about [X] per cent of turnover from the London area and a [X] proportion for the London and Home Counties area, and the remaining party (Fourfront) made [X] proportion of their turnover from the London area and a [X] proportion for the London and Home Counties area.

For the purposes of penalty calculation, the CMA does not consider it is necessary to decide whether the market is wider than London and the Home Counties.

- 4.25 The CMA was told that, generally, suppliers of central London face tougher demands than they would from supplying equivalent projects in nearby areas. Projects in central London tend to be of relatively higher value and shorter timeframe than elsewhere in London and the Home Counties.⁶⁵¹ However, the CMA does not consider that this necessarily means the relevant geographic area is narrower than London and the Home Counties.
- 4.26 Given the tougher demands associated with supplying central London, the CMA considers that suppliers of that region would face relatively low constraints to supplying nearby areas, such as elsewhere in London or the Home Counties. Further, the six parties to the investigation told the CMA that their offices are based in either London or the Home Counties.⁶⁵² Although many of these parties focus primarily on London, there would be relatively low barriers to supplying services in the Home Counties. For example, three of the Infringements in this investigation were carried out in the Home Counties.⁶⁵³
- 4.27 The CMA therefore finds that the relevant geographic market in this case is limited to London and the Home Counties. The CMA has therefore included, for the purposes outlined in paragraph 4.3, turnover in the relevant product market achieved in London and the Home Counties.

Relevant markets: conclusion

- 4.28 In light of the above, the CMA finds that the relevant markets affected by the Infringements for the purpose of determining the Addressees' relevant turnover are:
- (a) for the Infringement relating to the Klesch contract, Category A non-residential fit-out services in London and the Home Counties; and
 - (b) for the Infringements relating to the Deyaar, Holloway White Allom, Newham College, Amicus Horizon, EasyJet, Dechert, HFIS, Visium, Cheniere Energy, Damac, DAI, Kokoba and Redefine contracts, Category B non-residential fit-out services in London and the Home Counties.

See responses from Loop (URN2882), ThirdWay (URN2872), Coriolis (URN2830), Oakley (URN2864) and Fourfront (URN2888).

⁶⁵¹ ThirdWay told the CMA that projects in central London tend to be smaller and faster paced than those outside of central London (URN2872).

⁶⁵² JLL, Fourfront, Loop, Coriolis, ThirdWay and Oakley.

⁶⁵³ The EasyJet, HFIS and DAI contracts were carried out in the Home Counties.

5. Legal assessment

Introduction

- 5.1 The Chapter I prohibition prohibits agreements or concerted practices between undertakings which may affect trade within the UK and which have as their object or effect the prevention, restriction or distortion of competition within the UK, unless an exclusion applies or the agreements or concerted practices in question are exempt. References to the UK are to the whole or part of the UK.⁶⁵⁴
- 5.2 Section 60 of the Act provides, broadly, that the Chapter I prohibition is to be interpreted consistently with Article 101 TFEU.
- 5.3 For the reasons set out below, the CMA finds that the Addressees infringed the Chapter I prohibition as specified for each Addressee and each Infringement at paragraph 1.2 above. They did this by participating in one or more agreements and/or concerted practices to submit cover bids and/or exchange commercially sensitive information in relation to certain customers contracts.⁶⁵⁵ These agreements and/or concerted practices had the object of preventing, restricting or distorting competition in the supply of non-residential fit-out services in the UK or a part of the UK and may have affected trade within the UK or a part of it.

Undertakings and the attribution of liability

Key legal principles

- 5.4 The Chapter I prohibition applies to agreements and concerted practices between ‘undertakings’.⁶⁵⁶ In determining who is liable for any infringement and who will be the addressee of an infringement decision, it is necessary to identify the relevant legal or natural persons that form part of the undertaking involved in the infringement.

Undertakings

- 5.5 The term ‘undertaking’ has been defined by the Court of Justice⁶⁵⁷ to cover ‘...every entity engaged in an economic activity, regardless of the legal status

⁶⁵⁴ Section 2(1) and (7) of the Act.

⁶⁵⁵ There was also one instance of a compensation payment being arranged.

⁶⁵⁶ The concept of an association of undertakings is not discussed further in this document.

⁶⁵⁷ Member of the Court of Justice of the European Union (the ‘**European Courts**’). The other relevant member is the General Court.

*of the entity and the way in which it is financed...*⁶⁵⁸ 'Economic activity' has been defined as conducting any activity '*...of an industrial or commercial nature by offering goods and services on the market...*'.⁶⁵⁹

- 5.6 The term 'undertaking' encompasses any natural or legal person that engages in commercial or economic activities, regardless of legal form. It therefore includes, among others, companies,⁶⁶⁰ partnerships,⁶⁶¹ individuals operating as sole traders,⁶⁶² and trade associations.⁶⁶³
- 5.7 The concept also designates an economic unit, even if in law that unit consists of several natural or legal persons.⁶⁶⁴ It is well established that an undertaking does not correspond to the commonly understood notion of a legal entity, for example under English commercial or tax law, and that a single undertaking may comprise one or more legal or natural persons.⁶⁶⁵
- 5.8 The undertaking that committed the infringement can therefore be larger than the legal entity whose representatives actually took part in the infringing activities. When an undertaking infringes the competition rules, it is for that entity, according to the principle of personal responsibility, to answer for that infringement.⁶⁶⁶

Attribution of liability

Parental liability

- 5.9 A legal entity may be held liable for an infringement committed by its subsidiary – even without the parent's knowledge or involvement⁶⁶⁷ – where,

⁶⁵⁸ Case C-41/90 *Hofner and Elser v Macrotron*, ECLI:EU:C:1991:161, at paragraph 21.

⁶⁵⁹ Case C-118/85 *Commission v Italy*, ECLI:EU:C:1987:283, at paragraph 7.

⁶⁶⁰ In all their corporate forms, including a limited partnership (see Case 258/78 *Nungesser v Commission*, ECLI:EU:C:1982:211) or a trust company (see Commission Decision 79/253/EEC of 31 January 1979 *Fides* at paragraph 34).

⁶⁶¹ Commission Decision 85/561/EEC of 13 December 1985 *Breeders' rights: roses*. Partnerships includes limited liability partnerships.

⁶⁶² Case 210/81 *Demo-Studio Schmidt v Commission*, ECLI:EU:C:1983:277.

⁶⁶³ Case 71-74 *FRUBO v Commission*, ECLI:EU:C:1975:61.

⁶⁶⁴ Case C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, at paragraph 55.

⁶⁶⁵ *Sepia Logistics Limited v Office of Fair Trading* [2007] CAT 13, paragraph 70; Case 170/93 *Hydrotherm Gerätebau GmbH v Compact del Dott Ing Mario Andreoli & C Sas (Hydrotherm)*, ECLI:EU:C:1984:271, at paragraph 11.

⁶⁶⁶ Case C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, at paragraph 56.

⁶⁶⁷ Case C-90/09 P *General Química SA v Commission*, ECLI:EU:C:2011:21.

as a matter of economic reality,⁶⁶⁸ it can be said to have exercised 'decisive influence' over its subsidiary during its ownership period.⁶⁶⁹

5.10 A parent company can be held jointly and severally liable for an infringement committed by a subsidiary company where:

- a. the parent company is able to exercise 'decisive influence' over the conduct of the subsidiary,⁶⁷⁰ and
- b. the parent company does in fact exercise such decisive influence,⁶⁷¹

such that the two entities can be regarded as a single economic unit and thus jointly and severally liable.

5.11 If the subsidiary is wholly owned by the parent company, 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 a decisive influence over the commercial policy of the subsidiary.⁶⁷²

5.12 Where a company holds all or almost all of the capital of an intermediate company which, in turn, holds all or almost all of the capital of a subsidiary of its group which has committed an infringement of competition law, there is also a rebuttable presumption that that company exercises decisive influence over the conduct of the intermediate company and, indirectly via that company, also over the conduct of that subsidiary.⁶⁷³

5.13 In these circumstances, it is thus sufficient for the CMA to establish that the subsidiary is (directly or indirectly) wholly owned by the parent company in order to presume that the parent company does in fact exercise decisive influence over the commercial conduct of its subsidiary and that the parent company can therefore be held jointly and severally liable with the subsidiary. The burden of rebutting such a presumption – by adducing sufficient evidence that the subsidiary company acted independently on the market – lies with the parent company.⁶⁷⁴

⁶⁶⁸ Case C-293/13 P *Del Monte v Commission*, ECLI:EU:C:2015:416.

⁶⁶⁹ C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:536; Case C-179/12 P *Dow v Commission*, ECLI:EU:C:2013:605.

⁶⁷⁰ Joined cases 32/78, and 36/78 to 82/78, *BMW Belgium and Others v European Commission*, ECLI:EU:C:1979:191.

⁶⁷¹ Case 102/82, *AEG-Telefunken v Commission*, ECLI:EU:C:1983:293.

⁶⁷² Case C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, paragraphs 60 and 61. Case T-24/05 *Alliance One & Others v European Commission*, ECLI:EU:T:2010:453, paragraphs 126-130.

⁶⁷³ Case C-508/11 P, *Eni v Commission* ECLI:EU:C:2013:289, paragraph 48.

⁶⁷⁴ Case C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, paragraph 61

- 5.14 Notwithstanding this presumption, the assessment of whether a parent company exercised decisive influence over a subsidiary turns not only on the parent's degree of influence on commercial policy in the narrow sense of the subsidiary's commercial conduct – this is one factor that enables the liability of the parent to be established.⁶⁷⁵ Rather, the assessment encompasses all the economic, organisational and legal links between the parent and subsidiary. These vary from case to case.⁶⁷⁶
- 5.15 The assessment is not formalistic, as the Court of Justice explained in *Commission v Stichting Administratiekantoort Portielje*:
- '... a finding that the author of the infringement and its holding entity form an economic unit does not necessarily presuppose the adoption of formal decisions by statutory organs ... on the contrary, that unit may also have an informal basis, consisting inter alia in personal links between the legal entities comprising such an economic unit.'*⁶⁷⁷
- 5.16 In reaching this judgment, the Court followed the opinion of Advocate General Kokott, which emphasised that competition law is concerned with substance over form and does not depend on technicalities of company law.^{678, 679}

⁶⁷⁵ C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 73 to 74, approving Opinion of Advocate General Kokott, paragraph 87: *'the absence of autonomy of the subsidiary in terms of its market conduct is only one possible connecting factor on which to base an attribution of responsibility to the parent company. It is not the only connecting factor, for, according to the Court's case-law, attribution of conduct to the parent company is possible "in particular" where the subsidiary ... does not decide independently upon its own conduct'*. The CAT has confirmed that the relevant factors *'are not limited to [a subsidiary's] commercial conduct'* (*Durkan v Office of Fair Trading* [2011] CAT 6, paragraph 22(d)). See also Case T-24/05 *Alliance One & Others v Commission*, ECLI:EU:T:2010:453, paragraph 170: *'It is also necessary to reject the applicants' argument that the decisive influence that a parent company must exercise in order to have liability attributed to it for the infringement committed by its subsidiary must relate to activities which form part of the subsidiary's commercial policy stricto sensu and which, furthermore, are directly linked to that infringement'*.

⁶⁷⁶ Case C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 72 to 74. The principles of attributing liability to a parent apply equally, whether the underlying infringement is of Chapter I CA98 or Article 101 TFEU, or Chapter II CA98 / Article 102 TFEU.

⁶⁷⁷ Case C-440/11 *Commission v Stichting Administratiekantoort Portielje and Gosselin Group NV* ECLI:EU:C:2013:514, paragraph 68.

⁶⁷⁸ Opinion of Advocate General Kokott in Case C-440/11 *Commission v Stichting Administratiekantoort Portielje and Gosselin Group NV*, ECLI:EU:C:2012:763, paragraphs 71 to 76.

⁶⁷⁹ In that case, the General Court was therefore wrong to take the view that *'The mere fact that the holding entity did not adopt any management decision in a manner consistent with the formal requirements of company law'* sufficed to determine that the subsidiary was free of its parent's decisive influence. It was irrelevant that the parent company did not take its first decision in writing, or hold its first formal board meeting, until after the end of the infringement period. The General Court was also wrong to find that the directors on the subsidiary's board who also sat on the board of the parent company could not have controlled the subsidiary both in their capacity as its directors and through the influence exerted by the parent – in so doing, the General Court took an excessively formal approach, relying only on a company law perspective. Case C-440/11 *Commission v Stichting Administratiekantoort Portielje and Gosselin Group NV*, ECLI:EU:C:2013:514, paragraphs 63 to 68.

- 5.17 There is no exhaustive set of criteria that must be fulfilled or ‘checklist’ to complete in making that assessment: the case law ‘*does not impose any formal requirement for the exercise of decisive influence*’.⁶⁸⁰
- 5.18 In particular, the CMA is not required to demonstrate that the parent was involved in, or even aware of, the infringement by its subsidiary.⁶⁸¹
- 5.19 Factors previously considered relevant to demonstrating decisive influence include:
- (a) percentage shareholding (and whether this is a majority or minority stake);⁶⁸²
 - (b) board representation,⁶⁸³ for example, overlapping directors or senior managers, or where the parent has representatives on the subsidiary’s board;⁶⁸⁴
 - (c) influence over strategic decisions and policy;⁶⁸⁵
 - (d) involvement in the subsidiary’s management,⁶⁸⁶ for example, determining the content of management decisions, or instructions or guidelines on commercial policy;
 - (e) voting rights, such as the right of veto/approval;⁶⁸⁷

⁶⁸⁰ Case C-440/11 *Commission v Stichting Administratiekantoort Portielje and Gosselin Group NV* ECLI:EU:C:2013:514, paragraph 50. The phrase is the Commission’s but was borne out in the Court of Justice’s approach to the judgment.

⁶⁸¹ Case C-90/09 P *General Química SA v Commission*, ECLI:EU:C:2011:21, paragraph 102. See also Case C-97/08 *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 59 and 77.

⁶⁸² The General Court has confirmed with respect to majority interests that it is generally the case that if a parent company holds a majority interest in the subsidiary’s share capital, that can enable it actually to exercise decisive influence on its subsidiary and, in particular, on the subsidiary’s market conduct; Case T-132/07 *Fuji Electric Co. Ltd v Commission*, ECLI:EU:T:2011:344, paragraph 182; Case T-104/13 *Toshiba Corp. v European Commission* ECLI:EU:T:2015:610, paragraph 96.

⁶⁸³ See for example Commission decision in Case COMP/39.437 – *TV and Computer Monitor Tubes (cathode ray tube cartel)* at paragraph 839 onwards and Case T-851/14 *Slovak Telekom v European Commission* ECLI:EU:T:2018:929, paragraph 285 and the case law cited therein.

⁶⁸⁴ Case T-851/14 *Slovak Telekom v European Commission* ECLI:EU:T:2018:929, paragraph 286: ‘*the actual exercise of management power by the parent company over its subsidiary may be proved, in particular, by the presence, in leading positions of the subsidiary, of individuals who occupy managerial posts within the parent company. Such an accumulation of posts necessarily places the parent company in a position to have a decisive influence over its subsidiary’s market conduct since it enables members of the parent company’s board to ensure, while carrying out their managerial functions within the subsidiary, that the subsidiary’s course of conduct on the market is consistent with the line laid down at management level by the parent company.*’

⁶⁸⁵ Case T-190/06 *Total SA and Elf Aquitaine SA v Commission*, ECLI:EU:T:2011:378.

⁶⁸⁶ Commission decision of 1 October 2008 in Case COMP/39181 – *Candle Waxes* (at paragraphs 334 and 335, citing Case T-314/01 *Avebe v Commission* [2006] ECLI:EU:T:2006:266, paragraphs 135-136).

⁶⁸⁷ Case T-104/13 *Toshiba Corp. v European Commission* ECLI:EU:T:2015:610, paragraphs 106-113. Upheld in Case C-623/15 P *Toshiba v Commission*, ECLI:EU:C:2017:21.

- (f) activity on the same market;⁶⁸⁸ and
- (g) other economic, legal and organisational links, including (but not limited to):
 - (i) same commercial name;⁶⁸⁹
 - (ii) consolidation of accounts and reporting obligations;⁶⁹⁰ and
 - (iii) exclusive distribution agreements.⁶⁹¹

5.20 The exercise of decisive influence by a parent company over its subsidiary's conduct may be inferred from a body of consistent evidence, even if some of that evidence in isolation is insufficient to establish the existence of such influence.⁶⁹²

Economic succession

5.21 As explained in paragraph 5.8 above, the general principle is that liability for an infringement of UK competition law rests with the person(s) responsible for the operation of the undertaking that committed the infringement at the time the infringement was committed (the 'personal responsibility' principle).⁶⁹³ However, in certain circumstances, an exception is made to the personal responsibility principle where responsibility for the operation of the undertaking has changed following the commission of the infringement (the 'economic successor' principle).

5.22 Exceptions to the personal responsibility principle have been made, in particular, in the following circumstances:

⁶⁸⁸ Commission Decision of 20 September 2006 in Case COMP/F-1/38.121 – *Copper Fittings* at paragraph 680.

⁶⁸⁹ Commission Decision of 3 May 2006 in Case COMP/F/38.620 – *Hydrogen Peroxide and Perborate*; this Decision was appealed subsequently on other points.

⁶⁹⁰ Commission Decision of 22 July 2009 in Case COMP/39.396 – *Calcium carbide and magnesium based reagents for the steel and gas industries* and Case T-384/09 *SKW Stahl-Metallurgie Holding and SKW Stahl-Metallurgie GmbH*, ECLI:EU:T:2014:27 (decision on this point upheld).

⁶⁹¹ See Case C-293/13 P *Del Monte v Commission*, ECLI:EU:C:2015:416.

⁶⁹² Case T-851/14 *Slovak Telekom v European Commission* ECLI:EU:T:2018:929, paragraph 284 and the case law cited therein.

⁶⁹³ Judgment in Case T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraph 236.

- where the person in control of the undertaking at the time the infringement was committed no longer exists⁶⁹⁴ or is no longer economically active,⁶⁹⁵ and/or
- where there are ‘structural links’ (economic and organisational) between the original person responsible for the undertaking that committed the infringement and the economic successor.⁶⁹⁶

5.23 In order to establish whether a person may be regarded as an economic successor, it is necessary to identify the ‘*combination of physical and human elements [i.e. the assets and personnel] which contributed to the commission of the infringement and then to identify the person who has become responsible for their operation.*’⁶⁹⁷

5.24 It is not necessary that the economic successor has taken over all of the assets and personnel of the relevant undertaking that committed the infringement. It is sufficient that the successor has taken over ‘*the main part of those physical and human elements that were employed in [the relevant business] and therefore contributed to the commission of the infringement in question.*’⁶⁹⁸

Assessment

Undertakings: application to the Addressees

5.25 The CMA finds that each of Bluu Solutions Limited, Tetris-Bluu Limited, Area Sq., Cube, Oakley, Coriolis, Loop Interiors LLP and ThirdWay Interiors Limited is⁶⁹⁹ an entity engaged in economic activities, with each having been engaged in the supply of non-residential fit-out services during the period of the relevant Infringement(s) in which each was involved. The CMA therefore finds that each of these entities constitutes an undertaking for the purposes of the Chapter I prohibition.

⁶⁹⁴ Judgment in Case C-40/73 *Suiker Unie v Commission*, ECLI:EU:C:1975:174; judgment in Case C-29/83 *Compagnie Royale Asturienne des Mines and Rheinzink GmbH v Commission*, ECLI:EU:C:1984:130; judgment in Case T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74.

⁶⁹⁵ Judgment in Case T-134/94 *NMH Stahlwerke GmbH v Commission*, ECLI:EU:T:1999:44; judgment in Case C-280/06 *Autorita Garante Della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA*, ECLI:EU:C:2007:775.

⁶⁹⁶ Judgment in Case C-204/00 P *Aalborg Portland A/S v Commission*, ECLI:EU:C:2004:6.

⁶⁹⁷ Judgment in Case T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraph 237.

⁶⁹⁸ Judgment of 11 March 1999, Case T-134/94 *NMH Stahlwerke GmbH v Commission*, ECLI:EU:T:1999:44, paragraph 130.

⁶⁹⁹ Or was at the time of the relevant Infringement.

Attribution of liability: application to Addressees

- 5.26 For each Addressee that the CMA finds has infringed the Act, the CMA has first identified the legal entity that was directly involved in each Infringement. It has then determined whether liability for the relevant Infringement in each case should be on a joint and several basis with another legal entity on the basis that both form part of the same undertaking for the purposes of the relevant Infringement.
- 5.27 In order to determine whether this is the case, the CMA has examined whether another legal entity exercised decisive influence over the entity directly involved in the relevant Infringement, that is, whether it exerted control or directed the conduct of the other to such an extent that they can be considered to be one and the same undertaking.⁷⁰⁰

Bluu Solutions Limited - JLL

- 5.28 The CMA finds that Bluu Solutions Limited was directly involved in, and is therefore liable for, the Infringements involving the Deyaar, Holloway White Allom, Newham College, Amicus Horizon, Klesch, EasyJet, Dechert, HFIS, Visium and Cheniere Energy contracts.
- 5.29 As explained in paragraph 3.6, in the period since the start of the earliest Infringement involving Bluu Solutions Limited (27 November 2006) to 14 June 2011, Bluu Middle East Holdings Limited held 100% of the shares in Bluu Solutions Limited. From 14 June 2011 to the present, Bluuco Limited has held 100% of the shares in Bluu Solutions Limited. From 6 August 2015 to the present, Jones Lang LaSalle Incorporated has been the ultimate 100% parent of Bluuco Limited (and therefore of Bluu Solutions Limited).
- 5.30 As a result of its 100% ownership, Bluuco Limited had the ability to exercise decisive influence over Bluu Solutions Limited from 14 June 2011. The CMA has applied the presumption that Bluuco Limited did actually exercise decisive influence over that company from 14 June 2011 until the end of last Infringement in which it was involved. JLL has not sought to rebut that presumption. From 6 August 2015, Jones Lang LaSalle Incorporated had the ability to exercise decisive influence over Bluu Solutions Limited and Bluuco Limited as a result of its indirect 100% ownership. The CMA has applied the presumption that Jones Lang LaSalle Incorporated did actually exercise decisive influence over those companies from 6 August 2015 until the end of

⁷⁰⁰ Advocate General Kokott's Opinion in *Akzo Nobel v Commission*, ECLI:EU:C:2009:262 (as referenced by the Court of Justice in its final judgment).

the last Infringement in which they were involved. JLL has not sought to rebut that presumption.

- 5.31 With respect to the period prior to 14 June 2011, Bluu Middle East Holdings Limited was the 100% owner of Bluu Solutions Limited and had the ability to exercise decisive influence over that company. The CMA has applied the presumption that Bluu Middle East Holdings Limited did actually exercise decisive influence over Bluu Solutions Limited from before the date of the first Infringement involving Bluu Solutions Limited until 14 June 2011. JLL has not sought to rebut that presumption. Bluu Middle East Holdings Limited has however since been dissolved.⁷⁰¹
- 5.32 The CMA finds that there is functional and economic continuity between Bluu Middle East Holdings Limited and Bluuco Limited and therefore finds that Bluuco Limited is the economic successor of Bluu Middle East Holdings Limited for the purposes of the Chapter I prohibition. This is for the following reasons:
- (a) as part of a group reorganisation in June 2011, the assets of Bluu Middle East Holdings Limited, including the shareholding in Bluu Solutions Limited, were transferred to the newly incorporated and renamed Bluuco Limited;⁷⁰²
 - (b) Bluuco Limited carries on economic activity which is very similar in nature to that carried on by Bluu Middle East Holdings Limited;
 - (c) the trading names of both entities for the relevant periods were the same;⁷⁰³
 - (d) the registered office of both companies was the same for the majority of the relevant time that each was the 100% shareholder of Bluu Solutions Limited;⁷⁰⁴ and

⁷⁰¹ See footnote 22.

⁷⁰² Note 13 to the Group of company accounts of Bluuco Limited for the period ended 31 December 2011 explains that *'During the period the affairs of the bluu Companies were restructured. Prior to the incorporation of bluuco Limited a number of companies were under the common control of [X], Director. bluuco Limited acquired the group companies in the period. The reorganisation involved the acquisition of a number of separate companies, and occurred on 30 June 2011'*. The Group of company accounts details the subsidiaries acquired as being bluu Solutions Limited, Light bluu Limited, bluu City Limited and bluu Projects Limited.

⁷⁰³ Prior to 14 June 2011, Bluu Middle East Holdings Limited (05529390) was named Bluuco Limited, and from 14 June 2011 the newly incorporated company (07663601) was named Bluuco Limited. See footnotes 22 and 23 above.

⁷⁰⁴ Based on Companies House filings, Bluu Middle East Holdings Limited (05529390)'s registered office address from 11 August 2005 to 10 January 2011 was Lowin House Tregolls Road Truro Cornwall TR1 2NA; Bluuco Limited (07663601)'s registered office address from 9 June 2011 to 24 October 2014 was also Lowin House Tregolls Road Truro TR1 2NA.

- (e) there is significant overlap of both directors and shareholders between the two companies.⁷⁰⁵

5.33 Therefore, the CMA finds that:

- (a) Bluu Solutions Limited is liable for all relevant Infringements in which it was involved, by virtue of it being the legal entity directly involved in those Infringements;
- (b) Bluuco Limited and Jones Lang LaSalle Incorporated are jointly and severally liable for Bluu Solutions Limited's involvement in the relevant Infringements for the following periods:
 - (i) Jones Lang La Salle Incorporated is jointly and severally liable only for the relevant Infringements which occurred from 6 August 2015 onwards, by virtue of it being the indirect 100% parent company of Bluu Solutions Limited during that period; and
 - (ii) Bluuco Limited is jointly and severally liable for the whole period of the Infringements in which Bluu Solutions Limited was involved (i) by virtue of it being the economic successor to Bluu Middle East Holdings Limited which was in turn the 100% parent company of Bluu Solutions Limited until 14 June 2011; and (ii) by virtue of it being the direct 100% parent company of Bluu Solutions Limited from 14 June 2011 onwards.

5.34 This Decision is therefore addressed to Bluu Solutions Limited, Bluuco Limited, and Jones Lang LaSalle Incorporated.

Tetris-Bluu Limited – JLL

5.35 The CMA finds that Tetris-Bluu Limited (now named Tetris Projects Limited) was directly involved in, and is therefore liable for, the Infringements involving the Damac and DAI contracts.

5.36 As explained in paragraph 3.7, in the period since the start of the earliest Infringement involving Tetris-Bluu Limited (12 April 2016) to the present, Jones Lang LaSalle Incorporated has been the ultimate 100% parent of Tetris-Bluu Limited/Tetris Projects Limited. Therefore, it had the ability to

⁷⁰⁵ The Annual Returns of Bluu Middle East Holdings Limited (05529390) show that [§] held a 100% shareholding in the company from at least 2006 until 30 June 2011; the Annual Returns of Bluuco Limited (07663601) show that [§] held a 100% shareholding in the company from its incorporation on 9 June 2011 until 9 June 2015 by which time [§] held an 8.33% shareholding. This shareholding in Bluuco Limited continued until the acquisition by JLL. [§] and [§] were directors of Bluu Middle East Holdings (05529390) from August 2005 and [§] was appointed as director in May 2011. These three individuals were also directors of Bluuco Limited (07663601), among others, from its incorporation until various dates between August 2015 and 2017.

exercise decisive influence over this company and the CMA has applied the presumption that it did actually exercise decisive influence over Tetris-Bluu Limited during the period of the relevant Infringements. JLL has not sought to rebut that presumption.

5.37 The CMA therefore finds that Tetris Projects Limited and Jones Lang LaSalle Incorporated are jointly and severally liable for Tetris-Bluu Limited's involvement in the relevant Infringements.

5.38 This Decision is therefore addressed to Tetris Projects Limited and Jones Lang LaSalle Incorporated.

Area Sq. – Fourfront

5.39 The CMA finds that Area Sq. was directly involved in, and is therefore liable for, the Infringements involving the Deyaar, Holloway White Allom, Newham College, EasyJet, Dechert, HFIS, Cheniere Energy and DAI contracts.

5.40 As explained in paragraph 3.3, during the period of each relevant Infringement, Area Sq. was 100% owned by Fourfront Group Limited. Therefore, Fourfront Group Limited had the ability to exercise decisive influence over this company and the CMA has applied the presumption that it did actually exercise decisive influence over Area Sq. during the relevant Infringements. Further, from 30 April 2016, Fourfront Group Limited was 100% owned by Fourfront Holdings Limited; Fourfront Holdings Limited therefore had the ability to exercise decisive influence over this company and the CMA has applied the presumption that it did actually exercise decisive influence over Fourfront Group Limited, and therefore Area Sq., from that date onwards.

5.41 The CMA therefore finds that Fourfront Group Limited and Fourfront Holdings Limited are jointly and severally liable with Area Sq. for the relevant Infringements, including for the payment of the financial penalties imposed by the CMA by this Decision in respect of the relevant Infringements (Fourfront Holdings Limited being liable only for the relevant Infringements in the period in which it was the parent of Fourfront Group Limited).

5.42 This Decision is therefore addressed to Area Sq., Fourfront Group Limited and Fourfront Holdings Limited.

5.43 The application of the presumption set out in paragraph 5.10 above is in itself sufficient to attribute liability to Fourfront Group Limited and Fourfront Holdings Limited for the relevant Infringements. Fourfront has not rebutted this presumption. In addition, the CMA notes the following factors which

confirm that Fourfront exercised decisive influence over Area Sq. during the period of the relevant Infringements:

- (a) There is significant overlap between the directors of Fourfront Group Limited, Fourfront Holdings Limited, Area Sq. and Cube:
 - (i) [X] and [X] have been directors of Cube, Area Sq. and Fourfront Group Limited throughout the period during which the Infringements in which Fourfront was involved took place;
 - (ii) [X] was director of Cube, Area Sq. and Fourfront Group Limited from before the first Infringement involving Fourfront until 31 December 2015;
 - (iii) [X] has been director of Cube, Area Sq. and Fourfront Group Limited since at least 9 May 2016⁷⁰⁶ i.e. during the period when the last Infringement involving Fourfront took place; and
 - (iv) [X], [X] and [X] have also been directors of Fourfront Holdings Limited since 22 March 2016;
- (b) Area Sq., Cube, Fourfront Group Limited and latterly Fourfront Holdings Limited publish consolidated accounts;⁷⁰⁷
- (c) All of the subsidiaries owned by Fourfront Group Limited are active in the same sector.⁷⁰⁸ 'Traditional' and 'Design and Build' services, where Cube and Area Sq. are active, are both types of activity in the same sector (Category A / Category B non-residential fit-out services); and
- (d) Area Sq., Cube, Fourfront Group Limited and Fourfront Holdings Limited all have the same registered office address.

Cube – Fourfront

- 5.44 The CMA finds that Cube was directly involved in, and is therefore liable for, the Infringements involving the Amicus Horizon and Klesch contracts.
- 5.45 As explained in paragraph 3.3, during the period of each relevant Infringement, Cube was 100% owned by Fourfront Group Limited. Fourfront Group Limited had the ability to exercise decisive influence over this company

⁷⁰⁶ [X] became director of Fourfront Group Limited on 6 May 2016 and of Area Sq. and Cube on 9 May 2016.

⁷⁰⁷ Consolidated financial statements of Fourfront Holdings Limited for the year ending 30 April 2017 included Fourfront Group Limited, Area Sq. and Cube.

⁷⁰⁸ Several of the consolidated financial statements published by Fourfront Group Limited during the years of the Infringements in which Fourfront was involved state that the subsidiaries 'operate within the commercial interiors sector'.

and the CMA has applied the presumption that it did actually exercise decisive influence over Cube during the relevant Infringements. Further, from 30 April 2016, Fourfront Group Limited was 100% owned by Fourfront Holdings Limited; Fourfront Holdings Limited therefore had the ability to exercise decisive influence over this company and the CMA has applied the presumption that it actually exercised decisive influence over Fourfront Group Limited, and therefore Cube, from that date onwards.

- 5.46 The CMA therefore finds that Fourfront Group Limited and Fourfront Holdings Limited are jointly and severally liable with Cube for the relevant Infringements, including for the payment of the financial penalties imposed by the CMA by this Decision in respect of the relevant Infringements (Fourfront Holdings Limited being liable only for the period in which it was the parent of Fourfront Group Limited).
- 5.47 This Decision is therefore addressed to Cube, Fourfront Group Limited and Fourfront Holdings Limited.
- 5.48 The application of the presumption set out in paragraph 5.10 above is in itself sufficient to attribute liability to Fourfront Group Limited and Fourfront Holdings Limited. Fourfront has not rebutted this presumption. In addition, the CMA notes the factors set out at paragraph 5.43(a) to 5.43(d) above in relation to Area Sq., which apply equally to Cube, confirm that Fourfront actually exercised decisive influence over Cube during the period of the relevant Infringements.
- 5.49 On the basis of paragraphs 5.39 to 5.48 above, the CMA finds that Area Sq., Cube and Fourfront Group Limited formed a single economic unit and therefore the same undertaking throughout the period of the relevant Infringements and that, from 30 April 2016, Fourfront Holdings Limited was also part of this single economic unit and therefore part of the same undertaking. Any infringement committed by Cube or Area Sq. was therefore committed by Fourfront as an undertaking (including Fourfront Holdings Limited only from 30 April 2016).

Loop

- 5.50 The CMA finds that Loop Interiors LLP (now called Loop Interiors London LLP) was directly involved in the Infringements involving the HFIS, Visium, Damac, DAI, and Kokoba and Redefine contracts.

- 5.51 On 12 January 2018, Loop Interiors London LLP was restructured into a private limited company, Loop Interiors Limited.⁷⁰⁹
- 5.52 The CMA finds that there is functional and economic continuity between Loop Interiors LLP (now named Loop Interiors London LLP) and Loop Interiors Limited and therefore finds that Loop Interiors Limited is the economic successor of Loop Interiors LLP for the purposes of the Chapter I prohibition. This is for the following reasons:
- (a) Loop Interiors London LLP ceased any significant economic activity on 12 January 2018, when it ceased trading, and its net assets (including working capital and goodwill) were transferred to the successor entity, which was subsequently renamed Loop Interiors Limited.⁷¹⁰
 - (b) Whilst Loop Interiors London LLP continues to exist in law, it is intended that it (and its corporate members) will be dissolved;⁷¹¹ the only active trading company is Loop Interiors Limited.⁷¹²
 - (c) Loop Interiors Limited carries on economic activity which is very similar in nature to that carried on by Loop Interiors London LLP.
 - (d) The trading names for both entities are very similar.
 - (e) The registered office address for both entities is the same.⁷¹³
 - (f) Both entities have the same five individuals as principals (Loop Interiors London LLP) and directors (Loop Interiors Limited).⁷¹⁴
 - (g) The above individuals who are the five principals/directors of Loop Interiors London LLP and Loop Interiors Limited respectively are also the same five individuals who, were/are, in effect, the shareholders in both Loop Interiors London LLP (indirectly through their relevant corporate member) and Loop Interiors Limited.⁷¹⁵

⁷⁰⁹ A company named Loopint Limited was registered at Companies House on 18 September 2017 under the company number 10966814. Loop Interiors LLP was renamed Loop Interiors London LLP and Loopint Limited was renamed Loop Interiors Limited on 20 September 2017. In representations to the CMA, Loop stated that the restructuring of Loop from an LLP to a limited company was not connected in any way to the CMA's investigation and was in contemplation prior to the start of the CMA's investigation.

⁷¹⁰ URN2882 and URN2048. Note that a number of contracts were retained in the LLP until their completion.

⁷¹¹ URN2048.

⁷¹² URN2882.

⁷¹³ URN2882.

⁷¹⁴ Note that Loop Interiors London LLP also had a number of additional principals who were family members of the relevant five principals mentioned above (URN2048).

⁷¹⁵ URN2048.

- 5.53 The CMA finds that Loop Interiors Limited is liable as the economic successor for the involvement of Loop Interiors LLP in the relevant Infringements, including for the payment of the financial penalties imposed by the CMA by this Decision in respect of the relevant Infringements.
- 5.54 This Decision is addressed to both Loop Interiors London LLP and Loop Interiors Limited.⁷¹⁶

ThirdWay

- 5.55 The CMA finds that ThirdWay Interiors Limited was directly involved in, and is therefore liable for, the Infringement involving the Kokoba and Redefine contracts.
- 5.56 As explained in paragraph 3.21, during the period of the Infringement in which ThirdWay Interiors Limited was involved, ThirdWay Interiors Limited was 100% owned by The ThirdWay Group Limited. The ThirdWay Group Limited had the ability to exercise decisive influence over this company and the CMA has applied the presumption that it did actually exercise decisive influence over ThirdWay Interiors Limited during the relevant Infringement. ThirdWay has not sought to rebut that presumption.
- 5.57 The CMA finds that The ThirdWay Group Limited is jointly and severally liable with ThirdWay Interiors Limited for the relevant Infringement, including for the payment of the financial penalty imposed by the CMA by this Decision in respect of that Infringement.
- 5.58 This Decision is therefore addressed to ThirdWay Interiors Limited and The ThirdWay Group Limited.

Oakley

- 5.59 The CMA finds that Oakley was directly involved in and is liable for the Infringement involving the Newham College contract, including for the payment of the financial penalty imposed by the CMA by this Decision in respect of that Infringement. As explained in paragraph 3.19, during the period of that Infringement, Oakley was 100% owned by its only director, [Director, Oakley].
- 5.60 This Decision is therefore addressed to Oakley.

⁷¹⁶ Under Rule 10 of the CMA Rules, where the CMA has made an infringement decision, it must (subject to Rules 18 and 19) give notice of the infringement decision to each person to whom the CMA considers is or was a party to the agreement, or is or was engaged in conduct, stating the facts on which the CMA bases the infringement decision and the CMA's reasons for making the infringement decision.

Coriolis

5.61 The CMA finds that Coriolis was directly involved in and is liable for the Infringements involving the Holloway White Allom and Newham College contracts, including for the payment of the financial penalties imposed by the CMA by this Decision in respect of those Infringements. As explained in paragraph 3.1, during the period of the relevant Infringements, Coriolis was 100% owned by its only director, [Director, Coriolis].

5.62 This Decision is therefore addressed to Coriolis.

Agreements and/or concerted practices between undertakings

Key legal principles

5.63 The Chapter I prohibition and Article 101 TFEU apply to ‘*agreements*’ and ‘*concerted practices*’ and ‘*decisions by associations of undertakings*’.⁷¹⁷

Agreements

5.64 The Chapter I prohibition and Article 101 TFEU are intended to catch a wide range of agreements, including oral agreements and ‘*gentlemen’s agreements*’.⁷¹⁸ An agreement may be express or implied by the parties, and there is no requirement for it to be formal or legally binding, nor for it to contain any enforcement mechanisms.⁷¹⁹ Tacit acquiescence may also be sufficient to give rise to an agreement for the purpose of the Chapter I prohibition or Article 101 TFEU.⁷²⁰ An agreement may also consist of either an isolated act or a series of acts or a course of conduct.⁷²¹ 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*’.⁷²²

⁷¹⁷ Section 2(1) of the Act and Article 101(1) TFEU.

⁷¹⁸ Judgment of 15 July 1970 in Case C-41/69, *ACF Chemiefarma v Commission* ECLI:EU:C:1970:71, paragraphs 106 to 114.

⁷¹⁹ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, at [658]; Commission Decision of 9 December 1998, *Greek Ferries*, Case IV/34466, paragraph 141 (upheld on appeal).

⁷²⁰ See for example Case T-41/96 *Bayer v Commission*, ECLI:EU:T:2000:242 at paragraph 102; OFT decision No. CA98/08/2004 of 8 November 2004, Case CE/2464-03 (*double glazing*).

⁷²¹ Judgment in Case C-49/92 P *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 81.

⁷²² Judgment of 26 October 2000, Case T-41/96 *Bayer v Commission*, ECLI:EU:T:2000:242, paragraph 69 (upheld on appeal in Judgment of 6 January 2004 in joined cases C-2/01 P and C-3/01 P, *BAI and Commission v Bayer*, ECLI:EU:C:2004:2, paragraphs 96 and 97) and Judgment in Case T-7/89 *Hercules Chemicals v Commission*, ECLI:EU:T:1991:75, paragraph 256.

5.65 Although it is necessary to show the existence of a joint intention⁷²³ to act on the market in a specific way in accordance with the terms of the agreement, the CMA is not required to establish a joint intention to pursue an anti-competitive aim.⁷²⁴

Concerted practices

5.66 The concepts of ‘agreements’ and ‘concerted practices’ are intended to catch forms of collusion having the same nature which are distinguishable from each other only by their intensity and the forms in which they manifest themselves.⁷²⁵

5.67 The Court of Appeal has noted that ‘*concerted practices can take many different forms, and the courts have always been careful not to define or limit what may amount to a concerted practice for [the] purpose*’ of determining whether there is consensus between the undertakings said to be party to a concerted practice.⁷²⁶

5.68 The concept of a concerted practice must be understood in light of the principle that each economic operator must determine independently the policy it intends to adopt on the market, including the prices and commercial terms it offers to customers.⁷²⁷ This requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors. It does, however, strictly preclude any direct or indirect contact between such operators by which an undertaking may influence the future conduct on the market of its actual or potential competitors or disclose to them its decisions or intentions concerning its own conduct on the market where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings involved and the volume of that market.⁷²⁸

⁷²³ Case T-168/01, *GlaxoSmithKline Services Unlimited v Commission*, ECLI:EU:T:2006:265, paragraph 76

⁷²⁴ Judgment of 27 September 2006 in Case T-168/01, *GlaxoSmithKline Services Unlimited v Commission*, ECLI:EU:T:2006:265, paragraph 77 (upheld on appeal in Judgment of 6 October 2009 in Joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, *GlaxoSmithKline Services Unlimited v Commission*, ECLI:EU:C:2009:610).

⁷²⁵ Judgment of 4 June 2009 in Case C-8/08, *T-Mobile Netherlands and Others*, ECLI:EU:C:2009:343, paragraph 2; see also Judgment in Case C-49/92 P *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraph 131 and *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraph 206(ii).

⁷²⁶ *Argos and Littlewoods v OFT* and *JJB Sports v OFT* [2006] ECWA Civ 1318, at paragraph 22.

⁷²⁷ Judgment of 16 December 1975 in Case C-40/73, *Suiker Unie and Others v Commission*, ECLI:EU:C:1975:174, paragraph 173. See also *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206(iv).

⁷²⁸ Judgment of 4 June 2009 in Case C-8/08, *T-Mobile Netherlands and Others*, EU:C:2009:343, paragraph 33.

- 5.69 A concerted practice is ‘*a form of coordination between undertakings*’ which falls short of ‘*having reached the stage where an agreement properly so-called has been concluded*’, and where competitors knowingly substitute practical cooperation between them for the risks of competition.⁷²⁹ The Court of Justice has added that ‘*By its very nature, then, a concerted practice does not have all the elements of a contract but may inter alia arise out of coordination which becomes apparent from the behaviour of the participants*’.⁷³⁰
- 5.70 The coordination comprises ‘*any direct or indirect contact*’ between undertakings which has the object or effect of influencing the conduct on the market of an actual or potential competitor⁷³¹ thereby creating conditions of competition which do not correspond to the normal conditions of the market in question.⁷³²
- 5.71 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*’.⁷³³ However, that does not necessarily mean that the conduct should produce the concrete effect of restricting, preventing or distorting competition.⁷³⁴ In addition, the Court of Justice in *Hüls v Commission* stated that ‘*...subject to proof to the contrary, which the economic operators concerned must adduce, the presumption must be that the undertakings taking part in the concerted action and remaining active on the market take account of the information exchanged with their competitors for the purposes of determining their conduct on that market. That is all the more true where the undertakings concert together on a regular basis over a long period*’.⁷³⁵ Therefore, in order to prove concertation, it is not necessary to show that the competitor in question has formally undertaken, in

⁷²⁹ Judgment of 14 July 1972 in Case C-48/69, *ICI v Commission*, ECLI:EU:C:1972:70, paragraph 64. See also Judgment in Case C-8/08, *T-Mobile Netherlands and Others*, ECLI:EU:C:2009:343, paragraph 26 and *JJB Sports plc v Office of Fair Trading* [2004] CAT 17, at paragraphs 151 to 153.

⁷³⁰ Judgment in Case C-48/69, *ICI v Commission*, ECLI:EU:C:1972:70, paragraph 65. See also *JJB Sports plc v Office of Fair Trading* [2004] CAT 17, at paragraph 151.

⁷³¹ Judgment in Case C-40/73, *Suiker Unie and Others v Commission*, ECLI:EU:C:1975:174, paragraph 174. See also Judgment in Case C-8/08, *T-Mobile Netherlands and Others*, ECLI:EU:C:2009:343, at paragraph 33; and *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206(v). The case law provides that a concerted practice also arises in the situation in which the object or effect of the direct or indirect contact is to disclose to a competitor the course of conduct which the disclosing party has decided to adopt or contemplates adopting on the market.

⁷³² Judgment of 14 July 1981 in Case C-172/80, *Züchner v Bayerische Vereinsbank*, ECLI:EU:C:1981:178, paragraph 14; Judgment in Case C-49/92 P, *Commission v Anic Participazioni*, ECLI:EU:C:1999:356, paragraph 117; and Judgment in Case C-8/08, *T-Mobile Netherlands and Others*, ECLI:EU:C:2009:343, paragraph 33.

⁷³³ Judgment in Case C-49/92 P, *Commission v Anic Participazioni*, ECLI:EU:C:1999:356, paragraph 118.

⁷³⁴ Judgment in Case C-49/92 P, *Commission v Anic Participazioni*, ECLI:EU:C:1999:356, paragraph 124. See also *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206(xi).

⁷³⁵ Judgment of 1999 in Case C-199/92, *Hüls v Commission (Polypropylene)*, ECLI:EU:C:1999:358, paragraph 162.

respect of one or several others, to adopt a particular course of conduct or that the competitors have expressly agreed a particular course of conduct on the market. It is sufficient that the exchange of information should have removed or reduced the degree of uncertainty as to the conduct in the market to be expected on his part.

Agreements and/or concerted practices

5.72 It is not necessary, for the purpose of finding an infringement, to distinguish between agreements and concerted practices, or to characterise conduct exclusively as an agreement or a concerted practice.⁷³⁶ Nothing turns on the precise form taken by each of the elements comprising the overall agreement and/or concerted practice. As explained by the Court of Justice, *'it is settled case-law that, although Article [101 TFEU] distinguishes between "concerted practice", "agreements between undertakings" and "decisions by associations of undertakings", the aim is to have the prohibition of that article catch different forms of coordination between undertakings of their conduct on the market [...] and thus to prevent undertakings from being able to evade the rules on competition on account simply of the form in which they coordinate their conduct.'*⁷³⁷

Assessment

5.73 The CMA finds that there was a concurrence of wills (and thereby an agreement) between the relevant Addressees in relation to each Infringement as set out at Section 3 above and/or a coordination of conduct in each Infringement by the relevant Addressees in which they knowingly substituted practical cooperation between them for the risks of competition. Therefore, the CMA finds that the relevant Addressees participated in agreement(s) and/or concerted practice(s) in relation to each Infringement in respect of the supply

⁷³⁶ *Argos and Littlewoods v OFT* and *JJB Sports v OFT* [2006] ECWA Civ 1318, at paragraph 21. See also Judgment of 17 December 1991 in Case T-7/89, *Hercules Chemicals v Commission*, ECLI:EU:T:1991:75, paragraph 264; Judgment of 24 October 1991 in Case T-1/89, *Rhône-Poulenc v Commission*, ECLI:EU:T:1991:56, paragraph 127; Judgment of 8 July 1999 in Case C-49/92 P, *Commission v Anic Partecipazioni*, ECLI:EU:C:1999:356, paragraphs 131 and 132; and Commission Decision 86/399/EEC of 10 July 1986 (IV/31.371 – *Roofing Felt*), in which the conduct of the undertakings was found to be an agreement as well as a decision of an association.

⁷³⁷ Judgment of 11 September 2014, in Case C-382/12 P, *MasterCard and Others v Commission*, ECLI:EU:C:2014:2201, paragraph 63 and the case law cited. See Judgment of 20 March 2002 in Case T-9/99, *HFB and Others v Commission*, ECLI:EU:T:2002:70, paragraphs 186 to 188; Judgment of 23 November 2006 in Case C-238/05, *ASNEF-EQUIFAX C-238/05*, ECLI:EU:C:2006:734, paragraph 32. See also Judgment of 20 April 1999 in joined cases T-305/94, T-306/94, etc, *LVM v Commission*, ECLI:EU:T:1999:80, paragraph 696: *'In the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by Article [101] of the Treaty.'*

of non-residential fit-out services in the UK or a part of it and which may have affected trade within the UK or a part of it. In reaching this conclusion, the CMA relies on the evidence of the Addressees' conduct as set out at paragraphs 3.32 to 3.446 above.

5.74 In particular, the evidence shows the following agreement(s) and/or concerted practice(s) in each case:

- (a) In relation to the client **Deyaar**, on the basis of the assessment set out at paragraphs 3.50 ff. above, the CMA finds that there was an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid in relation to this contract.
- (b) In relation to the client **Holloway White Allom**, on the basis of the assessment set out at paragraphs 3.74 ff. above, the CMA finds that there was (i) an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid in relation to this contract and (ii) an agreement and/or concerted practice between Bluu and Coriolis in accordance with which Coriolis submitted a cover bid in relation to this contract.
- (c) In relation to the client **Newham College**, on the basis of the assessment set out at paragraphs 3.112 ff. above, the CMA finds that there was (i) an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid in relation to this contract, (ii) an agreement and/or concerted practice between Bluu and Coriolis in accordance with which Coriolis submitted a cover bid in relation to this contract and (iii) an agreement and/or concerted practice between Bluu and Oakley in accordance with which Oakley submitted a cover bid in relation to this contract.
- (d) In relation to the client **Amicus Horizon**, on the basis of the assessment set out at paragraphs 3.149 ff. above, the CMA finds that there was an agreement and/or concerted practice between Fourfront and Bluu in accordance with which Bluu submitted a cover bid in relation to this contract.
- (e) In relation to the client **Klesch**, on the basis of the assessment set out at paragraphs 3.178 ff. above, the CMA finds that there was an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid in relation to this contract.
- (f) In relation to the client **EasyJet**, on the basis of the assessment set out at paragraphs 3.217 ff. above, the CMA finds that there was an agreement

and/or concerted practice between Bluu and Fourfront in accordance with which Bluu submitted a cover bid in relation to this contract.

- (g) In relation to the client **Dechert**, on the basis of the assessment set out at paragraphs 3.235 ff. above, the CMA finds that there was an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid in relation to this contract.
- (h) In relation to the client **HFIS**, on the basis of the assessment set out at paragraphs 3.262 ff. above, the CMA finds that there was (i) an agreement and/or concerted practice between Fourfront and Bluu in accordance with which Bluu submitted a cover bid in relation to this contract and (ii) an agreement and/or concerted practice between Fourfront and Loop in accordance with which Loop submitted a cover bid in relation to this contract.
- (i) In relation to the client **Visium**, on the basis of the assessment set out at paragraphs 3.281 ff. above, the CMA finds that there was an agreement and/or concerted practice between Bluu and Loop in accordance with which Loop submitted a cover bid in relation to this contract.
- (j) In relation to the client **Cheniere Energy**, on the basis of the assessment set out at paragraphs 3.297 ff. above, the CMA finds that there was an agreement and/or concerted practice between Bluu and Fourfront in accordance with which Fourfront submitted a cover bid in relation to this contract.
- (k) In relation to the client **Damac**, on the basis of the assessment set out at paragraphs 3.336 ff. above, the CMA finds that there was an agreement and/or concerted practice between Loop and JLL in accordance with which JLL submitted a cover bid in relation to this contract and Loop made a compensation payment to [Director 1, JLL] in consideration for JLL agreeing to submit this cover bid.
- (l) In relation to the client **DAI**, on the basis of the assessment set out at paragraphs 3.363 ff. above, the CMA finds that there was an agreement and/or concerted practice (i) between Fourfront and JLL in accordance with which JLL submitted a cover bid in relation to this contract and (ii) between Fourfront and Loop in accordance with which Loop submitted a cover bid in relation to this contract.
- (m) In relation to the clients **Kokoba** and **Redefine**, on the basis of the assessment set out at paragraphs 3.433 ff. above, the CMA finds that there was one overall agreement and/or concerted practice between Loop and ThirdWay, relating to both the Kokoba and Redefine contracts, in

accordance with which (i) Loop submitted a cover bid for the contract with Kokoba; and (ii) Loop and ThirdWay exchanged commercially sensitive information, including future pricing information, in relation to the Redefine contract.

- 5.75 The CMA has not found any documentary evidence relating to any of the Infringements in which any of the Addressees sought to distance themselves publicly from their arrangement(s) / concerted practice(s).⁷³⁸ On the contrary, the evidence shows that the Addressees in relation to each Infringement took steps consistent with each agreement and/or concerted practice.
- 5.76 Based on the above and on the evidence set out at paragraphs 3.32 to 3.446, the CMA finds that the concurrence of wills and/or coordination of conduct between the relevant Addressees in relation to each Infringement constituted agreement(s) and/or concerted practice(s) for the purposes of the Chapter I prohibition.

Object of preventing, restricting or distorting competition

Key legal principles

- 5.77 The Chapter I prohibition and Article 101 TFEU prohibit agreements between undertakings or concerted practices which:
- ‘...have as their object or effect the prevention, restriction or distortion of competition.’*
- 5.78 It is settled case-law that certain types of coordination between undertakings reveal in themselves a sufficient degree of harm to competition, such that there is no need to examine their effects.⁷³⁹ Certain types of coordination between undertakings can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.⁷⁴⁰
- 5.79 The term ‘object’ in both the Chapter I prohibition and the prohibition in Article 101 TFEU refers to the sense of ‘aim’, ‘purpose’, or ‘objective’ of the coordination between undertakings in question.⁷⁴¹ This is assessed objectively. It is not necessary to establish that the parties jointly intended, subjectively, to pursue an anticompetitive aim – only that they had a common

⁷³⁸ *JJB Sports plc and Allsports Ltd v OFT* [2004] CAT 17 at paragraphs 1042-1043.

⁷³⁹ Case C-373/14 P *Toshiba v Commission* ECLI:EU:C:2016:26, paragraph 26; and Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 49.

⁷⁴⁰ Case C-373/14 P *Toshiba v Commission* ECLI:EU:C:2016:26, paragraph 26; and Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 50.

⁷⁴¹ See, for example, respectively: Case C-56/64 *Consten & Grundig v Commission*, ECLI:EU:C:1966:41, paragraph 343; Case C-96/82 *IAZ and Others v Commission*, ECLI:EU:C:1983:310, paragraph 25; Case C-209/07 *Competition Authority v Beef Industry Development Society*, ECLI:EU:C:2008:643, paragraphs 32 to 33.

understanding whose terms, assessed objectively, pursue or result in such an aim.⁷⁴²

- 5.80 An agreement may be regarded as having an anticompetitive object even if it does not have a restriction of competition as its sole aim but also pursues other legitimate objectives.⁷⁴³
- 5.81 In order to determine whether an agreement objectively reveals a sufficient degree of harm such as to constitute a restriction of competition by object, regard must be had to:
- (a) the economic and legal context of which it forms a part, including 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;
 - (b) its content; and
 - (c) its objectives.⁷⁴⁴
- 5.82 Where appropriate, the way in which the coordination (or collusive behaviour) is implemented may be taken into account.⁷⁴⁵ Anti-competitive subjective intentions on the part of the parties can also be taken into account in the assessment, but they are not a necessary factor for finding that there is an anti-competitive restrictive object.⁷⁴⁶

Cover bidding

- 5.83 The practice of cover bidding is a form of collusive tendering. It is settled case law that collusive tendering infringes Article 101 by object.
- 5.84 In *International Removal Services*,⁷⁴⁷ the European Commission found that the companies involved, amongst other practices, provided cover bids for

⁷⁴² Case T-168/01 *GlaxoSmithKline Services Unlimited v Commission*, ECLI:EU:T:2006:265, paragraph 77 (upheld on appeal in Joined cases C-501/06P etc *GlaxoSmithKline Services Unlimited v Commission*, ECLI:EU:C:2009:610).

⁷⁴³ Case C-209/07 *Competition Authority v Beef Industry Development Society*, EU:C:2008:643, paragraph 21.

⁷⁴⁴ Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 53, citing Case C-32/11 *Allianz Hungaria v Commission*, ECLI:EU:C:2013:160, paragraph 36 and the case-law cited. See also Case C-373/14 P *Toshiba v Commission* ECLI:EU:C:2016:26, paragraph 27.

⁷⁴⁵ *Cityhook Limited v OFT* [2007] CAT 18, at paragraph 268, which noted the provisions of paragraph 22 of the Commission Notice: *Guidelines on the application of Article 81(3) of the Treaty* (now Article 101(3) TFEU), OJ C 101/97, 27 April 2004 ('**Article 101(3) Guidelines**'). Paragraph 22 provides that '*the way in which an agreement is actually implemented may reveal a restriction by object even where the formal agreement does not contain an express provision to that effect*'.

⁷⁴⁶ Judgment in Case -32/11 *Allianz Hungária Biztosító and Others*, ECLI:EU:C:2013:160, paragraph 37 and Judgment in Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, ECLI:EU:C:2014:2204, paragraph 54.

⁷⁴⁷ Commission decision in Case COMP/38.543, *International Removal Services*; case appealed on other grounds – see Case T-199/08 *Ziegler v Commission*, Joined Cases T-204/08 and T-212/08 *Team Relocations*

contracts and operated a system of compensatory 'commission payments' for companies who lost bids. The Commission stated⁷⁴⁸ that:

'The submission of cover quotes to customers is a manipulation of the tendering procedure. The manipulation consists in the fact that the companies involved, except the one which is the lowest bidder, have no intention of winning the contract for the removal. This means that the customer is confronted with a false choice and that the prices quoted in all the bids which he receives are deliberately higher than the price of the company which is "the lowest bidder", and at all events higher than they would be in a competitive environment.'

- 5.85 The decision confirms⁷⁴⁹ that the European Courts have found such practices infringe Article 101 TFEU:

'The Court of Justice has held^[750] that concertation regarding the manner in which an invitation to tender is responded to, the protection of the undertaking which, following concertation between competitors, is the lowest bidder... also form part of agreements and/or restrictive practices within the meaning of Article 81^[751] of the Treaty'.

- 5.86 In *Apex Asphalt*,⁷⁵² the CAT upheld the finding by the CMA's predecessor, the Office of Fair Trading ('OFT'), in *West Midland Roofing Contractors*⁷⁵³ that cover bidding (also referred to as collusive tendering) amounted to an infringement of the Chapter I prohibition. In the context of that case, the OFT described cover bidding as arising when a supplier/bidder submits a price for a contract that is not intended to win the contract; rather, it is a price that has been decided upon in conjunction with another supplier/bidder that wishes to win the contract.⁷⁵⁴

NV and others v Commission, Joined cases T-208/08 *Gosselin Group v Commission* and T-209/08 *Stichting Administratiekantoor Portielje v Commission*, Case T-210/08 *Verhuizingen Coppens v Commission*, Case T-211/08 *Putters International v Commission*. See also Case C-440/11 P *European Commission v Stichting Administratiekantoor Portielje*, Case C-439/11 P - *Ziegler v Commission*, C-444/11 P - *Team Relocations and Others v Commission* and Case C-429/11 P *Gosselin Group v Commission*.

⁷⁴⁸ At paragraph 358.

⁷⁴⁹ At paragraph 348.

⁷⁵⁰ In Case T-29/92, *Vereniging van Samenwerkende Prijsregelende Organisaties in de Bouwnijverheid and Others v Commission*, ECLI:EU:T:1995:34.

⁷⁵¹ Now Article 101.

⁷⁵² *Apex Asphalt and Paving Co Ltd v OFT* [2005] CAT 4.

⁷⁵³ *West Midland Roofing Contractors*, OFT decision of 17 March 2004.

⁷⁵⁴ One aspect of this practice is that the customer is deceived as to the extent of competition – see for example cases T-204/08 and T-212/08, *Team Relocations NV and others v European Commission* ECLI:EU:T:2011:286, at paragraph 13 ('The members of this cartel also cooperated in submitting cover quotes, which led customers... into the mistaken belief that they could choose according to competition-based criteria.'). See also, for example, *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4 at paragraphs 208, 209, 250 and 251.

5.87 The CAT found that collusion in the context of a tendering process is an infringement of the Chapter I prohibition. More specifically, it found that:

'The essential feature of a tendering process... is the expectation... that [the tenderee] will receive...a number of independently articulated bids formulated by contractors wholly independent of each other. A tendering process is designed to produce competition in a very structured way.

*'The importance of the independent preparation of bids is sometimes recognised in tender documentation by imposing a requirement on the tenderers to certify that they have not had any contact with each other in the preparation of their bids...The competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of the tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market.'*⁷⁵⁵

5.88 The CAT went on to explain⁷⁵⁶ that submitting an anti-competitive cover bid had the object or effect of restricting competition because:

'(a) it reduces the number of competitive bids submitted in respect of that particular tender;

(b) it deprives the tenderee of the opportunity of seeking a replacement (competitive) bid;

(c) it prevents other contractors wishing to place competitive bids in respect of that particular tender from doing so;

(d) it gives the tenderee a false impression of the nature of competition in the market, leading at least potentially to future tender processes being similarly impaired.'

5.89 The CAT in that case also made it clear that it is irrelevant if the contractor's reason for submitting a cover bid is because it is concerned that if it does not submit a 'realistic' bid following an invitation (albeit in circumstances where the contractor does not in fact wish to be awarded that particular contract), there is a risk that the tenderee will not approach that contractor again. This is because *'The subjective intentions of a party to a concerted practice are immaterial where the obvious consequence of the conduct is to prevent,*

⁷⁵⁵ *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4 at paragraphs 208 and 209.

⁷⁵⁶ *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4 at paragraph 251.

restrict or distort competition'.⁷⁵⁷ It is also irrelevant for the finding of an infringement that there were other bidders from which the tenderer could choose, apart from the parties who were colluding, as the competitive process has still been distorted.⁷⁵⁸

5.90 Subsequent to the *Apex Asphalt* case, in *Bid rigging in the Construction Industry*,⁷⁵⁹ the OFT found that cover bidding had as its obvious consequence the prevention, restriction or distortion of competition.⁷⁶⁰ The decision found that a large number of undertakings in the construction sector in various parts of the UK had been involved in instances of cover bidding and that some of the instances involved compensation payments to the losing bidder in addition to cover bidding arrangements.⁷⁶¹ On appeal, the CAT confirmed that cover bidding clearly constitutes an infringement of the Chapter I prohibition.⁷⁶²

5.91 The CAT has also stated that submitting a cover bid in order to give the appearance of submitting a realistic bid, so that the tenderer is invited to bid on subsequent occasions, does not preclude liability.⁷⁶³

Exchange of commercially sensitive information

5.92 The Chapter I prohibition also applies to agreements or concerted practices which '*directly or indirectly fix purchase or selling prices or any other trading conditions*'.⁷⁶⁴

5.93 It is settled case law that agreements or concerted practices which involve the sharing amongst competitors of pricing or other information of commercial or strategic significance restrict competition by object.⁷⁶⁵

⁷⁵⁷ *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4 at paragraph 250, and also see above at paragraphs 5.79 to 5.82.

⁷⁵⁸ See *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4 at paragraph 251.

⁷⁵⁹ OFT Decision CA98/02/2009 of 21 September 2009.

⁷⁶⁰ *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, at paragraph III.97.

⁷⁶¹ The decision was appealed by a number of the parties; most appeals related to penalty, but some also included liability for individual instances of cover bidding. The CAT upheld some of the appeals in this case, though not on the point of principle that cover bidding constitutes an infringement of the Chapter I prohibition.

⁷⁶² *Kier Group plc and Kier Regional Limited v OFT*, [2011] CAT 3, paragraphs 94 and 99.

⁷⁶³ *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 250: '*Concertation the object of which is to deceive a tenderee into thinking that a bid is genuine when it is not, plainly forms part of the mischief which section 2 of the Act is seeking to prevent. The subjective intentions of a party to a concerted practice are immaterial where the obvious consequence of the conduct is to prevent restrict or distort competition.*'

⁷⁶⁴ Article 101(1)(c); and section 2(2)(c) of the Act.

⁷⁶⁵ See for example: *Balmoral Tanks v CMA* [2017] CAT 23; Judgment in Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, ECLI:EU:C:2015:184, paragraphs 113 to 127; Judgment in Case C-8/08 T-*Mobile Netherlands and Others*, ECLI:EU:C:2009:343. See also *Agreements and Concerted Practices* (OFT401, December 2004, adopted by the CMA Board); the Commission Notice: *Guidelines on the applicability of Article*

- 5.94 The Court of Justice has therefore held that the exchange of information between competitors is liable to be incompatible with Article 101 TFEU (and EU Member States' equivalent national competition laws) if it reduces or removes the degree of uncertainty as to the operation of the market in question, with the result that competition between undertakings is restricted.⁷⁶⁶ In particular, 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.⁷⁶⁷
- 5.95 The OFT found that the giving and receiving of cover bids as part of a tendering process is an example of the anti-competitive exchange of pricing information.⁷⁶⁸ This includes the disclosure of an intended bid or any elements comprising the first round or provisional price tendered during the tender process prior to final bids. The OFT also found that *'the disclosure to a competitor of whether or not a party intends to compete for a tender is also capable of anti-competitive object or effect (whether or not pricing information is also exchanged) as it substantially reduces the uncertainty faced by that competitor on the market.'*⁷⁶⁹

Compensation payments

- 5.96 In *International Removal Services*⁷⁷⁰, the Commission found most of the parties to the anti-competitive arrangements had agreed that the winning bidder would pay losing bidders compensation, by way of 'commissions'.⁷⁷¹ The Commission found this to constitute an anti-competitive agreement within the meaning of Article 101 TFEU.⁷⁷²

101 of the Treaty of the Functioning of the European Union to horizontal co-operation agreements, OJ C 11/1, 14 January 2011; and Article 101(3) Guidelines, paragraphs 72 to 74.

⁷⁶⁶ Judgment in Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paragraph 121; Judgment of 11 March 1999 in Case C-194/99 P, *Thyssen Stahl v Commission*, EU:C:2003:527, paragraph 81; Judgment in Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, paragraph 35.

⁷⁶⁷ Judgment in Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paragraph 122; Judgment in Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, paragraph 41.

⁷⁶⁸ *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, at paragraph III.125.

⁷⁶⁹ *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, at paragraph III.126.

⁷⁷⁰ See footnote 747 above.

⁷⁷¹ In addition to other anti-competitive practices, including cover bidding.

⁷⁷² At paragraph 297 of the Decision.

5.97 Similarly, the OFT found that ‘...an agreement to make a compensation payment in conjunction with cover bidding has as its obvious consequence the prevention, restriction or distortion of competition...’.⁷⁷³

Assessment

5.98 The CMA finds that, consistent with the relevant principles set out in paragraphs 5.77 to 5.97 above, each Addressee, through their participation in the relevant Infringements, coordinated their competitive and pricing behaviour with at least one other Addressee through cover bidding and/or the exchange of commercially sensitive information in relation to certain customer contracts in the supply of non-residential fit-out services in the UK with the object of seeking to influence the outcome of the competitive process in each case. Such conduct is an obvious restriction of competition and can be regarded, by its very nature, as being harmful to the proper functioning of normal competition. The CMA therefore finds that the Addressees’ conduct had as its object the prevention, restriction or distortion of competition.

5.99 The legal and economic context of the Infringements is set out paragraphs 3.24 to 3.30 and Section 4, above. For the purpose of its analysis of the object of the agreements and/or concerted practices that form the Infringements in this case, the CMA points out in particular that:

- (a) invitations to tender are one of three ways in which undertakings active in Category A and Category B non-residential fit-out services obtain business. They are therefore a source of new contracts for the Addressees, and they are an important means by which customers find a provider of non-residential fit-out services;
- (b) all contracts at issue in this Decision involve some form of tender and/or bidding process; and
- (c) the CAT has recognised that the essential feature of a tendering process is the expectation that the contracting party will receive a number of independently articulated bids formulated by contractors wholly independent of each other. A tendering process is designed to produce competition in a very structured way.⁷⁷⁴ The CMA has no reason to believe that tendering processes would work differently for non-residential fit-out services.

⁷⁷³ *Bid rigging in the Construction Industry*, OFT Decision CA98/02/2009 of 21 September 2009, at paragraph III.135.

⁷⁷⁴ *Apex Asphalt and Paving Co Ltd v OFT* [2005] CAT 4, paragraph 208.

- 5.100 The CAT has also recognised that the competitive tendering process may be interfered with if the tenders submitted are not the result of individual economic calculation but of knowledge of the tenders by other participants or concertation between participants. Such behaviour by undertakings leads to conditions of competition which do not correspond to the normal conditions of the market.⁷⁷⁵ The CMA finds that this was the case in respect of the agreements and/or concerted practices that are the subject of this Decision if they are assessed in the context outlined above.
- 5.101 In particular, the agreements and/or concerted practices involving the Deyaar, Holloway White Allom, Newham College, Amicus Horizon, Klesch, EasyJet, Dechert, HFIS, Visium, Cheniere Energy and DAI contracts can all be classified as agreements and/or concerted practices to submit cover bids to the relevant customers who were seeking competitive bids (see paragraphs 3.32 to 3.368 above). They can therefore be characterised as cover bidding. The CMA finds that these agreements and/or concerted practices reveal a sufficient degree of harm to competition such that there is no need to examine their effects. They are, by their very nature, harmful to the proper functioning of normal competition. The CMA therefore concludes that these agreements and/or concerted practices had the object of restricting competition.
- 5.102 The agreement and/or concerted practice involving the Damac contract can be classified as an agreement and/or concerted practice to submit a cover bid to Damac and to pay a compensation payment to [Director 1, JLL] for submitting that cover bid (see paragraphs 3.303 to 3.343 above). It can therefore be characterised as cover bidding including a compensation payment. The CMA finds that this agreement and/or concerted practice reveals a sufficient degree of harm to competition such that there is no need to examine its effects. It is, by its very nature, harmful to the proper functioning of normal competition. The CMA therefore concludes that this agreement and/or concerted practice had the object of restricting competition.
- 5.103 The agreement and/or concerted practice involving the Kokoba and Redefine contracts can be classified as one overall agreement and/or concerted practice between Loop and ThirdWay, relating to both the Kokoba and Redefine contracts, pursuant to which (i) Loop submitted a cover bid for the contract with Kokoba; and (ii) Loop and ThirdWay exchanged commercially sensitive information, including future pricing information, in relation to the Redefine contract. It can therefore be characterised as cover bidding and the anti-competitive exchange of information. The CMA finds that this agreement and/or concerted practice reveals a sufficient degree of harm to competition such that there is no need to examine its effects. It is, by its very nature,

⁷⁷⁵ *Apex Asphalt and Paving Co Limited v OFT*, [2005] CAT 4, paragraph 209.

harmful to the proper functioning of normal competition. The CMA therefore concludes that this agreement and/or concerted practice had the object of restricting competition.

Appreciable restriction of competition

Key legal principles

5.104 An agreement and/or concerted practice will only infringe the Chapter I prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition⁷⁷⁶ within the UK or a part of it.

5.105 The Court of Justice has clarified that an agreement that may affect trade between Member States and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition.⁷⁷⁷ In accordance with section 60(2) of the Act,⁷⁷⁸ this principle also applies *mutatis mutandis* in respect of the Chapter I prohibition: accordingly, an agreement that may affect trade within the UK and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition.

Assessment

5.106 As noted above, the CMA finds that each of the agreements and/or concerted practices described in this Decision had as its object the prevention, restriction and distortion of competition. The CMA also finds that the Infringements may have affected trade in the UK (see paragraph 5.109 below). The CMA therefore finds that each such agreement and/or concerted practice constitutes by its very nature an appreciable restriction of competition for the purposes of the Chapter I prohibition.

⁷⁷⁶ It is settled case law that an agreement between undertakings falls outside the prohibition in Article 101(1) TFEU if it has only an insignificant effect on the market: see Judgment of 13 December 2012 in Case C-226/11, *Expedia Inc. v Autorité de la concurrence and Others*, ECLI:EU:C:2012:795, paragraph 16.

⁷⁷⁷ Judgement in Case C-226/11 *Expedia Inc. v Autorité de la concurrence and Others*, ECLI:EU:C:2012:795, paragraph 37; and Commission Notice on agreements of minor importance [2014] OJ C291/01, paragraphs 2 and 13.

⁷⁷⁸ Section 60(2) of the Act provides that, when determining a question in relation to the application of Part 1 of the Act (which includes the Chapter I prohibition), the court (and the CMA) must act with a view to securing that there is no inconsistency with any relevant decision of the European Court in respect of any corresponding question arising in EU law. See also *Carewatch and Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraph 148 onwards.

Effect on trade within the UK

Key legal principles

5.107 By virtue of Section 2(1)(a) of the Act, the Chapter I prohibition applies to agreements which ‘...*may affect trade within the United Kingdom.*’

5.108 The CAT has held that effect on trade within the UK 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.⁷⁷⁹

Assessment

5.109 The CMA finds that each of the Infringements prevented, restricted or distorted competition for the supply of non-residential fit-out services within London and the Home Counties in the UK. The CMA therefore finds that each Infringement may have affected trade within the UK within the meaning of the Chapter I prohibition and that, in so far as required, the effect on trade within the UK was appreciable.

Exclusions and exemptions

5.110 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 of the Act.⁷⁸⁰

5.111 The CMA finds that none of the relevant exclusions or exemptions applies to any of the Infringements.

5.112 The Addressees did not argue that the arrangements between them in each instance are exempt from the Chapter I prohibition by the operation of section 9 of the Act.

5.113 Although it is for the Addressees to demonstrate that the conditions for exemption have been satisfied in relation to the relevant Infringements, the CMA does not consider that these conditions would be satisfied in this case given, in particular, the nature of the Infringements. Further:

⁷⁷⁹ *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, at paragraphs 459 & 460. The CAT considered this point also in *North Midland Construction plc v Office of Fair Trading* [2011] CAT 14, at paragraphs 48-51 & 62 but considered that it was ‘*not necessary [...] to reach a conclusion*’.

⁷⁸⁰ 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.

- (a) no block exemption order exists under section 6 of the Act that would exempt the Addressees' conduct from the Chapter I prohibition;
- (b) there is also no parallel exemption from the Chapter I prohibition under section 10 of the Act that would apply; and
- (c) none of the exclusions from the Chapter I prohibition as set out in section 3 of the Act applies in this case.

6. The CMA's action

The CMA's decision

- 6.1 On the basis of the evidence set out in this Decision, the CMA has concluded that each of the Addressees infringed the Chapter I prohibition by participating in one or more agreements and/or concerted practices to submit cover bids and/or exchange commercially sensitive information in relation to certain customers' contracts, which in each case had as their object the prevention, restriction or distortion of competition in the supply of non-residential fit-out services in the UK or a part of it and may have affected trade within the UK or a part of it, as specified for each Addressee and each Infringement at paragraph 1.2 above.

Financial penalties

General points

- 6.2 Section 36(1) of the Act provides that, on making a decision that an agreement has infringed the Chapter I prohibition, the CMA may require an undertaking party to the agreement concerned to pay the CMA a penalty in respect of the infringement. In accordance with section 38(8) of the Act, the CMA must have regard to its Penalties Guidance.
- 6.3 The CMA considers that it would be appropriate to impose a financial penalty on the undertakings as set out in paragraph 1.3 above.
- 6.4 Pursuant to the terms of the JLL Immunity Agreement, no financial penalty will be imposed on Bluu Solutions Limited, Bluuco Limited, Tetris Projects Limited, or Jones Lang LaSalle Incorporated (i.e. the JLL entities) in respect of the Infringements in which they were involved, provided they continue to comply with the conditions of the CMA's leniency programme. Consequently, the CMA has not calculated the level of any financial penalty that would be applied to these JLL entities if immunity had not been granted.

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

- 6.5 Provided the penalty it imposes in a particular case is (i) 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 and (ii) the CMA has had regard to the Penalties Guidance in accordance with section 38(8) of the Act, the CMA has a margin of appreciation when determining the appropriate amount of a penalty under the Act. The CMA is not bound by its decisions in

relation to the calculation of financial penalties in previous cases. Rather, the CMA makes its assessment on a case-by-case basis having regard to all relevant circumstances and the objectives of its policy on financial penalties.

- 6.6 In line with statutory requirements and the twin objectives of its policy on financial penalties, the CMA will also have regard to the seriousness of the infringement and the objective of deterring both the undertaking on which the penalty is imposed and other undertakings from engaging in behaviour that breaches the prohibition in Chapter I of the Act (as well as other prohibitions under the Act).

Intention / negligence

- 6.7 The CMA may impose a penalty on an undertaking which has infringed the Chapter I prohibition if it is satisfied that the infringement has been committed intentionally or negligently.⁷⁸¹ The CMA is not obliged to specify whether it considers the infringement to be intentional or merely negligent.⁷⁸²

- 6.8 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 section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition’.*⁷⁸³

- 6.9 This is consistent with the Court of Justice’s statement in *Deutsche Telekom* that: ‘*the question whether the infringements were committed intentionally or negligently...is satisfied where the undertaking concerned cannot be unaware of the anti-competitive nature of its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty.*’⁷⁸⁴

- 6.10 The circumstances in which the CMA might find that an infringement has been committed intentionally include the situation in which the agreement or conduct in question has as its object the restriction of competition. Ignorance or a mistake of law does not prevent a finding of intentional infringement, even where such ignorance or mistake is based on independent legal advice.⁷⁸⁵

⁷⁸¹ The Act, section 36(3).

⁷⁸² *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading* [2002] CAT 1, paragraphs 453–457; see also *Argos and Littlewoods v OFT* [2005] CAT 13, paragraph 221.

⁷⁸³ *Argos and Littlewoods v OFT* [2005] CAT 13, paragraph 221.

⁷⁸⁴ C-280/08 P *Deutsche Telekom v Commission*, EU:C:2010:603, paragraph 124.

⁷⁸⁵ See C-681/11 *Bundeszweitsbewerbsbehörde and Bundeskartellanwalt v Schenker & Co. AG and others*, EU:C:2013:404, paragraph 38.

- 6.11 Each of the Settling Parties, as part of its Terms of Settlement, has accepted that it has infringed the Chapter I prohibition and that it is liable to pay a penalty. JLL has made the same admission as confirmed in the JLL Immunity Agreement.⁷⁸⁶ In addition, for the reasons given at paragraphs 5.77 to 5.98 above, each of the Infringements had as its object the prevention, restriction or distortion of competition.
- 6.12 In any event, based on the evidence set out in Section 3 above, the CMA finds that each of the Addressees must have been aware or could not have been unaware of the anti-competitive nature of its conduct. At the very least, the CMA considers that each of the Addressees ought to have known that agreements and/or concerted practices between them would result in a restriction or distortion of competition. The CMA notes that, as set out in paragraphs 5.83 to 5.91, it is well established that cover bidding is regarded as a serious infringement of competition law, and has been since before the date of the first Infringement. Furthermore, by coordinating in relation to the submitting of cover bids and/or the exchange of commercially sensitive information in relation to the relevant customer contracts, the Addressees must have been aware or could not have been unaware that their actions would result in a restriction or distortion of competition.
- 6.13 The CMA therefore finds that each of the Addressees committed the Infringement(s) in which they were involved intentionally or, at the very least, negligently.

Calculation of penalties

- 6.14 As noted at paragraph 6.2 above, when setting the amount of the penalty, the CMA must have regard to the guidance on penalties in force at that time. The Penalties Guidance establishes a six-step approach for calculating the penalty.
- 6.15 In setting the amount of the penalties, the CMA has taken into account the representations made by the Settling Parties⁷⁸⁷ in relation to penalties, including written representations and representations made during settlement meetings.
- 6.16 The CMA has calculated the penalty separately for each of the 13 Infringements from steps 1 to 3. At step 4, the CMA carried out a single proportionality assessment of the overall combined penalty for each Settling

⁷⁸⁶ Loop made the same admission in the Loop Leniency Agreement as well as through its Terms of Settlement.

⁷⁸⁷ The CMA is referring to "Settling Parties" in this section because the remaining party, JLL, benefits from immunity from any financial penalties.

Party. Steps 5 and 6 were applied on the combined figure for each Settling Party reached at the end of step 4.

Step 1 – the starting point

- 6.17 The starting point for determining the level of financial penalty that will be imposed on an undertaking is calculated having regard to the relevant turnover of the undertaking, the seriousness of the infringement and the need for general deterrence.⁷⁸⁸

Seriousness of the infringement and need for general deterrence

- 6.18 The CMA will apply a starting point of up to 30% of an undertaking's relevant turnover in order to reflect adequately the seriousness of the particular infringement (and ultimately the extent and likelihood of actual or potential harm to competition and consumers). In applying the starting point, the CMA will also reflect the need to deter the infringing undertaking and other undertakings generally from engaging in that type of infringement in the future.⁷⁸⁹
- 6.19 In assessing the seriousness of the Infringements, the CMA first considered how likely it is for the type of infringement at issue to, by its very nature, harm competition.⁷⁹⁰ The CMA has taken into account the following factors as part of this assessment:
- (a) The CMA will generally use a starting point between 21 and 30% for the most serious types of infringement, including cartel activities.⁷⁹¹ The Infringements are cartel activities for which the CMA is prepared to grant leniency.
 - (b) In all Infringements, there was one party (Party A) who wished to win the contract and arranged for one or more other companies to submit cover bids which would give Party A a higher chance of winning the contract. Party A will likely have set its own tender/bid price (and/or quality) with reference to the fact that cover bids were being provided.
 - (c) On the other hand, in relation to some contracts at least, the company providing the cover bid may have already unilaterally decided it would not bid for the contract (or that it would not compete strongly for it), and in some cases it may not have been aware of the tender or bidding process

⁷⁸⁸ Paragraph 2.3 of the Penalties Guidance.

⁷⁸⁹ Paragraph 2.4 of the Penalties Guidance.

⁷⁹⁰ Paragraph 2.6 of the Penalties Guidance.

⁷⁹¹ Paragraph 2.6 of the Penalties Guidance.

but for the instigator's intervention. Therefore, the collusion did not necessarily contribute causally to the company submitting the cover bid ceasing to be a contender.

- (d) Nonetheless, all the factors that generally make cover bidding a serious object infringement remain – such as reducing the number of competitive bids submitted, depriving the procurer of the opportunity of seeking a replacement competitive bid, preventing other contractors wishing to place competitive bids from doing so, and giving the procurer a false impression of the nature of competition in the market (potentially leading to future tender or bidding processes being similarly impaired).⁷⁹²

6.20 Second, the CMA considered the extent and/or likelihood of harm to competition in the specific relevant circumstances of this case.⁷⁹³ The CMA took into account the following factors as part of this assessment:

- (a) *Structure of the market* – the parties involved in each Infringement represent a relatively small fraction of the relevant market. Although there are some barriers to entry such as the need for specialised workforce and the importance of having good relationships with the supply chain and prospective clients, there are many other suppliers of similar or greater size.

On the other hand, the number of companies that submit bids for each fit-out contract is generally small, given the cost involved in preparing tender/bid documents (which generally include fairly detailed designs). In a number of Infringements, the parties were the only bidders involved in the tender or bidding process (leading to a higher likelihood of inflated bids).

- (b) *Market coverage* – the CMA's case covers only 14 contracts⁷⁹⁴ (and no single continuous infringement) within an 11-year period. This means that only a small proportion of the parties' turnover in the relevant market directly 'benefitted' from the collusive practices identified by the CMA.
- (c) *Actual or potential harm caused to consumers whether directly or indirectly* – as explained in paragraph 6.19(b) above, a party seeking cover bids will likely have set its own tender/bid price (and/or quality) with reference to the fact that cover bids were being provided.

⁷⁹² See paragraph 5.88 above.

⁷⁹³ Paragraphs 2.5 and 2.8 of the Penalties Guidance.

⁷⁹⁴ As set out in paragraph 1.2 above, there are 13 separate Infringements, covering 14 contracts.

- 6.21 Finally, the CMA considered whether the starting point is sufficient for the purpose of general deterrence.⁷⁹⁵ There have already been several investigations under the Act in the wider construction sector.⁷⁹⁶ The CMA considers that the need for general deterrence means that the CMA should send a strong signal that anti-competitive behaviour in this sector will not be tolerated. The CMA considers that this factor merits a higher starting point.
- 6.22 Considering the above factors in the round and the submissions made by the Settling Parties, the CMA considers that the appropriate starting point for all Infringements is 22%.⁷⁹⁷

Relevant turnover

- 6.23 The 'relevant turnover' is defined in the Penalties Guidance as the turnover of the undertaking in the relevant product and geographic market affected by the infringement in the undertaking's last business year.⁷⁹⁸ The 'last business year' is the undertaking's financial year preceding the date when the infringement ended.⁷⁹⁹
- 6.24 As set out in Section 3, the CMA finds that the relevant markets affected by the Infringements in this case are:

⁷⁹⁵ Paragraph 2.9 of the Penalties Guidance.

⁷⁹⁶ See for example *Supply of galvanised steel tanks for water storage main cartel infringement* CMA Decision CE/9691/12 of 19 December 2016, *Supply of galvanised steel tanks for water storage information exchange infringement* CMA Decision CE/9691/12 of 19 December 2016, *Bid rigging in the Construction Industry* OFT Decision CA98/02/2009 of 21 September 2009, *Aluminium Spacer Bars* OFT Decision CA98/04/2006 of 28 June 2006, *English and Scottish roofing contractors* OFT Decision CA98/01/2006 of 22 February 2006, *Felt and single ply roofing contracts in Western-Central Scotland* OFT Decision CA98/04/2005 of 8 July 2005, and *West Midland Roofing Contractors*, OFT decision of 17 March 2004.

⁷⁹⁷ One of the Infringements (relating to the Damac contract) involved a compensation payment to the party providing a cover bid (see paragraph 3.342 above). The CMA considers that a higher starting point would have been merited for this Infringement, as the compensation payment arrangement means there is a greater likelihood that the price charged to the client will be inflated to take account of the need to pay the compensation payment. However, the CMA would not have known about the compensation payment in the Infringement relating to the Damac contract *but for* Loop's leniency application. In accordance with paragraph 9.6 of the CMA's Leniency Guidance, the CMA will not take account of the evidence concerning the compensation payment to the detriment of Loop when assessing the appropriate amount of penalties. Given that the only other party to the Damac Infringement is JLL (the immunity applicant, who will not be fined), the CMA has not applied a higher starting point for the Damac Infringement.

⁷⁹⁸ Paragraph 2.11 of the Penalties Guidance. The CMA notes the observation of the Court of Appeal in *Argos Ltd and Littlewoods Ltd v OFT* and *JJB Sports plc v OFT* [2006] EWCA Civ 1318, at paragraph 169 that: '[...] neither at the stage of the OFT investigation, nor on appeal to the Tribunal, is a formal analysis of the relevant product market necessary in order that regard can properly be had to step 1 of the Guidance in determining the appropriate penalty.' The Court of Appeal considered that it was sufficient for the OFT to 'be satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement' (at paragraphs 170 to 173).

⁷⁹⁹ Paragraph 2.11 of the Penalties Guidance.

- (a) for the Infringement relating to the Klesch contract, Category A non-residential fit-out services in London and the Home Counties; and
- (b) for the Infringements relating to the Deyaar, Holloway White Allom, Newham College, Amicus Horizon, EasyJet, Dechert, HFIS, Visium, Cheniere Energy, Damac, DAI, Kokoba and Redefine contracts, Category B non-residential fit-out services in London and the Home Counties.

6.25 The CMA therefore took into account, for each Infringement, each Settling Party's turnover from the supply of either Category A or Category B non-residential fit-out services (depending on the relevant market affected by each Infringement) in London and the Home Counties in the Settling Party's financial year preceding the date when the Infringement ended. On the basis of this approach, the CMA considers that the relevant turnover for each of the Settling Parties is as set out in the tables at Annex A below.

Step 2 – adjustment for duration

- 6.26 The starting point under step 1 may be increased, or in particular circumstances decreased, to take into account the duration of an infringement.⁸⁰⁰ Where the total duration of an infringement is less than one year, the CMA will treat that 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.⁸⁰¹
- 6.27 The CMA has found that the Infringements lasted between 12 days and approximately four months.⁸⁰² The CMA considers that there are no exceptional circumstances meriting a duration of less than a full year for each Infringement, and that in the particular circumstances of this case it is appropriate to treat the duration as a full year for the purpose of calculating the number of years of each Infringement. In particular, the CMA notes that, once a contract has been awarded following an anti-competitive tender, the anti-competitive effect is irreversible in relation to that tender.⁸⁰³
- 6.28 The CMA has accordingly applied a multiplier of one to the figure reached at the end of step one for each Infringement.

⁸⁰⁰ Paragraph 2.16 of the Penalties Guidance.

⁸⁰¹ Paragraph 2.16 of the Penalties Guidance.

⁸⁰² See paragraph 1.2.

⁸⁰³ *Apex Asphalt and Paving Co Ltd v OFT* [2005] CAT 4 at [278].

Step 3 – adjustment for aggravating and mitigating factors

- 6.29 The basic amount of the penalty, adjusted as appropriate at step 2, may be increased where there are aggravating factors, or reduced where there are mitigating factors.⁸⁰⁴ A non-exhaustive list of aggravating and mitigating factors is set out in the Penalties Guidance.⁸⁰⁵ In the circumstances of this case, the CMA has adjusted the penalty at step 3 to take account of the following factors:

Aggravating factor – involvement of directors or senior management

- 6.30 The involvement of directors or senior management in the infringement can be an aggravating factor.⁸⁰⁶ The CMA considers that it is a notable feature of this case that, in relation to all Infringements, all Settling Parties had at least one director or senior manager directly involved in the conduct, including requesting, agreeing or organising the cover bid. The CMA therefore considers that an increase of 15% for all Infringements for the involvement of directors or senior management is appropriate and proportionate in the circumstances.
- 6.31 The CMA considers that an increase of 15% for the involvement of directors or senior management in the Infringements is appropriate for all Settling Parties, regardless of their size. The CMA notes that company directors have an additional responsibility, beyond that of other employees, not to infringe the law, and that this is true even if an undertaking is relatively small.⁸⁰⁷

Aggravating factor - role of the undertaking as a leader in, or an instigator of, the infringement

- 6.32 The role of an undertaking as a leader in, or an instigator of, an infringement can be an aggravating factor.⁸⁰⁸ In relation to 12 of the 13 Infringements, the CMA has identified a leader and/or instigator.⁸⁰⁹ The leader and/or instigator was the party which orchestrated the arrangement, including by requesting cover bids from other parties and/or by providing cover bids and designs to be submitted by other parties, with the aim of improving the chances of the leader/instigator winning the contract.

⁸⁰⁴ Paragraph 2.17 of the Penalties Guidance.

⁸⁰⁵ Paragraphs 2.18 and 2.19 of the Penalties Guidance.

⁸⁰⁶ Paragraph 2.18 of the Penalties Guidance.

⁸⁰⁷ *Ping Europe Ltd v CMA* [2018] CAT 13, at [244].

⁸⁰⁸ Paragraph 2.18 of the Penalties Guidance.

⁸⁰⁹ In 6 out of 12 Infringements where the CMA identified a leader and/or instigator, the leader and/or instigator was the immunity applicant, JLL.

- 6.33 The CMA considers that an increase of 10% for the role of the undertaking as a leader in, or an instigator of, the infringement is appropriate. The CMA has accordingly applied an increase of 10% to Fourfront's penalty in relation to the Amicus Horizon, EasyJet, HFIS, and DAI contracts, and an increase of 10% to Loop's penalty in relation to the Kokoba and Redefine contracts.

Mitigating factor - cooperation

- 6.34 Cooperation which enables the enforcement process to be concluded more effectively and/or speedily can be a mitigating factor. The Penalties Guidance provides that, for these purposes, what is expected is cooperation over and above respecting time limits specified or otherwise agreed (which will be a necessary but not sufficient criterion).⁸¹⁰ Parties benefiting from the CMA's leniency programme will not receive an additional reduction under this head, given that continuous and complete cooperation is a condition of leniency.⁸¹¹
- 6.35 The CMA considers that it is appropriate to decrease Fourfront's penalty at step 3 by 10%. Fourfront made several of its directors available for voluntary witness interviews. The CMA's assessment is that those witnesses were generally very open and provided information about the Infringements which allowed the CMA to conclude the enforcement process more effectively and speedily. Fourfront also submitted two letters to the CMA, before entering into settlement discussions, admitting to Infringements in which it was involved.⁸¹²
- 6.36 The CMA also considers that it is appropriate to decrease Coriolis' penalty by 5% to reflect the fact that it made its sole director available for a voluntary witness interview and enabled the CMA to take investigatory steps which allowed the case team to conclude the enforcement process more speedily.

Mitigating factor - compliance

- 6.37 Adequate steps taken by an undertaking with a view to ensuring future compliance with competition law can be a mitigating factor, which may merit a discount in penalty of up to 10%.⁸¹³ The mere existence of compliance activities will not be treated as a mitigating factor, but such activities are likely to be treated as a mitigating factor where an undertaking demonstrates that adequate steps, appropriate to the size of the business concerned, have been

⁸¹⁰ Paragraph 2.19 and footnote 35 of the Penalties Guidance.

⁸¹¹ Paragraph 2.19 and footnote 35 of the Penalties Guidance. Accordingly, Loop's cooperation is reflected in its leniency discount.

⁸¹² URN2288 and URN2291A.

⁸¹³ Paragraph 2.19 and footnote 33 of the Penalties Guidance.

taken to achieve a clear and unambiguous commitment to competition law compliance throughout the undertaking (from the top down).⁸¹⁴

- 6.38 The CMA considers that the compliance activities undertaken by Fourfront, Loop, Coriolis, and ThirdWay demonstrate a clear and unambiguous commitment to competition law compliance, and that these parties have taken appropriate steps relating to risk identification, risk assessment, risk mitigation and review.
- 6.39 The CMA therefore considers that it is appropriate to decrease the penalty by 10% for each of Fourfront, Loop, Coriolis, and ThirdWay to reflect the fact they have taken adequate steps with a view to ensuring compliance.

Step 4 – adjustment for specific deterrence and proportionality

- 6.40 The penalty may be adjusted at this step for specific deterrence (namely, ensuring that the penalty imposed on the infringing undertaking will deter it from engaging in anti-competitive practices in the future),⁸¹⁵ or to ensure that a penalty is proportionate, having regard to appropriate indicators of the undertaking's size and financial position at the time the penalty is being imposed.⁸¹⁶ At step 4, the CMA will assess whether, in its view, the overall penalty is appropriate in the round.⁸¹⁷
- 6.41 Where necessary, the penalty may be decreased at step 4 to ensure that the level of penalty is not disproportionate or excessive. In carrying out this assessment of whether a penalty is proportionate, the CMA will have regard to the infringing undertaking's size and financial position, the nature of the

⁸¹⁴ Paragraph 2.19 and footnote 33 of the Penalties Guidance.

⁸¹⁵ Paragraphs 1.4 and 2.20 of the Penalties Guidance

⁸¹⁶ Paragraph 2.20 of the Penalties Guidance. The CMA has considered a range of financial indicators in this regard, based on published accounting information and other financial management account information provided by the Settling Parties at the time of calculating the penalty. For Fourfront, Coriolis, and Oakley, financial indicators included total worldwide turnover over a three-year average, profit after tax over a three-year average, profit after tax for the last financial year, net assets for the last financial year, dividends over a three-year average, and adjusted net assets for the last financial year. For ThirdWay, as The ThirdWay Group Limited was only incorporated 2 June 2016 and therefore did not have financial figures over a three-year period upon which the CMA could base its assessment, financial indicators included total worldwide turnover for the last financial year, profit after tax for the last financial year, net assets for the last financial year, dividends for the last financial year, and adjusted net assets for the last financial year. The CMA also considered the financial indicators for Thirdway Interiors Limited for 2014 to 2017 and concluded that it was reasonable to rely on The ThirdWay Group Limited financial indicators for 2017. For Loop, as Loop Interiors London LLP is a Limited Liability Partnership, the financial indicators included worldwide turnover over a three-year average, profit before tax over a three-year average, profit before tax for the last financial year, net assets for the last financial year, disbursements over a three-year average, and adjusted net assets for the last financial year.

⁸¹⁷ Paragraph 2.24 of the Penalties Guidance.

infringement, the role of the undertaking in the infringement and the impact of the undertaking's infringing activity on competition.⁸¹⁸

- 6.42 The CMA's consideration of step 4 in calculating each Settling Party's financial penalty is set out below. As set out above, this assessment is based on the total penalty figure after step 3 for all Infringements each Settling Party was involved in.
- 6.43 Some of the Settling Parties have submitted representations comparing the discount percentages applied to various Settling Parties. The CMA considers that it is inappropriate to directly compare Settling Parties' discount percentages, as each percentage discount figure was determined by the CMA having regard to each Settling Party's individual size and financial position, the nature of the Infringement(s) in which each Settling Party was involved and its role in it, and the impact of each Settling Party's conduct on competition.⁸¹⁹

Fourfront

- 6.44 The CMA considers that Fourfront's penalty after step 3 should be decreased by [X]% to ensure that the level of penalty is not disproportionate or excessive. The CMA's view is that such a reduction is appropriate having regard to the factors set out in paragraphs 6.40 to 6.41 above.
- 6.45 In this assessment, the CMA has had regard to Fourfront's size and financial position, the serious nature of the Infringements, the fact that Fourfront was involved in 10 Infringements, and that it was the instigator in relation to four of them.
- 6.46 The CMA has also taken into account the fact that two of the Infringements (EasyJet and Dechert) took place in the same financial year, and another two Infringements (HFIS and Cheniere Energy) took place in the same financial year. As a consequence, Fourfront's relevant turnover in those two years was counted twice at step 1.
- 6.47 The CMA notes that the adjusted penalty amounts to [X]% of Fourfront's three-years' average turnover, [X]% of its last year's average turnover, [X]% of its three-years' average profit, [X]% of its last year's profit and [X]% of its last year's net assets. It also represents [X]% of the company's three-years' average dividends.⁸²⁰ [X]. However, the CMA notes that Fourfront has been profitable until this financial year and the risk to Fourfront's financial

⁸¹⁸ Paragraph 2.24 of the Penalties Guidance.

⁸¹⁹ See in this respect *G F Tomlinson* [2011] CAT 7, paragraphs 149 *et seq.*

⁸²⁰ All percentages in Section 6 of this Decision are rounded to the nearest whole number.

sustainability is primarily a consequence of its participation in the Infringements.

- 6.48 Assessing the resulting penalty in the round, the CMA considers that the adjusted penalty of £5,179,130 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

Loop

- 6.49 The CMA considers that Loop's penalty after step 3 should be decreased by [X]% to ensure that the level of penalty is not disproportionate or excessive. The CMA's view is that such a reduction is appropriate having regard to the factors set out in paragraphs 6.40 to 6.41 above.
- 6.50 In this assessment, the CMA has had regard to Loop's size and financial position, the serious nature of the Infringements, the fact that Loop was involved in five Infringements, and that it was the instigator in relation to the Kokoba and Redefine Infringement, covering two contracts.
- 6.51 The CMA has also taken into account the fact that two of the Infringements (HFIS and Visium) took place in the same financial year, and another two Infringements (Damac and DAI) took place in the same financial year. As a consequence, Loop's relevant turnover in those two years was counted twice at step 1.
- 6.52 The CMA notes that the adjusted penalty amounts to [X]% of Loop's three-years' average turnover, [X]% of its last year's average turnover, [X]% of its three-years' average profit before tax, [X]% of its last year's profit before tax and [X]% of its last year's net assets. It also represents [X]% of Loop's three-years' average disbursements. When undertaking this assessment, the CMA took into account that Loop was a Limited Liability Partnership at the time for which these indicators were calculated. Accordingly, profit indicators may overstate Loop's financial position, whereas the net asset indicators may understate this. The CMA has taken this into account when considering all relevant factors in assessing the proportionality of Loop's penalty.
- 6.53 Assessing the resulting penalty in the round, the CMA considers that the adjusted penalty of £2,742,997 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

Coriolis

- 6.54 The CMA considers that Coriolis' penalty after step 3 should be decreased by [X]% to ensure that the level of penalty is not disproportionate or excessive.

The CMA's view is that such a reduction is appropriate having regard to the factors set out set out in paragraphs 6.40 to 6.41 above.

- 6.55 In this assessment, the CMA has had regard to Coriolis's size and financial position, the serious nature of the Infringements, the fact that Coriolis was only involved in two Infringements, and that it was not the instigator in relation to any of them.
- 6.56 The CMA has taken account of the fact that Coriolis [X]. The CMA notes that the adjusted penalty amounts to [X]% of Coriolis' three-years' average turnover, [X]% of its last year's average turnover, and [X]% of the company's three-years' average dividends.
- 6.57 Assessing the resulting penalty in the round, the CMA considers that the adjusted penalty of £12,939 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

Oakley

- 6.58 The CMA considers that Oakley's penalty after step 3 should be decreased by [X]% to ensure that the level of penalty is not disproportionate or excessive. The CMA's view is that such a reduction is appropriate having regard to the factors set out set out in paragraphs 6.40 to 6.41 above.
- 6.59 In this assessment, the CMA has had regard to Oakley's size and financial position, the serious nature of the Infringement in which Oakley was involved, the fact that Oakley was only involved in one Infringement, and that it was not the instigator in relation to this Infringement.
- 6.60 The CMA notes that the adjusted penalty amounts to [X]% of Oakley's three-years' average turnover, [X]% of its last year's turnover, [X]% of its three-years' average profit, [X]% of its last year's profit and [X]% of its last year's net assets. [X].
- 6.61 Assessing the resulting penalty in the round, the CMA considers that the adjusted penalty of £87,698 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

ThirdWay

- 6.62 The CMA considers that ThirdWay's penalty after step 3 should be decreased by [X]% to ensure that the level of penalty is not disproportionate or excessive. The CMA's view is that such a reduction is appropriate having regard to the factors set out in paragraphs 6.40 to 6.41 above.

- 6.63 In this assessment, the CMA has had regard to ThirdWay's size and financial position, the serious nature of the Infringement in which ThirdWay was involved, the fact that ThirdWay was only involved in one Infringement, and that it was not the instigator in relation to this Infringement.
- 6.64 The CMA notes that the adjusted penalty amounts to [~~8~~] % of ThirdWay's last years' turnover, [~~8~~] % of its last year's profit and [~~8~~] % of its last year's net assets. It also represents [~~8~~] % of the company's last year's dividends.⁸²¹
- 6.65 Assessing the resulting penalty in the round, the CMA considers that the adjusted penalty of £2,225,879 is appropriate in this case for deterrence purposes without being disproportionate or excessive.

Step 5 – adjustment to prevent the maximum penalty from being exceeded and to avoid double jeopardy

Adjustments to prevent maximum penalty from being exceeded

- 6.66 The CMA may not impose a penalty for an infringement that exceeds 10% of an undertaking's worldwide turnover in the business year preceding the date of the CMA's decision.⁸²²
- 6.67 The CMA has assessed all Settling Parties' penalties at the end of step 4 against this maximum penalty threshold. This assessment has not necessitated any reduction to the penalty at step 5 of the penalty calculation for Fourfront⁸²³ and ThirdWay.⁸²⁴
- 6.68 This assessment has necessitated a reduction to the penalty for Loop, Coriolis and Oakley at step 5 of the penalty calculation. Accordingly, Loop's

⁸²¹ See footnote 816 above regarding the availability of financial information for The ThirdWay Group Limited.

⁸²² Section 36(8) of the Act, Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309) and the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259). See also paragraph 2.25 of the Penalties Guidance.

⁸²³ The applicable group turnover for Fourfront is its worldwide turnover in the financial year ending 30 April 2018, namely £146,575,546. Fourfront Holdings Limited consolidated statutory accounts made up to 30 April 2018, available at <https://beta.companieshouse.gov.uk/company/10079456/filing-history>.

⁸²⁴ As figures were not available for the financial year ending 31 December 2018 (which in the present case would be the business year preceding the date of the CMA's decision) on 18 December 2018 when the CMA issued the draft penalty calculations, the applicable group turnover for ThirdWay is its worldwide turnover in the financial year ending 31 December 2017, namely £49,459,839. The ThirdWay Group Limited's consolidated financial accounts for the year ended 31 December 2017, available at <https://beta.companieshouse.gov.uk/company/10210711/filing-history>.

penalty at the end of step 5 is £1,818,027;⁸²⁵ Coriolis' penalty at the end of step 5 is £9,668;⁸²⁶ and Oakley's penalty at the end of step 5 is £73,197.⁸²⁷

Step 6 – application of reductions under the CMA's leniency programme and for settlement

- 6.69 The CMA will reduce an undertaking's penalty at step 6 where the undertaking has a leniency agreement with the CMA and/or settles with the CMA.⁸²⁸

Application of reductions under the CMA's leniency programme

- 6.70 As set out paragraphs 2.4 and 2.6 above, JLL has been granted immunity under the CMA's leniency programme as set out in the JLL Immunity Agreement, and, provided it continues to comply with the conditions of leniency, JLL will not be required to pay a financial penalty (see paragraph 6.4 above).
- 6.71 As set out paragraph 2.8 above, according to the Loop Leniency Agreement the CMA has granted Loop a reduction of 25% to its penalty at step 6 to reflect the overall value of the information Loop provided, and Loop's cooperation,⁸²⁹ provided it continues to comply with the conditions of leniency.
- 6.72 In determining the level of Loop's leniency discount the CMA had regard to a number of factors, in particular, the fact that Loop was not the first undertaking to come forward (and therefore fell to be treated as a Type C leniency applicant under the CMA's leniency programme),⁸³⁰ the overall added value of the information, documents and evidence Loop provided, and its overall level of cooperation.⁸³¹ Under the Leniency Guidance, Type C leniency applicants can generally expect to achieve penalty discounts in the range of 25-50%.⁸³²

⁸²⁵ As Loop Interiors Limited has only been trading since 12 January 2018, the CMA does not have a full year's accounts from which to determine the worldwide turnover for Loop Interiors Limited in its last business year. Accordingly, the applicable turnover for Loop is its turnover for Loop Interiors London LLP for the financial year ending 31 March 2018, namely £[>]. URN2880 (unaudited financial statements).

⁸²⁶ The applicable turnover for Coriolis is its turnover in the financial year ending 30 June 2018, namely £[>]. URN2832 (management accounts).

⁸²⁷ The applicable turnover for Oakley is its turnover in the financial year ending 30 September 2018, namely £[>]. URN2832 (management accounts).

⁸²⁸ Paragraphs 2.29 and 2.30 of the Penalties Guidance.

⁸²⁹ As set out in paragraph 3.32 and footnote 44 of the Penalties Guidance, these discounts are applied consecutively, with the leniency discount being applied, followed by the settlement discount.

⁸³⁰ Paragraph 2.24 of the of the Leniency Guidance.

⁸³¹ Paragraph 6.8 of the Leniency Guidance.

⁸³² Paragraph 6.9 of the Leniency Guidance.

- 6.73 While Loop applied for leniency at an early stage in the investigation, at that point the CMA already had a significant amount of evidence in its possession, including that provided by the Type A applicant and material obtained through section 28 inspections. This meant that the material provided by Loop with its initial leniency application was of limited additional value, albeit that it did assist the CMA in its review and assessment of the material obtained during inspections. Loop subsequently provided additional material which added more value to the case, but this was only submitted at a much later stage of the investigation and following prompts from the CMA.
- 6.74 Loop also made three of its directors available for voluntary interviews. However, these interviews did not significantly add to the evidence relied on by the CMA. The CMA also took into account that Loop made repeated requests for deadline extensions and did not proactively provide certain evidence to the CMA.

Application of reductions for settlement

- 6.75 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.⁸³³
- 6.76 As set out in paragraphs 2.17 to 2.21 above, the Settling Parties have admitted the facts and allegations of the Infringements in which they were involved, as set out in the Summary Statement of Facts dated 1 February 2019,⁸³⁴ which are now reflected in this Decision. In light of those admissions, and the Settling Parties' cooperation in expediting the process for concluding the investigation, the CMA has reduced the Settling Parties' penalties by 20% at step 6.

Financial hardship

- 6.77 In exceptional circumstances, the CMA may reduce a penalty where the undertaking is unable to pay the penalty proposed due to its financial position. Such financial hardship adjustments will be exceptional and there can be no expectation that a penalty will be adjusted on this basis.⁸³⁵

⁸³³ Paragraph 2.20 of the Penalties Guidance.

⁸³⁴ Fourfront signed Settlement Letter and Terms of Settlement, Loop signed Settlement Letter and Terms of Settlement, Coriolis signed Settlement Letter and Terms of Settlement, Oakley signed Settlement Letter and Terms of Settlement, and ThirdWay signed Settlement Letter and Terms of Settlement.

⁸³⁵ Paragraph 2.27 of the Penalties Guidance.

- 6.78 The CMA considers that in the circumstances of this case, there are no exceptional circumstances such as to warrant making any financial hardship adjustment to the penalty after step 6 for any of the Settling Parties.

Conclusion and payment of penalty

- 6.79 The CMA requires Fourfront to pay the penalty applicable to it as set out in the table at Annex A - Final penalty – Fourfront below, resulting in a penalty payable of £4,143,304. The individual figures in the tables below are rounded to the nearest pound. By way of further detail of the relative liability of the Fourfront entities:

- (a) Area Sq. is liable for the Infringements involving the Deyaar, Holloway White Allom, Newham College, EasyJet, Dechert, HFIS, Cheniere Energy and DAI contracts and is therefore liable for £3,297,404 of the total penalty payable by Fourfront. Fourfront Group Limited is jointly and severally liable with Area Sq. for this full amount. The Infringement involving the DAI contract occurred during Fourfront Holding Limited's period of ownership. Fourfront Holdings Limited is therefore jointly and severally liable with Area Sq. and Fourfront Group Limited for £493,416 of the penalty payable.
- (b) Cube is liable for the Infringements involving the Amicus Horizon and Klesch contracts and is therefore liable for £845,900 of the total penalty payable by Fourfront. Fourfront Group Limited is jointly and severally liable with Cube for this full amount. Neither of these infringements occurred during the ownership of Fourfront Holdings Limited, and therefore Fourfront Holdings Limited is not jointly and severally liable for this amount with Cube and Fourfront Group Limited.

- 6.80 The CMA requires Loop to pay the penalty applicable to it as set out in the table at Annex A - Final penalty – Loop below, resulting in a penalty payable of £1,090,816. The individual figures in the tables below are rounded to the nearest pound. Loop Interiors Limited is liable for the payment of this penalty as the economic successor of Loop Interiors LLP (now named Loop Interiors London LLP).

- 6.81 The CMA requires Coriolis to pay the penalty applicable to it as set out in the table at Annex A - Final penalty – Coriolis below, resulting in a penalty payable of £7,735. The individual figures in the tables below are rounded to the nearest pound.

- 6.82 The CMA requires Oakley to pay the penalty applicable to it as set out in the table at Annex A - Final penalty – Oakley below, resulting in a penalty payable

of £58,558. The individual figures in the tables below are rounded to the nearest pound.

- 6.83 The CMA requires ThirdWay to pay the penalty applicable to it as set out in the table at Annex A - Final penalty – ThirdWay below, resulting in a penalty payable of £1,780,703. The individual figures in the tables below are rounded to the nearest pound. The ThirdWay Group Limited and ThirdWay Interiors Limited are jointly and severally liable for the payment of this penalty.
- 6.84 The penalty will become due to the CMA on 13 June 2019⁸³⁶ and must be paid to the CMA by close of banking business on that date, or on such date or dates as agreed in writing with the CMA.⁸³⁷

12 April 2019

[✂]

Howard Cartlidge

Senior Director, Cartels

for and on behalf of the Competition and Markets Authority

⁸³⁶ The next working day two calendar months from the expected date of receipt of the Decision.

⁸³⁷ Details of how to pay are set out in the letter accompanying this Decision.

Annex A

Final penalty – Fourfront

Step	Description		Adjustments										Adjusted penalty
	Relevant turnover		£[>]¹	£[>]²	£[>]³	£[>]⁴	£[>]⁵	£[>]⁶	£[>]⁷	£[>]⁸	£[>]⁹	£[>]¹⁰	
	Infringement		Deyaar	Holloway White	Newham College	Amicus Horizon	Klesch	Easyjet	Dechert	HFIS	Cheniere Energy	DAI	
1	Starting point as a percentage of relevant turnover		22%	22%	22%	22%	22%	22%	22%	22%	22%	22%	
2	Adjustment for duration		1	1	1	1	1	1	1	1	1	1	
3	Adjustment for aggravating and mitigating factors	Aggravating: Director / senior management	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	
		Aggravating: Leader and/or instigator	0%	0%	0%	10%	0%	10%	0%	10%	0%	10%	
		Mitigating: Cooperation	-10%	-10%	-10%	-10%	-10%	-10%	-10%	-10%	-10%	-10%	
		Mitigating: Compliance	-10%	-10%	-10%	-10%	-10%	-10%	-10%	-10%	-10%	-10%	
		Penalty after step 3	£[>]	£[>]	£[>]	£[>]	£[>]	£[>]	£[>]	£[>]	£[>]	£[>]	£[>]
4	Adjustment for proportionality		-[>]%										£5,179,130
5	Adjustment to take account of the statutory maximum penalty		No adjustment necessary										£5,179,130
	Maximum penalty												£5,179,130
6	Settlement discount		-20%										£4,143,304
	Penalty payable												£4,143,304

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- ¹ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2006, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ² Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2011, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ³ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2012, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ⁴ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2013, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ⁵ Fourfront's turnover from the supply of Category A non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2013, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ⁶ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2014, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ⁷ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2014, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ⁸ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2015, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ⁹ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2015, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.
- ¹⁰ Fourfront's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 April 2016, included in Fourfront's response of 19 November 2018 to the CMA's follow-up information request dated 12 November 2018.

Final penalty – Loop

Step	Description		Adjustments					Adjusted penalty
	Relevant turnover		£[>]¹¹	£[>]¹²	£[>]¹³	£[>]¹⁴	£[>]¹⁵	
	Infringement		HFIS	Visium	Damac	DAI	Kokoba and Redefine	
1	Starting point as a percentage of relevant turnover		22%	22%	22%	22%	22%	
2	Adjustment for duration		1	1	1	1	1	
3	Adjustment for aggravating and mitigating factors	Aggravating: Director / senior management involvement	15%	15%	15%	15%	15%	
		Aggravating: Leader and/or instigator	0%	0%	0%	0%	10%	
		Mitigating: Cooperation	0%	0%	0%	0%	0%	
		Mitigating: Compliance	-10%	-10%	-10%	-10%	-10%	
		Penalty after step 3	£[>]	£[>]	£[>]	£[>]	£[>]	£[>]
4	Adjustment for proportionality		-[>]%					£2,742,997
5	Adjustment to take account of the statutory maximum penalty		Adjustment to 10% of worldwide turnover					£1,818,027
	Maximum penalty							£1,818,027
6	Leniency discount		-25%					£1,363,520
	Settlement discount		-20%					£1,090,816
	Penalty payable							£1,090,816

¹¹ Loop's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 31 March 2015, included in Loop's response of 29 October 2018 to the CMA's information request dated 15 October 2018.

¹² Loop's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 31 March 2015, included in Loop's response of 29 October 2018 to the CMA's information request dated 15 October 2018.

¹³ Loop's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 31 March 2016, included in Loop's response of 29 October 2018 to the CMA's information request dated 15 October 2018.

¹⁴ Loop's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 31 March 2016, included in Loop's response of 29 October 2018 to the CMA's information request dated 15 October 2018.

¹⁵ Loop's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 31 March 2017, included in Loop's response of 29 October 2018 to the CMA's information request dated 15 October 2018.

Final penalty – Coriolis

Step	Description		Adjustments		Adjusted penalty
	Relevant turnover		£[X] ¹⁶	£[X] ¹⁷	
	Infringement		Holloway White Allom	Newham College	
1	Starting point as a percentage of relevant turnover		22%	22%	
2	Adjustment for duration		1	1	
3	Adjustment for aggravating and mitigating factors	Aggravating: Director / senior management involvement	15%	15%	
		Aggravating: Leader and/or instigator	0%	0%	
		Mitigating: Cooperation	-5%	-5%	
		Mitigating: Compliance	-10%	-10%	
		Penalty after step 3	£[X]	£[X]	£[X]
4	Adjustment for proportionality		-[X]%		£12,939
5	Adjustment to take account of the statutory maximum penalty		Adjustment to 10% of worldwide turnover		£9,668
	Maximum penalty				£9,668
6	Settlement discount		-20%		£7,735
	Penalty payable				£7,735

¹⁶ Coriolis' turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 June 2010, included in Coriolis' response of 23 October 2018 to the CMA's information request dated 15 October 2018.

¹⁷ Coriolis' turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 June 2012, included in Coriolis' response of 23 October 2018 to the CMA's information request dated 15 October 2018.

Final penalty – Oakley

Step	Description		Adjustments	Adjusted penalty
	Relevant turnover		£[><] ¹⁸	
	Infringement		Newham College	
1	Starting point as a percentage of relevant turnover		22%	
2	Adjustment for duration		1	
3	Adjustment for aggravating and mitigating factors	Aggravating: Director / senior management involvement	15%	
		Aggravating: Leader and/or instigator	0%	
		Mitigating: Cooperation	0%	
		Mitigating: Compliance	0%	
		Penalty after step 3	£[><]	£[><]
4	Adjustment for proportionality		-[><]%	£87,698
5	Adjustment to take account of the statutory maximum penalty		Adjustment to 10% of worldwide turnover	£73,197
	Maximum penalty			£73,197
6	Settlement discount		-20%	£58,558
	Penalty payable			£58,558

¹⁸ Oakley's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 30 September 2012, included in Oakley's responses of 26 October 2018 and 4 December 2018 to the CMA's information requests and follow-up information requests dated 15 October 2018 and 26 November 2018.

Final penalty – ThirdWay

Step	Description		Adjustments	Adjusted penalty
	Relevant turnover		£[>]¹⁹	
	Infringement		Kokoba and Redefine	
1	Starting point as a percentage of relevant turnover		22%	
2	Adjustment for duration		1	
3	Adjustment for aggravating and mitigating factors	Aggravating: Director / senior management involvement	15%	
		Aggravating: Leader and/or instigator	0%	
		Mitigating: Cooperation	0%	
		Mitigating: Compliance	-10%	
		Penalty after step 3	£[>]	£[>]
4	Adjustment for proportionality		-[>]%	£2,225,879
5	Adjustment to take account of the statutory maximum penalty		No adjustment necessary	£2,225,879
	Maximum penalty			£2,225,879
6	Settlement discount		-20%	£1,780,703
	Penalty payable			£1,780,703

¹⁹ ThirdWay's turnover from the supply of Category B non-residential fit-out services in London and the Home Counties in the financial year ending 31 December 2016, included in ThirdWay's response of 15 November 2018 to the CMA's follow-up information request dated 12 November 2018.