Neutral Citation Number: **[2026] EWHC 765 (Comm)**

Case No: CL-2021-000089

IN THE HIGH COURT OF JUSTICE
THE BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Rolls Building, Royal Courts of Justice
London
Date: 31st March 2026

Before:
THE HON MR JUSTICE ROBIN KNOWLES CBE

- -

Between:

JINXIN INC. **Claimant**

- and -
(5) MARCO AULETTA
(6) RICCARDO SILVA HOLDING DESIGNATED ACTIVITY COMPANY
(9) RICCARDO SILVA
and OTHERS **Defendants**

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- -

Adrian Beltrami KC, Anne Jeavons, Nathaniel Bird, Diana Stoean and Ben Rayment (instructed by **Herbert Smith Freehills Kramer LLP**) for the Claimant
Simon Colton KC, Daniel Benedyk and Constantine Fraser (instructed by **Enyo Law LLP**) for the Defendants

Hearing dates:
9-12, 16-19, 23-26, 30 June,
1-3, 7-9, 14, 16-17, 22-24, 28-31 July,
8-9, 13-16 October;
with further written submissions
5, 12, 16 December 2025

- -

JUDGMENT

Robin Knowles J, CBE:

Introduction

1. Jinxin Inc. (Jinxin), the Claimant, was incorporated on 11 February 2016. Two major Chinese corporate groups, Baofeng and Everbright, brought about its incorporation.

2. Four weeks later, by a Share Purchase Agreement dated 8 March 2016 (the SPA), Jinxin agreed to purchase 65% of the issued shares in the holding company of a group of companies known as MPS or Media Partners and Silva (the MPS Group).

3. This trial addresses the allegations in tort, or civil wrong, against three Defendants (the Trial Defendants). These are Mr Riccardo Silva (Mr Silva) and Riccardo Silva Holding Designated Activity Company Limited (RSH), and Mr Marco Auletta (Mr Auletta). RSH and Mr Auletta were among the sellers. Mr Silva was the ultimate beneficial owner of RSH.

4. The business of the MPS Group was sports. Specifically, the MPS Group was involved in the buying and selling of broadcasting and media rights in sports. The sports involved included football, at the level both of the "Serie A" Italian football league and of the FIFA World Cup.

5. The purchase by Jinxin followed a decision by Baofeng to establish a foreign investment fund. A Chinese Limited Partnership was established on 25 February 2016 as an investment vehicle, with subsidiaries of Baofeng and Everbright among its general partners. At the time of the purchase, Jinxin's sole shareholder was Everbright Jinhui Investment Management (Shanghai) Co Ltd. Before completion the ownership of Jinxin was transferred to Jinxin Hong Kong Ltd on 14 March 2016.

6. The purchase by Jinxin was completed on 24 May 2016. The purchase price was US $715 million, before adjustment under the terms of the SPA.

7. By 2018 the MPS Group had collapsed. Jinxin alleges that false and fraudulent representations had been made to it by the Trial Defendants to achieve the sale.

The professional advisers

8. The purchase effected by the SPA was a major international commercial transaction with all parties having access to expertise and where no party was without resources.

9. Within the MPS Group, MP & Silva SARL (MPS Monaco) was used to engage professional advisers. MPS Monaco engaged UBS Investment Bank AG (UBS) on 26 November 2014 to act as exclusive financial advisor.

10. Mr Auletta, CEO of the MPS Group, had suggested that UBS should take charge of communicating with potential buyers. In the course of its work, in addition to Process Letters (the UBS Process Letters), UBS produced a presentation (the UBS Presentation) in several iterations and a business plan (the UBS Business Plan) again in several iterations.

11. UBS also set up a virtual data room to make documents and information available to potential purchasers, and to which new documents were uploaded as the sale progressed. This was also the portal through which UBS would answer questions from potential purchasers (known as the 'Q&A') from autumn 2015.

12. UBS recommended that further advisors were engaged to provide 'vendor due diligence' (VDD). To that end, MPS Monaco engaged Allen & Overy LLP (A&O) who produced a report on MPS Group's material contracts on 13 November 2015 and a legal due diligence report (the A&O Legal VDD report) on 18 November 2015.

13. MPS Monaco also engaged Ernst & Young LLP (EY) on 5 June 2015 to produce financial and tax VDD reports. EY produced the EY Tax and EY Financial VDD Reports on 17 November 2015, along with an accompanying EY Databook. EY subsequently issued the EY Databook Addendum on 1 March 2016, providing updated post-audit figures for FY2015 (ending 30 June 2015).

14. Jinxin uses the term "Vendor Documents" to describe the following documents among others: the UBS Presentation, the UBS Business Plan and the Q&A, the A&O Legal VDD Report, the EY Tax and EY Financial VDD Reports, the EY Databook and the EY Databook Addendum. The suitability of the term is challenged by the Trial Defendants but it is convenient to use it as an abbreviation.

15. DealGlobe Limited (DealGlobe), a Chinese investment bank and financial adviser, was engaged to provide general and financial advice to Baofeng and subsequently Jinxin. KPMG Advisory (China) Limited (KPMG) was engaged as financial and tax advisers to Baofeng, and (from 16 August 2016, after the sale) to Jinxin. Clifford Chance LLP (Clifford Chance) were engaged as legal advisers on behalf of Baofeng.

16. The Court did not at this trial have the advantage of a great deal of the material that would have been available to or generated by the various professional advisers, and did not hear oral evidence from any of them.

The SPA

17. The SPA itself is presented as an A&O document, consistently with Mr Auletta's evidence that A&O also acted as legal advisor in relation to the purchase.

18. In the SPA, Jinxin contracted for the benefit of express warranties, indemnities and undertakings from those defined as the Sellers. These included Mr Auletta and RSH but not Mr Silva.

19. Clause 9.1 of the SPA and Schedule 5 ("Sellers' Warranties") are set out in Annex 1 and Annex 3 to this judgment. These are not the subject of the claims advanced by Jinxin at this trial. But paragraphs 1.12, 1.13, 2 and 8 of Schedule 5 are of particular note.

20. By Clause 19 of the SPA:

> "**19. WHOLE AGREEMENT**

19.1 This agreement and the other Transaction Documents contain the whole agreement between the parties relating to the transactions contemplated by the Transaction Documents and supersede all previous agreements, whether oral or in writing, between the parties relating to these transactions. Except as required by statute, no terms shall be implied (whether by custom, usage, or otherwise) into this agreement.

19.2 Each party:

(a) acknowledges that in agreeing to enter into this agreement and the other Transaction Documents it has not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of any other party before the entering into of this agreement;

(b) waives all rights and remedies which, but for this subclause 19.2, might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance; and

(c) acknowledges and agrees that no such express or implied representation, warranty, collateral contract or other assurance may form the basis of, or be pleaded in connection with, any claim made by it under or in connection with this agreement.

19.3 Nothing in this clause limits or excludes any liability for, or remedy in respect of, fraud."

Jinxin's case as stated and as put

21. This is a fraud case. Jinxin must state its allegations by way of statement of case. It is those allegations and not different or additional allegations that the Trial Defendants come to trial to meet. Jinxin takes on the burden of proving the allegations it makes. The standard of proof is on the balance of probabilities but given the nature of allegations levelled by Jinxin, to be satisfied to that standard requires convincing evidence.

22. Even in a fraud case, the requirement that a party state its allegations by way of statement of case must be approached sensibly and not over-technically. The objective is a fair trial to resolve the dispute between these parties. However, there were occasions where Jinxin sought to advance an allegation that it had not stated at all by way of statement of case (originally or by amendment), with the consequences that would have followed for disclosure, or for the preparation of witness or expert evidence. In trying the case and preparing this judgment I have not addressed allegations for which this is true and have confined myself to the statements of case.

23. More generally, and without intending criticism of the legal teams, I heard much evidence and argument that proved unnecessary for the issues that I have to decide. To some extent that is inevitable in a case like the present, and in contexts other than this

trial but related to the story of the MPS Group and of Jinxin the evidence and argument may be important.

24. In this judgment I confine myself to the issues that I have to decide to determine whether Jinxin's case in deceit and conspiracy is made out against the Trial Defendants. I will not attempt to address every dealing touched on by one or other of the parties across years of a worldwide business, but I will address sufficient to resolve the dispute. It is important to do this if the wood is to be seen for the trees.

The tort of fraudulent misrepresentation, or deceit

25. At the end of the month following oral closing arguments for this trial, the Privy Council gave judgment in Credit Suisse Life (Bermuda) Ltd v Bidzina Ivanishvili and Others [2025] UKPC (Lords Hodge, Briggs, Leggatt and Richards and Lady Simler). The parties have made further submissions in light of that judgment, delivered by Lord Leggatt for the Privy Council.

26. Lord Leggatt wrote:

> "127. … [W]hat is traditionally called the tort of deceit … involves a simple and perfectly general principle: a person who causes another person to suffer loss by deceiving that other person is liable to compensate the other person for such loss.
>
> 128. What it means to deceive someone can be unpacked into a number of separate elements. It involves (1) making a representation of fact (or law) which (2) is false, (3) the maker does not believe to be true, (4) is intended to be believed by the representee, and (5) causes the representee to believe that the representation is true.
>
> 129. The scope of what counts as a representation for this purpose is very broad. The concept is not limited to statements which expressly assert the truth of a proposition. Indeed, it is not limited to statements: it includes actions as well as words. For the purpose of the law of deceit, the term "representation" encompasses any words or act calculated to cause another person to believe a proposition.
>
> ….
>
> 137. [I]n a summary that has often been cited, Viscount Maugham in Bradford Third Equitable Benefit Building Society v Borders [1941] 2 All ER 205, 211, said that an action for deceit requires four things to be established:
>
> > "First, there must be a representation of fact made by words, or, it may be, by conduct. ... Secondly, the representation must be made with a knowledge that it is false. It must be wilfully false, or at least made in the absence of any genuine belief that it is true ... Thirdly, it must be made with the intention that it should be acted upon by the plaintiff, or by a class of persons which will include the plaintiff, in the manner which resulted in damage to him ... Fourthly, it must be proved that the plaintiff has acted upon the false statement and has sustained damage by so doing ..." (Citations omitted.)

> Many similar statements of the law can be found: see eg Derry v Peek (1889) 14 App Cas 337 360-361, 374; Clerk & Lindsell on Torts, 24th ed (2023), para 17-01."

27. Lord Leggatt included examples:

> "130. The breadth of the concept can be illustrated by some examples, most of them taken from a longer list given in Clerk & Lindsell on Torts, 24th ed (2023), para 17-09. The following have been held to constitute deceit: pledging goods as security for a loan knowing that one has no title to the goods or authority from the owner to pledge them (Advanced Industrial Technology Corpn Ltd v Bond Street Jewellers Ltd [2006] EWCA Civ 923); ordering goods on credit on behalf of a company known to be insolvent (Contex Drouzhba Ltd v Wiseman [2007] EWCA Civ 1201; [2008] BCC 301); presenting company accounts to a buyer knowing that they had been dishonestly prepared (MAN Nutzfahrzeuge AG v Freightliner Ltd [2005] EWHC 2347 (Comm), para 78); and inviting someone to invest in a company known to be insolvent (Sinha v Taylor [2022] EWHC 1096 (Comm), para 57).

28. Among other examples referenced by Lord Leggatt were these:

> "131. Two cases particularly relied on by counsel for the plaintiffs are Gordon v Selico Ltd (1986) 18 HLR 219 and Spice Girls Ltd v Aprilia World Service BV [2002] EWCA Civ 15; [2002] EMLR 27. In Gordon v Selico the seller of a flat who deliberately covered up dry rot so that the prospective buyer would not see it was held liable in deceit. In Spice Girls the participation in photoshoots of all five members of the Spice Girls group and their approval of promotional material depicting all five of them for use in advertising motor scooters manufactured by their sponsor (Aprilia) were held to represent that they did not know that any member had declared an intention to leave the group (as Geri Halliwell had in fact done). A claim for damages for misrepresentation succeeded although, as the Court of Appeal in that case noted at para 67, "no one at [Aprilia] gave any consideration at the time to what representations were to be implied into the statements and conduct of the Spice Girls".
>
> 132. There is nothing recent or novel in the notion that deceit can be perpetrated by entirely non-verbal conduct, including conduct of which the claimant is unaware. An old example is Schneider v Heath (1813) 3 Camp 506, where the seller of a ship, to hide the fact that the hull was worm-eaten and the keel broken rendering the ship unseaworthy, had the ship removed from the ways where she lay dry and floated in a dock so that the defects would not be seen when the buyer came to bid for her. Sir James Mansfield CJ had no hesitation in holding that on these facts the buyer was entitled to succeed in a claim to recover back his deposit on the ground that he was induced to pay it by deceit.
>
> …
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> 136. Another type of case, which must be increasingly common, is where a fraudulent misrepresentation is made not to any human being, but to a machine. In Renault UK Ltd v Fleetpro Technical Services Ltd [2007] EWHC 2541 (QB), para

> 122, the judge held that a fraudulent misrepresentation giving rise to liability in deceit can be made to a machine, rather than to an individual, if the machine is set up to process certain information in a particular way in which it would not process information about the material transaction if the correct information were given; see also Skatteforvaltningen v Solo Capital Partners LLP [2025] EWHC 2364 (Comm), paras 531-532."

29. Dealing further with the representation made, Lord Leggatt said:

> "170. There are certainly cases in which, to establish that the defendant's words and/or conduct caused the claimant to hold a false belief, it will in practice be necessary to show that the claimant understood them to convey a particular meaning. This is so whenever the meaning is unclear or ambiguous and the representation is false only if it bears one particular meaning. …
>
> …
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> 172. … what matters in a claim for deceit is not whether the plaintiff understood the defendant's statement according to the construction put on it by the court, but whether the plaintiff understood the statement in the sense that the defendant intended the plaintiff to understand it (and knew to be false or at least did not believe to be true): see eg Akerhielm v de Mare [1959] AC 789, 805. How the court interprets the statement may well be relevant to the court's assessment of how either or both parties probably understood it. But it is the parties' subjective beliefs that are critical. That said, in a case such as Arkwright v Newbold where a particular statement made is false only if interpreted in a particular non-obvious sense, it is clearly correct that to prove "reliance in belief" the plaintiff must show that it understood the statement in that sense."

30. On assumption, Lord Leggatt said:

> "175. … The categories of representation and assumption are not mutually exclusive. It is possible, and indeed common, for a person to act on the basis of an unconscious assumption and in reliance on a representation. …
>
> 176. What matters is whether, in a case where the claimant has acted on an assumption, the assumption was one which the claimant would naturally be expected to make in response to the defendant's words or actions or whether it was one made independently by the claimant. If the claimant has acted as a result of an erroneous belief not caused by the defendant, the defendant will not be liable.

31. Dealing with non-disclosure, at [177]-[178] Lord Leggatt wrote:

> "177. … The distinction between misrepresentation and non-disclosure - which reflects that between acts and omissions - is an important one because, except in those cases (such as the formation of contracts of insurance) where there is a duty to disclose material facts, non-disclosure does not give rise to liability.
>
> 178. The distinction turns on whether the defendant (1) has done something to cause the claimant to hold a false belief on which the claimant has acted to its detriment or (2) has merely failed to inform the claimant of a material fact or to

> correct a false belief which the claimant independently holds. A case may fall in the first category without the claimant being aware of what the defendant has done, …. Such ignorance does not turn the case into one of non-disclosure. The seller who takes active steps to conceal a defect in order that a buyer should not discover it stands in a different position from the seller who is aware of a defect not apparent to the buyer but does nothing actively to hide it. The line is not always easy to draw. But it depends entirely on what the defendant has or has not done and not at all on the claimant's awareness or understanding of acts done by the defendant."

32. Addressing the subject of reliance in Credit Suisse Life (Bermuda), Lord Leggatt wrote:

> "161. There is no doubt that reliance or inducement is an essential element of a claim for deceit (or other claim for damages for misrepresentation). There are two aspects to the requirement. The first is that the representation must have deceived the claimant (C) by causing C to hold a false belief ("reliance in belief"). The second is that C must because of holding that false belief have acted so as to suffer loss ("reliance in action"). Both aspects of reliance require the representation to operate on the mind of C. But neither logically requires C to be consciously aware of the representation at the time when C acts on it. Nor is there any good reason to insist on such an additional requirement.
>
> 162. It is an everyday feature of human experience that people form and act on beliefs without any conscious awareness or thought. If someone takes advantage of such unconscious mental processes to deceive another person and cause her to act to her detriment, there is no reason why a claim for damages should not lie. The mischief is no less than in a case involving conscious awareness."

33. In Farol Holdings Ltd and Others v Clydesdale Bank plc and Another [2024] EWHC (Ch) 593 at [216] Zacaroli J (as he then was) described the factual presumption of inducement in a claim in misrepresentation:

> "… the representee must in fact have been induced to take action – for example entering into a contract – in reliance on the representation. The misrepresentation need not be the only reason for the representee's decision to enter into the contract, but the representee will have no cause of action if it would have entered into the contract on the same terms even if the representation had not been made. If it is proved that a false statement is made which was material – in the sense that it was likely to induce entry into the contract – then there is an evidential presumption (of fact, not law) that the representee was so induced. The presumption is stronger if the representation was made fraudulently."

See further Zurich Insurance Co plc v Hayward [2016] UKSC 48; [2017] AC 142. That the presumption can be rebutted was not in dispute.

The alleged Representations

34. Both express and implied representations are alleged by Jinxin. Jinxin contends that a total of sixteen representations were made: seven express and nine implied. The alleged representations have been grouped and summarised by Jinxin as follows. It will be necessary later to examine their exact alleged terms.

35. First, "Business Practices Representations" are described by Jinxin as representations as to the honesty, legality and lawfulness of the conduct of the MPS Group business including, specifically, the absence of bribery, corruption or similar misconduct in relation to its business practices.

36. "Serie A Representations", second, are described by Jinxin as representations that the MPS Group's success in repeatedly securing the Serie A rights derived from a long-standing relationship with the organiser of Serie A, Lega Nazionale Professionisti (La Lega), and had been achieved by way of, and the Trial Defendants had confidence that they would be renewed by way of, honest, legal and lawful business practices.

37. The third group of representations are grouped by Jinxin as "Investigation Representations". These are described by Jinxin as alleged representations as to the limited scope and nature of a criminal investigation, known as "the Milan Investigation" then under way in respect of Mr Silva.

38. Finally, "EBITDA Representations" are described by Jinxin as representations as to the material accuracy and truth of EBITDA forecasts (that is, forecasts of earnings before interest, taxes, depreciation, and amortization) and of financial information contained in various documents.

39. Jinxin's case is that the Representations were made by the Trial Defendants "through the provision of the Vendor [D]ocuments on their behalf". The express representations are alleged to be from passages in specified Vendor Documents, that is, documents other than the SPA. As for the implied representations where the words or conduct from which the representation is said to have been implied are set out by Jinxin (see Property Alliance Group v RBS [2018] EWCA Civ 355, [2018] 1 WLR 3529 at [132]), these are again from the Vendor Documents and their provision.

Mr Silva and Mr Auletta

40. My confidence in Mr Silva as a witness was not high, after reading and hearing his evidence over a number of days.

41. The criticism made by Jinxin that Mr Silva would at times intentionally avoid answering questions he did not like is a fair criticism. He also was determined to insert points that he wanted to get in, regardless of their relevance to the question in hand. Mr Silva's efforts in his evidence to dismiss some of what he had written at the time of events under discussion, as gossip or a joke, was not convincing. There was also some embellishment in Mr Silva's evidence: an example is when he made the claim, soon diluted as questions continued, to have received positive legal advice about his business relationship with Mr Bogarelli.

42. Overall, in the witness box Mr Silva sought to control the message to suit him. I was not however taken near to the point of rejecting all of Mr Silva's evidence. I have considered each piece of material evidence on its merits.

43. From the evidence at trial, including his own evidence, I have also been able to draw conclusions about Mr Silva's approach in business. That approach was one of detailed control, first of action and then of message. In business he would keep information close, reveal it selectively, and cast it in a light that suited his strategy or objective.

44. As an example, at one point Mr Silva's evidence was:

> "I'm not in charge of this. I'm not in charge of Asia. I'm not in charge of the sale forecast. I'm not in charge of the financials of the company."

The truth is, I find, that these areas would have positively commanded his attention, and were at the centre of his (admittedly vast) stage. I am left fully satisfied that Mr Silva knew almost everything that was going on that is material to this case. But I have more to say below about his approach to business and on contemporaneous events.

45. The Trial Defendants accept Mr Auletta, as Chief Executive Officer of the MPS Group, was "in charge of all operational matters". Mr Silva, not Mr Auletta, was the individual primarily responsible for the Serie A business. It was he who had the direct relationship with a Mr Marco Bogarelli and his associates, to whom reference is made below.

46. However, I accept Jinxin's argument that cross examination showed Mr Auletta also to know something about "the commercial side" of the business of the MPS Group, and to some degree more than he sought to convey in his evidence. The same was true for Mr Auletta's involvement in the sale of the business. This is unsurprising; the sale of the business was of fundamental importance to him, as it was for Mr Silva.

47. As with Mr Silva's evidence, I am left nowhere near to the point of rejecting all of Mr Auletta's evidence but I do take it carefully.

The business

48. A sports media rights agency known as Media Partners was founded in the early 1990s by Mr Bogarelli, a Mr Andrea Locatelli and others. By the early 2000s, Mr Giuseppe Ciochetti had joined the agency, and the three men ran it.

49. Mr Bogarelli, who is no longer alive, was a major presence in the Italian sports media rights market, with expertise across the publishing and sports media rights industries.

50. At first, Media Partners focused on the Italian distribution of media rights to National Basketball Association matches. It moved into skiing where it repackaged media rights from separate national skiing organisations for distribution to broadcasters. It became well-known in the sports media market.

51. Turning to football, the agency developed close connections with a number of clubs in Serie A and was retained by some for consulting and advisory services. It began acquiring and distributing media rights to European football away games within Italy.

52. In 1999 Mr Silva began working for the agency. This was after a university education, and some work for an Italian telecommunications company. Mr Silva was allocated to a business division which focused on sports digital rights, known as 'MPWeb'. Mr Andrea Radrizzani was engaged to work as a consultant for MPWeb. Mr Silva and Mr Radrizzani became close working partners.

53. In 2001 Mr Silva was also appointed CEO of Milan Channel, the official television channel of AC Milan.

54. Mr Silva became close to Mr Bogarelli, and the latter became something of a mentor figure to him. In time, Mr Bogarelli would open doors for Mr Silva in the media rights world, although with an expectation of some financial return.

55. Mr Silva was keen to be more involved in sports television rights. In 2004 he founded a new company, Media Partners & Silva Limited (MPS Dublin) incorporated in the Republic of Ireland. Mr Bogarelli, Mr Locatelli and Mr Ciocchetti agreed to help him. Each was closely involved in the early development of this company. They shared experience and expertise with MPS Dublin and Mr Silva. It is a fair description to say that Mr Silva traded on Mr Bogarelli's reputation and connections, in order to gain credit and credibility with the sellers and buyers of media rights.

56. Indeed, it was Mr Bogarelli who permitted Mr Silva to call the new company 'Media Partners & Silva Limited', the very purpose being to allow brand recognition. That MPS Dublin and Media Partners were associated became well-known in the Italian sports media market. Media Partners and MPS Dublin held themselves out as a single group, although MPS Dublin was wholly owned by Mr Silva until immediately prior to completion of the SPA around a dozen years later in 2016.

57. At this earlier point in time, the market for media rights in Italian football was highly decentralised. Mr Silva identified the value that an agency could achieve by 'repackaging' different rights from multiple clubs to better meet broadcasters' needs internationally.

58. To take this further, Mr Bogarelli and others introduced Mr Silva to various Serie A executives, broadcasters, media rights agencies and traders. Mr Silva met regularly with club executives and got to know them personally, establishing and maintaining relationships.

59. With the assistance of Mr Bogarelli, the international Serie A media rights were secured for the major clubs of Juventus, AC Milan, Inter Milan and Roma. Building further on this, Mr Silva developed a track record in both the acquisition and distribution of media rights. By 2007, MPS Dublin had managed to secure the international media rights for almost every football club in Serie A.

60. Meanwhile, in 2006 the Media Partners business of Mr Bogarelli, Mr Locatelli and Mr Ciochetti had been sold to Infront Sports & Media AG (Infront). Its Italian operation was then rebranded as Infront Italy. Mr Bogarelli, Mr Ciocchetti and Mr Locatelli remained as directors. Mr Bogarelli became President of its Board of Directors and Mr Ciocchetti its Managing Director.

61. Mr Bogarelli continued to assist Mr Silva in marketing Serie A media rights.

62. Mr Radrizzani had a consultancy business in Japan called EAST (Euro-Asia Sports Trade) Co Ltd. It was agreed that MPS Dublin would acquire Serie A media rights for individual football clubs and Mr Radrizzani would act as MPS Dublin's exclusive distributor of media rights to home games into the Asian market. Initially the two clubs ACF Fiorentina and ACR Messina were involved.

63. In time, Mr Radrizzani came to be seen as the major distributor of Serie A media rights in the Asian market. At the same time a transaction with Dentsu, a Japanese advertiser,

saw MPS Dublin entitled to substantial commission for each season between 2007-2010 on the distribution of international Serie A media rights in Asia. In May 2007, Mr Radrizzani and Mr Silva formed MPS Singapore to focus on the distribution in Asia of the media rights acquired by MPS Dublin.

64. Mr Auletta, whom Mr Silva had known since he was a child, then joined the business in 2008. He took charge of corporate administration.

65. As already noted, in exchange for the assistance he provided to Mr Silva, Mr Bogarelli expected to be paid. He asked for a share in MPS Dublin's profits. After a short-lived earlier arrangement, on 7 March 2007 MPS Dublin entered into two agreements with a company incorporated in Canada in the name Management & Sport Limited (MSL). MSL was nominated as a contracting party by Mr Bogarelli.

66. One of the two agreements provided for MPS Dublin to pay MSL 50% of its "Net Incomes" from the distribution of international broadcasting rights for Serie A for the three seasons from 2007-08 to 2009-10, in return for MSL's cooperation and assistance with marketing the rights.

67. In 2009 B4 Capital SA (B4), a sports media rights group, replaced MSL. Domino Holdings Limited (Domino) later replaced B4, possibly as late as 2012, although MPS Dublin began paying Domino from 2010.

68. Mr Massimo Cellino had known Mr Bogarelli since the late 1990s. From 2005, Mr Cellino was Vice-President of Serie A, later becoming a director. Mr Cellino had negotiated the award of the international media rights for the Serie A club Cagliari Calcio to MPS Dublin in 2005. He was aware that Mr Bogarelli and others in Media Partners collaborated with Mr Silva.

69. Mr Cellino explained that most of the Italian football club executives knew about the "mutual acquaintance and relationships between" Mr Bogarelli and Mr Silva. He added that Mr Bogarelli's close relationship with Mr Silva was perceived as "functional to eventually increase the results of the world-wide distribution of Serie A and the relevant revenues from the international markets".

70. By 2016 the MPS Group had 20 offices worldwide. A holding company was formed in Luxembourg with the name MP & Silva Holding SA (MPS Luxembourg), though leaving MPS Dublin wholly owned by Mr Silva.

71. The MPS Group worked with 200 broadcasters. As well as Serie A and La Lega, its engagement by now extended to the US National Football League, the UEFA Champions League, the Barclays Premier League, the Bundesliga, Ligue 1, the English FA Cup, and Euro 2016. Beyond football it was involved in Formula 1, in the National Basketball Association, and in baseball, handball and ice-hockey.

72. In one sense, this range and diversification brought complexity, with constant work required to sustain things. In another sense, the business model remained simple. This is a fair summary in the written opening for the Trial Defendants:

> " 'Rights-in' deals would last a few years at most, and MPS was therefore forced to pitch for dozens of new properties each year across numerous countries and

> sports, …. On the 'rights-out' side, MPS was repackaging perishable intangibles in potentially endless variations and selling them to broadcasters in each territory of the world, which required experienced managers, developed relationships and a network of consultants ….

73. Again, as fairly summarised on behalf of the Trial Defendants:

> "The two sides of the business were in constant interplay, as every bid MPS made was inevitably informed by its estimate of the potential price it could achieve on the resale of the relevant rights – whether as a standalone product, or packaged with other properties. And all this was taking place at a time of rapid technological change, with the move from analogue to digital TV and the rise of internet streaming."

Infront Italy, Mr Bogarelli and La Lega

74. In 2008, the Italian government adopted Legislative Decree No. 9/2008, implementing Law N.106 of 19 July 2007.

75. The Law of 2007 delegated power to the Italian government to reform regulations concerning the ownership and commercialisation of sports broadcasting rights. The Decree of 2008 would become known as the Melandri-Gentiloni Law, named after the ministers who promulgated it. The Melandri-Gentiloni Law provided for the centralised marketing and sale of sports audiovisual rights using a tender system.

76. On 27 January 2009 La Lega appointed Infront Italy to act as its adviser in connection with the sale of audio-visual rights for Serie A football until the conclusion of the 2015/16 season.

77. As the Trial Defendants emphasise, the role was not a straightforward advisory one. It involved significant economic risk because Infront Italy guaranteed La Lega a minimum income for each season. The amount was initially €900 million. Infront was also responsible for the technical production and for the technical distribution of match footage.

78. A factor in La Lega's choice to appoint Infront Italy was Mr Bogarelli. In due course La Lega linked Infront Italy's remuneration to Mr Bogarelli remaining in post at Infront Italy. I accept Mr Silva's evidence that he asked Mr Bogarelli whether Infront Italy, La Lega and the clubs were comfortable with the ongoing relationship between Mr Silva and Mr Bogarelli. I accept that Mr Bogarelli told him they were. No witness was called by Jinxin from La Lega to say that La Lega did not know and were not comfortable.

79. Four agreements between MPS Dublin and the four companies Domino, MESED, Latam Distribution Limited (Latam) and FE Media Event Distribution LP (FE Media) call for reference at this point. Each of the four companies was ultimately controlled by Mr Bogarelli, Mr Ciocchetti and Mr Locatelli. The agreements provided for large payments for services.

Domino

80. In the agreement with Domino the parties referred to the earlier agreement between MPS Dublin and B4 for a "commercial partnership" for the acquisition and distribution of Serie A rights for the 2010/11 and 2011/12 seasons and to the transfer by B4 to Domino. The agreement provided for the parties jointly to manage the distribution of Serie A rights, sharing income and expense equally and developing a marketing plan jointly. It was agreed MPS Dublin would pay to Domino 50% of the income generated from the sale of Serie A rights.

81. The agreement recorded that the revenue share for each party should be €15 million for each season.

MESED

82. The agreement with MESED was titled "Business Consultant Agreement". The parties recorded that MESED had made available its "skill and know-how… and granted decisive assistance and support" in order for MPS Dublin to carry out the sales of Serie A rights for the 2012/13, 2013/14 and 2014/15 seasons in Middle East countries.

83. The agreement described services MESED had rendered as including providing MPS Dublin with information regarding the sales and the intentions and requirements of prospective customers on a regular basis, supporting MPS Dublin in establishing necessary contacts and ensuring successful negotiations with them, providing detailed knowledge of local market practices and customer organisations, identifying and defining opportunities and providing market intelligence and conducting inquiries and supporting negotiations. Until the expiry of the agreement, MESED agreed to render assistance with liaison and coordination between MPS Dublin and its clients.

84. The agreement recorded that MESED would be paid a fee of €6.7 million for the first season and €6.5 million for the two remaining seasons.

Latam

85. In the agreement with Latam the parties recorded that Latam had assisted MPS Dublin to pursue its interest in the distribution of Serie A media rights for the 2012/13, 2013/14 and 2014/15 seasons in the Americas. There was reference to "services and decisive support" rendered by Latam for the successful distribution of media rights in Canada, North America and South America.

86. The agreement recorded that Latam would be paid a fee of €5.3 million for season 2012/13 and €5 million for each season 2013/14 and 2014/15.

FE Media

87. The fourth agreement, with FE Media, provided for FE Media to provide consulting services in respect of the distribution of Serie A rights for the 2012/13, 2013/14 and 2014/15 seasons in countries in South East Asia, Australasia and the islands of the Pacific region, in consideration for a total fee of €10.6 million.

88. The services were described as follows:

> "In particular, [FE Media] shall conduct market researches in the Territory, contact potential new partners and clients for MPS's business, advice [sic] MPS as to the opportunities to negotiate and execute any suitable commercial agreement with third parties of the Territory, assist MPS in meetings, correspondence and negotiations with third parties of the Territory, report to MPS's appointed manager any relevant information, therein including details of any offer received by the potential partners and clients, information on the their commercial reliability and solvency and any further information supportive to develop MPS's business or that may be requested by MPS from time to time. [FE Media] Services shall extend to all assistance required by MPS in the execution and performance of all contracts between MPS and broadcasters or agencies of the Territory."

89. Jinxin contends that in fact there were no services rendered by (at least) MESED, Latam and FE Media or needed by MPS Dublin from them. I do not accept that this was proved on the evidence at trial. In his evidence in chief Mr Silva said that he saw these contracts "as the continuation of the same agreement I had had with Mr Bogarelli since 2004". He added that he still felt indebted to Mr Bogarelli for the role Mr Bogarelli had played in helping him to become established. I accept Mr Silva's evidence here.

90. I find that the underlying position was basically as described by Mr Silva in his witness statement giving his evidence in chief at the trial, as follows:

> "91. Mr Bogarelli explained that he preferred not to own shares in MPS Dublin, I assumed because he did not want to risk losing money. He also did not think that Media Partners (then owned by Bridgepoint, a British fund) would take on the risk of investing in a totally new business. Nevertheless, given the value of the assistance and advice that he, Mr Locatelli and Mr Ciocchetti were giving me in my new business, they each expected to share in its success.
>
> 92. At the beginning, Mr Bogarelli asked for 50% of the profits of MPS Dublin. He did not want to bear the risk of any losses, either. I had no basis to argue with this, given I was nothing in the industry at that time. I thought it was a way to ensure the success of the business. I needed them, and their experience from leading Italy's premiere sports agency, which was also in the top 10 globally. I agreed to Mr Bogarelli's proposal.
>
> 93. Mr Bogarelli also came to me with the proposed structure of this arrangement which, again, I had no reason to question. From my perspective, I was paying him an amount which reflected about 50% of the profits of the company. How he chose to receive this money, and how he chose to split it with Mr Locatelli and Mr Ciocchetti, was totally up to him. I never asked. The names of the companies, their jurisdictions - none of this mattered to me in the context of the overall arrangement. What I was concerned with was the overall commercial deal with Mr Bogarelli.
>
> 94. We entered into written agreements to reflect these arrangements, and I never had any basis to question them either. I was always under the impression that if I had not been able to generate sufficient revenue to pay Mr Bogarelli the amounts agreed in the various contracts, it would not have been a problem and we would simply have renegotiated the amount to be paid that year. I do not remember who prepared the contracts, and I do not remember reviewing them closely before signing them, other than to check the amounts agreed to be paid. I signed hundreds of contracts each year. For me, if I understood the concept behind the deal and I

> trusted the other side, the detail of the contract was not important. I may have got my lawyer to look over them.
>
> 95. At first, in around 2006, Mr Bogarelli told me he preferred to enter into a joint venture contract with a company, Media Partners International BV, which was based in the Netherlands. I was shown a copy of the contract in preparing this statement.
>
> 96. In 2007, Mr Bogarelli told me the contract should instead be with Management and Sport Ltd, which was based in Canada. I was also shown a copy of this contract.
>
> 97. In around September 2009, Mr Bogarelli told me the contract should be with B4, an Italian-based international media rights agency (who I describe in more detail at §208ff below). Although we signed a contract (which I was shown in preparing this statement), the joint venture with B4 was never implemented, and MPS Dublin never made any payments to B4.
>
> 98. In around 2010, Mr Bogarelli told me that he preferred to enter into consulting contracts for lump sum amounts. I have seen copies of these contracts while preparing this statement. Again, I never asked why Mr Bogarelli wanted the payments to be made to particular companies, or who owned or operated those companies, although I always assumed Mr Bogarelli owned them.
>
> 99. I saw all these contracts as the continuation of the same agreement I had had with Mr Bogarelli since 2004. Again, I had no basis to question the written agreements, and I signed them. I was not concerned with the names or jurisdictions of the corporate entities, or why the consulting contracts were linked to certain territories. I did not review them line by line, and I did not treat them differently year to year. I simply was not concerned with the details. From my perspective, I received assistance and advice from Mr Bogarelli, Mr Locatelli and Mr Ciocchetti internationally. I suspected that the different contracts were put together for their own fiscal reasons, but I did not ask any of them about this as I did not consider it to be my business."

91. Summarising, Jinxin contends that for each of the Serie A seasons between 2007/2008 to 2015/2016, MPS Dublin was party to either a joint venture agreement or a purported consultancy agreement with a company associated with Mr Bogarelli and others. By its calculation, between April 2010 and November 2013 MPS Dublin paid €54.3 million pursuant to those agreements (reaching around €70 million by the time of the SPA) whilst Mr Bogarelli, Mr Locatelli and Mr Ciochetti were obliged to act as La Lega's impartial independent advisers. Just under half of the €54.3 million was (contends Jinxin) "paid or allocated" to B4, a competitor for the Serie A rights in each of the 2009, 2011 and 2014 tenders.

92. Jinxin says that Mr Bogarelli, Mr Locatelli and Mr Ciochetti did not inform La Lega of the payments, but this was not, in my judgment, established on the evidence. Mr Silva accepted that he himself did not tell La Lega, and that MPS Dublin's bids for the Serie A rights did not disclose, that MPS Dublin or the MPS Group was in a joint venture/profit sharing arrangement with Mr Bogarelli, Mr Locatelli and Mr Ciochetti.

93. I fully appreciate the fact that the account of the 2004 agreement given by Mr Silva in his witness statement is open to many challenges. It was not documented. Mr Auletta's evidence was that he did not know of it. There are discrepancies with later agreements.

In his oral evidence Mr Silva added evidence that was not consistent. He was not transparent externally about it at the time or since - as he said in his evidence:

> "About 50% of the profits, I think I never told anyone about the details of our commercial arrangements. Then it also changed and I don't discuss commercial arrangements with third parties."

At the same time, I am in no doubt on the evidence that it was widely known he and Mr Bogarelli were close and worked together. I appreciate there are inconsistencies, such as efforts not to call attention to the fact that at one point MPS Group had offices in the same place as Infront.

94. But in my judgment the basic picture given in his witness statement remains, and it (and a relationship with Mr Bogarelli that was both a business relationship and a personal one) explains much of what happened thereafter. Mr Silva had no interest in the detailed terms of the later agreements; it is a false errand to look to see what precise services were or were to be provided according to the terms of those agreements. What he was paying for was the original and overall continuing support from Mr Bogarelli.

95. Observing and listening to Mr Silva at trial and reading the documents in which he was involved, it is clear to me that Mr Silva would do almost anything for Mr Bogarelli. He felt he owed that to Mr Bogarelli. He also felt Mr Bogarelli was crucial to the business. And he needed his relationship with Mr Bogarelli to show others that he (Mr Silva) had, in the form of that relationship, something that others did not.

96. Mr Silva was also prepared to arrange payments to individuals where Mr Bogarelli requested.

Mr Bendoni

97. Thus, by an email dated 12 September 2012 Mr Silva wrote:

> "Guys, just one information about the 25.000 'I paid for a panel in Qatar', it's not correct. Between me and you, I had to pay a 'prize' of 25k per season to an AS Roma consultant (for having their support and vote in the League assembly) and the way I was told to transfer this money every year was through this 'sponsorship' for an event in Dubai (called something like 'Globe Soccer'). If they had asked me to pay an ice cream shop or give them the money cash I would have done exactly the same.
>
> In the first two years I even forgot about this event (since it was just a way to pay them the 'prize'), I wasn't even sure it really existed, the third year (2012) I got some info and thought that since after all formally we were sponsoring them we could try to use it somehow and I told Rachel to contact them and try to get something out of it (some boards or visibility, an invitation to someone from MPS – not me –to be a panelist or something, anything else)."
>
> "I preferred not to explain the whole story to Rachel, so she thinks it's a real sponsorship. Everything is ok. Pls keep confidential."

98. The consultant referred to was Tommaso Bendoni. Mr Silva negotiated a 'contract of sponsorship' for the Globe Soccer Conference in Dubai on 28-29 December 2012 with Mr Bendoni's company BC Bendoni Communication. The contract provided for the €25,000 to be paid and that payments of €25,000 were also to be made for the two preceding years 2010 and 2011.

99. In a later email dated 5 August 2013 to Mr Radrizzani and Mr Auletta, Mr Silva described the payment as (in Italian) "a favour for the Bendoni family, friends of the Emperor and requested by the latter." By "the Emperor" Mr Silva was referring to Mr Bogarelli. He added that they were "a cost associated to having good relationships with Serie A / Italian clubs". In his oral evidence, Mr Silva said nothing that in my judgment alters this reality of what he was doing. Indeed at one point he put things in this way in his oral evidence:

> "For sure, it started as a favour, because it was asked as a favour, and if you can do a little favour, you can do it, and also to have a good relationship with Mr Bendoni"

Ms Pappas

100. In an email dated 21 February 2012 from Mr Silva to Mr Dalmiglio, Mr Silva wrote that he had signed an agreement with an entity called D&C PR Entertainment providing for a one-off €100,000 'consultancy fee' for Greece. But he continued (as translated from the original Italian):

> "(in reality we will not ask them to do anything for Greece)".

When Ms Pappas of D&C (whose son was the godson of Mr Galliani, CEO of AC Milan) sought more money from MPS Group, RS sent her request to Mr Bogarelli and Mr De Denaro of B4, asking "Marco, do you want to do the "closing of the deal" with her for these extra 60k?? .....".

101. Jinxin contends that the payments to Mr Bogarelli and others were for preferential treatment in the award of Serie A rights. I do not accept that that was the nature of these arrangements. It is necessary however in this connection to refer to and acknowledge some of the contemporaneous correspondence.

102. In an email dated 29 April 2009 from Mr Silva to a Mr Luca Marinoni, copied to Mr Radrizzani, Mr Silva wrote:

> "I have a gentleman's agreement with the top management of Infront whereby, in the face of actual advantages (past present and future) in our favour on Serie A international rights, MP&Silva agrees to use Infront's technical and production services for the technical management of those rights."

103. On 28 November 2010 in an email from Mr Silva to Mr Dalmiglio (Chief Commercial Officer of the MPS Group, and the Seventh Defendant), Mr Radrizzani and Mr Auletta, headed 'confidential', Mr Silva wrote (as translated from the original Italian):

> "Giovetti [of Mediapro Sports, a Spanish sports media rights agency] gave me to understand that B4 is their buyer for everything, and thus it is necessary - and might be convenient for everyone - to "go through" them... "aumma-aumma"

> [secretly]... So I have an appointment with B4 (Jimmy) on Tuesday. What we have to do to make some dough…."

104. There were three email chains dated 20 March 2012 between Mr Silva and Mr Radrizzani. In the course of these Mr Radrizzani challenged the finance and cost structure involved in respect of the Serie A rights. Mr Silva described the acquisition of Serie A rights as:

> "… an articulated and complex business, a perfect machine in which at least 5-6 people are involved, all with important and decisive roles to play in the acquisition (without them, goodbye Serie A)."

Mr Silva wrote that "[u]nlike the other "partners" involved, MPS is the entity that has Serie A in its hands in operational terms" and that this gave MPS advantages of synergies and market "power".

105. Mr Silva continued that what he termed the 'clan' had "brought [Mr Radrizzani] Milan, Inter, Juve, Roma, and continue to bring him the Serie A rights", and in particular benefitted Mr Radrizzani's reputation in Asia. He described the 'clan' as obtaining only an "exclusively economic" benefit in the form of the royalties, "secretly, like cockroaches".

106. Mr Silva added:

> "the payments to La Lega are like this thanks to the clan, the tender and the related rates/amounts were written by the advisor, Infront, at my "suggestion"."

He set out that:

> "… it is written on the tender that the advisor (Infront) has the right, as a condition, to ask for a guarantee covering the TOTAL for the three years … the clan… gives me favourable rates and does not ask me for the guarantee provided for in the tender."

107. By an email dated 12 July 2012 from Mr Silva to a Mr Al-Khelaifi attaching a document labelled 'Confidential', Mr Silva wrote:

> "… it's important to remind that Infront (my good friend Marco Bogarelli) is the exclusive advisor of Lega Serie A and Lega Serie B in the exploitation until season 2017/2018 of the national and international media rights for all their properties (including Serie A, Coppa Italia, Super Coppa Italia, Serie B and Youth Competitions), and he is currently negotiating a deal extension for further three seasons (2018/2019, 2019/2020, 2020/2021), and a pre-agreement with Marco is a key factor in order to manage the rights tender smoothly and basically get the right package that we want."

108. By an email dated 1 May 2014 from Mr Silva, copied to Mr Radrizzani and Mr Auletta, Mr Silva wrote, as an explanation as to why the MPS Group would not consider purchasing Infront Italy:

> "If we were also advisors (or otherwise in the same group or connected in any way), under the Melandri Act we could not also be buyers/distributors. …"

However, he continued:

> "And as long as Marco Bogarelli is at Infront, the relationship of friendship and mutual trust will always put us in "pole position" for international rights."

109. By an email dated 20 July 2014 from Mr Silva to Mr Radrizzani, concerning a potential purchase by beIN Media Group LLC (the Qatari multinational broadcast network and rightsholder, formerly known as Al Jazeera Satellite Network) of Infront Italy, Mr Silva discussed the fact that "control" over the Serie A "chain" was "carried out through commercial relations and agreement between independent companies, not through control of the various properties" so as to avoid various legal restrictions and prohibitions.

110. He continued:

> "The potential for us to keep the Serie A is and will continue to be linked to Bogarelli. With years of work, relationships and lots of chemistry, Bogarelli controls the votes of 14-15 teams, more than the owners of Infront (Bridgepoint, Qatar or others), for which the only advantage of the League's advisory will be economic (the EUR 30 million in annual profits generated) but the rights cannot touch them."

111. From the evidence at trial, I am left in no doubt that, because of its role with La Lega, Infront had a great deal of influence over the Serie A clubs. At the time this was put in various ways by Mr Silva, albeit with some characteristic overstatement:

> "Infront in Italy has a situation of absolute power in football …"

> "As everyone knows, all the production (from stadiums, to archives, to programs, to everything else) and every television and 'media' aspect of the Serie A is managed entirely by Infront (which guarantees … a year to the Lega), the interlocutor for these things is not the Lega (which does not do and does not know nothing) but Infront, which does everything and decides everything".

112. It is true that in a number of emails Mr Silva boasted about Mr Bogarelli bringing advantage. In his oral evidence Mr Silva sought to confine these descriptions to the past, before centralised tendering was used. That is not how he put it at the time, but I accept that at the time he was overclaiming the relevance of the current importance of his relationships and connections. Some of that was self-delusion and some was self-aggrandisement. He would talk up his role, or an idea of what he could do or get done that others could not, even to the point of inaccuracy against his interest.

113. There is no doubt that Mr Bogarelli was powerful and that it was important to have his support. Mr Silva was liberal with his assertions ("Boga and I will decide"; "I'll fix it with Boga"), but this was because he sought to impress or reassure. He did the same externally, for example in an email to Mr Al Khelaifi ("shouldn't be difficult to get (thanks to my alliance with Bogarelli)").

114. That is not to say that there were some matters where this type of connection was helpful in some way. He gave the example to Mr Radrizzani of the fact that Infront as adviser to La Lega did not exercise a right to ask MPS Dublin for a guarantee (requiring blocked funds) of the payments due for rights over three years. But the arrangements for a guarantee were for those whose financial covenant was more doubtful than a major bidder like the MPS Group. Another example was Mr Bogarelli's support for La Lega choosing not to make the tender country by country.

115. However, all of this was about Mr Silva using his connections and influence and in a way that was accepted at the time. I have not been satisfied on the evidence at trial that payments to Mr Bogarelli and others were for preferential treatment for the MPS Group in the award of Serie A rights.

Serie A: Dealings with competitors

116. With the Melandri-Gentiloni Law, draft tender guidelines for the first round of the Serie A tender for the 2010/2011 and 2011/2012 seasons were approved by the Italian communications regulator on 14 May 2009, and by the Italian Competition Authority on 1 July 2009.

117. Domestic rights packages were awarded in due course to the broadcasters Sky Italia and Mediaset Italia Spa. La Lega's invitation to tender for the international rights, providing for the award of a single global package, was issued on 12 October 2009.

118. The Trial Defendants bring out the point, which I accept, that despite the shift to a centralised tender process, control over the sale of the Serie A rights continued to be exercised by the clubs although by their acting together. Infront Italy provided initial drafts of the tender documents to the clubs, and these were then debated and redrafted by a technical committee of club representatives. The clubs met in general assembly (the Assembly) to decide which bids (if any) La Lega would accept.

119. Shortly after the bidding closed in the 2009 tender, in an email dated 4 November 2009 to Mr Alban Jaho (of DigitAlb, an Albanian TV and media company), Mr Silva wrote that of the "real" offers, "very confidentially I can tell you that MP&Silva offer has been the highest offer."

120. In the 2009 tender process, MPS Dublin submitted its sealed bid for the international Serie A rights on 2 November 2009. In the event, MPS Dublin's bid was the highest (of nine) at €90.5 and €91 million for the 2010/2011 and 2011/2012 seasons respectively. The second placed bid was at an average of €79 million per year, from Mediapro. At the Assembly, the clubs voted by 18 to 2 to award the rights to MPS Dublin.

121. In the 2011 tender process, MPS Dublin submitted a bid for €114 million, €117 million and €120 million for the 2012/2013, 2013/2014 and 2014/2015 seasons respectively. B4 was second-placed bidder with an average of €96 million per season. At the Assembly, eighteen clubs voted to award MPS Group the rights, with two abstentions.

122. In the 2014 tender process, MPS Dublin submitted a bid for €172 million, €185 million and €200 million for the 2015/2016, 2016/2017 and 2017/2018 seasons compared to an average of €140 million per season from IMG Media Limited (IMG) as second-placed bidder. At the Assembly, the clubs unanimously awarded MPS Group the rights.

123. Mr Marco Canigiani was the Marketing, Sponsorship and Sales Director of Lazio, and since 2006 had been a member of the Serie A Media Rights Committee. Mr Canigiani assisted MPS Group by providing updates during the deliberations at La Lega on awarding international rights in 2011. When there was an attempt in 2014 to move away from a single global tender for the international rights Mr Canigiani advised "at the Lega, someone is pushing to break things up by territory, but that he is pushing back". Mr Canigiani was paid $50,000 by MPS Group in 2008 and another $93,000 in 2011.

124. In the run-up to the tender deadlines, MPS Dublin had entered into various agreements with broadcasters and other agencies, providing for different arrangements for the sub-licensing or assignment of Serie A rights according to the outcome of the tender. These are summarised below.

125. I accept that it was commonly understood and accepted that agencies would enter sub-licensing or assignment deals prior to a tender. Some of these "output deals" would be with broadcasters but others would be with other agencies, that is, others who might also be in a position to bid in the tender process. There seems no doubt that they were capable of compromising competitiveness or being anti-competitive. But whatever the rights or wrongs, that was the way things were done at the time, at what was still an immature stage in the industry. That is not to say that the same would be acceptable today.

126. As Mr Simon Colton KC put it in his closing argument for the Trial Defendants:

> "[Mr Silva] was working in an industry and at a time when relationships were key and competitors spoke to each other more than they might now, an industry where conflicts of interest may not have been managed with the care that they are in other industries and at other times."

127. I accept that as a concise, accurate, and insightful summary. I should record that I had the benefit of expert evidence of Mr Oliver. I am grateful for it but found it of limited value in that he had no direct experience of media rights at this time.

128. Not only were competitors prepared to be involved, but Avv. D'Addio had some involvement too. On 24 November 2010 Mr Silva emailed Avv. D'Addio, copying Mr Radrizzani and Mr Auletta, and in which he referred (in Italian) to:

> "… your excellent text of an agreement that provides: if I buy a certain right, I will resell it to you for a predetermined amount (based on a gentlemen's agreement of a certain kind that you know)."

Mr Silva said to "Keep it as a reference (you did it) … because it could be used for future agreements.".

129. In an email chain dated December 2009 to January 2010 with Ms Milchior of Acid Sport, who was seeking a consultancy appointment in respect of Serie A sales, Mr Silva referred to "informal pressures" from Infront to "give the rights to this here and to that there", and that he had to "compose the 'puzzle' properly, in order to avoid consultancy overlapping with some clients".

130. It is to note that the agreements entered into by MPS Dublin did not have the effect of reducing MPS Dublin's bid to the level that the "output deals" would allow. MPS Dublin's successful bids at each tender were well above those of others. It was not sewn up for MPS Group. They had to bid high and in fact bid much higher than competitors even where they knew or might know or could work out what competitors would bid.

131. In each of the 2009, 2011 and 2014 tenders La Lega was persuaded to accept the MPS Group's initial bid and not enter into private negotiations with bidders. In practice the bid amounts were known, whatever the terms of the tenders, including by leaks. Jinxin contends that private negotiations could have led to higher bids. That is true, but they could have led to lower bids. The fact that they did not when private negotiations were used in 2017 is not persuasive, and may show that things were by then beginning to mature away from past practices.

132. Mr Silva claimed in his evidence that the 'output deals' MPS Dublin entered into could not have been anti-competitive because they did not contain formal non-compete clauses and therefore, regardless of the economic incentives created by the agreements, "Everyone could do what they wanted". Objectively this is not convincing, but I do consider he believed it at the time and still sees things that way.

IMG

133. Arrangements between MPS Dublin and IMG were effected through agreements dated 16 October 2009 (in respect of the Serie A rights for the 2010/11 and 2011/12 seasons), 14 November 2011 and 18 November 2011 (in respect of the Serie A rights for the 2012/13, 2013/14 and 2014/15 seasons) and 14 October 2014 (in respect of the Serie A rights for the 2015/16, 2016/17 and 2017/18 seasons).

134. Mr Silva was involved in the negotiation of the agreements on behalf of MPS Dublin and signed them on behalf of MPS Dublin. Each contained confidentiality clauses. In broad terms, first there was an agreement pursuant to which IMG irrevocably undertook that, in the event that it was awarded the Serie A rights for the seasons in question, it would assign such rights to MPS Dublin for a stated sum. As a result, in practice, as Jinxin points out, IMG had little or no incentive to submit a bid for the Serie A rights that was higher than the sum for which it had agreed to grant MPS Dublin the assignment of such rights. Mr Silva would therefore know the likely level of IMG's maximum bid.

135. Second there was an agreement pursuant to which MPS Dublin agreed that, in the event that it (MPS Dublin) won the Serie A rights, it would appoint IMG as "exclusive consultant" in respect of the sales of the Serie A rights in stated territories, for agreed fees.

136. In a series of emails to himself dated 14-16 October 2009, Mr Silva recorded the key terms of the draft agreements reached with IMG, including the agreed level for a 'contract of automatic resale' by IMG to Mr Silva, and the countries over which a "consultancy" had been agreed in return. He noted:

> "IMG (€1.5m per year)
>
> - Bid discussed at around €75m.

> - "Exclusive distributor" in 5 of the following 8 countries: UK, Hungary, Romania, Turkey, Ex- Yugoslavia (Spain, Poland, Germany).
> - 10% commission, with an MG of €1.5m per year.
> - In-flight rights to be managed together (to be defined)"

137. In an email chain dated 22 February 2012 from Mr Silva to Ms Vanjak and Mr Radrizzani, discussing the sale of Serie A rights in various territories, Mr Silva noted (in Italian) that in respect of Russia:

> "Although we will officially sell using IMG as a consultant, Serie A (Serie A only) will be sold to a friendly company (please keep confidential also internally)".

138. MPS Dublin executed a document entitled 'Consulting Services Agreement' in late 2012 with another company, 'Media Guide Industry Limited' in respect of the sale of the Serie A rights in territories already covered by agreements with IMG. In an email chain dated 29 September 2011 with Mr Pozzali concerning a request by Fox International to meet, Mr Silva stated (in Italian) that he:

> "… wouldn't like Fox to get unhealthy ideas about bidding or pretending to want to bid for Serie A worldwide and wanting to talk about this… It would be a nightmare, especially now that I've fixed IMG and everything seems in order." (original text Italian).

139. MPS Dublin later entered into agreements with IMG dated 14 October 2014. They provided, first, that if IMG acquired the Serie A rights it would licence the rights for France, the Middle East and North Africa region and Latin America to MPS Dublin for fixed fees of approximately €44, 47 and 50 million for each of the three seasons and grant first negotiation and last refusal rights over the remainder. Second, they provided that if MPS Group won the rights it would appoint IMG as its exclusive sales consultant in the USA, Canada, Russia and CIS, Sub-Saharan Africa, the Indian subcontinent and Japan. In an email dated 31 December 2014 Mr Silva stated that he had "made a verbal agreement with [Mr Francini on] Serie A and he respected it perfectly": Mr Silva's evidence was it was "a commercial deal, to work together".

Mediapro

140. Mediapro signed a Memorandum of Understanding dated 28 October 2009 with MPS Dublin providing that if Mediapro won the Serie A rights for the seasons in question it would assign them to MPS Group (except for Spain and Andorra) for €79 million for each of the two seasons; and if MPS Group won the rights, it would exclusively sub-licence the rights for the territory of Spain for €5 million per season. As noted above Mediapro's bid in the 2009 tender was at two times €79 million.

141. Mediapro did not bid in the 2011 or 2014 tenders. Mr Silva wrote in late 2011 that Mr Romy of Mediapro "is sorted" by "a good deal for all". In an email dated 18 April 2012 to the MPS Group's lawyer, Avv. D'Addio, Mr Silva wrote that Mediapro had asked to include a 'true' agreement for the Serie A highlights, and suggested that Mediapro wanted (original text in Italian):

> "to make the output deal more 'understandable' and 'justifiable' in the eyes of auditors or shareholders."

142. By an agreement dated 27 June 2012, Mediapro agreed, should it win them, to assign the worldwide Serie A rights for the seasons 2015/2016 to 2017/2018 to MPS Group for €95 million per season. A 'consultancy agreement' was also in place with Vermost, a company related to Mediapro; its genuineness was challenged but I am not satisfied it was ultimately other than described, that is, for assistance in improving marketing Serie A rights in North and Central America.

Sportfive

143. Two agreements dated 30 October 2009 were entered into between MPS Dublin and Sportfive International Sarl, a sports rights agency.

144. The first provided that if Sportfive was the successful bidder in the tender it would assign the rights to MPS Group for €78 million for each of the two seasons. The other was a "consultancy agreement" providing that if MPS Group won the rights, it would pay Sportfive to market the Serie A rights in stated territories, for agreed fees. Sportfive subsequently submitted a bid in the 2009 tender of €152 million, €4 million less than the total of €78 million for each of the two seasons.

145. In Mr Silva's emails to himself he noted:

> "Sportfive (€2.5m per year plus €2m unofficial)
>
> - Bid discussed at around €75m. Contract of automatic resale to us at €75m if S5 buys the rights.
>
> - Agreement valid only if acquisition price > €90m.
>
> - "Consultancy" in France, Germany, Poland, Sub-Saharan Africa (excluding RAI International).
>
> - Fixed Fee of €1.5m per year if acquisition price was 83-90 (€2m if < 83m).
>
> - On Top: Variable Fee of €1m if Sales > €15m."

146. The agreement was revised in 2010 by an Addendum to provide for the provision by Sportfive of data and information and "other advice … only upon reasonable request". For the 2011 tender there was no agreement with Sportfive, which did not in the event make a bid. MPS Group did however agree a consultancy agreement with Media Sport System, a company associated with a consultant to Sportfive, which provided for payment where MPS Group acquired Serie A rights.

Pitch International

147. Pitch International informed MPS Group of its proposed bid in the 2011 tender, which was the bid it made. Jinxin contends that Pitch's bid was not intended to be competitive but merely to give the false impression that the tender was a competitive one featuring bids from numerous agencies (a 'cover bid'), but this was not established on the evidence. MPS Group sub-licensed the Serie A rights in the former Yugoslavia to Pitch for €2 million per season.

RAI

148. In emails to himself dated 14-16 October 2009 Mr Silva referred to an agreement with Radiotelevisione Italiana SPA (RAI, the Italian public broadcaster) that RAI would not bid. He noted in emails to himself:

> "RAI Trade (€1m per year to around €2.5m per year)
>
> - No bid
> - If by December 31st they buy Italian language at €9.5m per year: j-v for America, Sub-Saharan Africa and Oceania, with 50% revenue sharing over €24m. MG of €1m. Co-signing of contracts.
> - If by December 31st they don't buy Italian language at €9.5m per year: "Consultant" for America, Sub-Saharan Africa and Oceania, with 10% commission"

149. RAI did not bid in the 2011 tender. It entered into an agreement that Mr Silva described as a "fake consultancy to justify the team of people from Rai Trade who pretend to act as our consultants". The effect of this arrangement was to reduce by €1 million the price that RAI paid to licence the Italian language international Serie A rights from MPS Group. To understand the reference to "fake consultancy", it is important to see Mr Silva's explanation:

> "…RAI said they would pay EUR5.5m, but only if the MPS Group engaged RAI Trade, RAI's consulting arm, as a sales consultant and pay them EURlm. The RAI executive I was speaking to said that they had to support RAI Trade. How RAI wanted to structure the deal was irrelevant to me. I didn't reject their offer of consulting services because I saw it as an opportunity to build my relationship with RAI generally. But I was really only interested in the net price for the rights because, in my view, RAI was a big, cold and stale public institution that moved slowly and was unlikely to deliver much value by way of their consulting services… Whether RAI delivered any consulting services was unimportant, which is why I joked about it, although in fact I think they did end up attending some meetings in New York with Carlo to help sell the rights."

UFA Sports

150. On 18 November 2011, Mr Silva notified an MPS Group employee that the managing director of UFA Sports GmbH, Mr Cordes, would meet with the employee to "transfer to you his proposal regarding not making real bids or problems on Serie A international [rights]". Mr Silva's evidence is that Mr Cordes had indicated "that UFA would not bid crazy on the rights if we made a commercial agreement".

151. On or around 24 November 2011, MPS Group entered into agreements with UFA Sports. These provided that, first, if UFA Sports won the rights it would *"*grant, licence and assign" them to MPS Dublin for €85 million per season. Second, they provided that if MPS Group won the rights it would appoint UFA Sports to act as its exclusive sales consultant in Germany, Austria, Bulgaria, Poland and Sub-Saharan Africa with a minimum guaranteed commission of €400,000.

B4

152. MPS Group and B4 made separate bids. Jinxin contends that this gave a false impression that they were competing against each other, but I am satisfied they were.

The FIFA World Cup

153. In comparison with Serie A, the FIFA World Cup was not at the centre of the case.

154. Mr Silva was ambitious for the MPS Group to secure involvement in FIFA World Cup media rights.

155. Mr Silva had previously worked with FIFA's Director of Television Rights. MPS Group had engaged individuals with knowledge and connections to FIFA. Infront Italy had been appointed by FIFA. There were relationships with key individuals at FIFA, including Mr Jerome Valcke, FIFA's Secretary General.

156. With the help of Mr Bogarelli and a director of Infront Switzerland, a role had been secured for the MPS Group as a sales representative for the Vietnam and Oceania rights to the 2014 World Cup. However other efforts had been unsuccessful, for some time.

157. TAF Sports Marketing Agency (TAF Sports) had been MPS Group's sub-licensee for Serie A rights in Greece. In Greece FIFA was represented by TAF Sports. Mr Silva believed that Mr Dinos Deris, the founder of TAF Sports, was someone who could help with "opening the door to FIFA".

158. In November 2011 Mr Silva emailed Mr Radrizzani and Mr Dalmiglio suggesting that since Mr Deris had Mr Valcke's "blessing" they could perhaps seek to "do Greece together" and use Mr Deris to assist MPS Group to obtain FIFA World Cup rights in other European countries.

159. In 2012, FIFA tendered the media rights for the 2018 and 2022 World Cups directly to broadcasters. It had been disappointed by the offers it had received in Italy and Greece. Rather than accept any of those offers, in December 2012 FIFA entered into an agreement with TAF Sports. The agreement was that TAF Sports, acting as FIFA's exclusive sales representative or consultant, would sell the rights for the 2018 and 2022 FIFA World Cups in Greece. TAF Sports would guarantee a minimum revenue, in exchange for a commission on any sales in excess of that figure.

160. Mr Deris emailed Mr Silva on 29 January 2013 to inform him of the agreement he had signed with FIFA. He said that Mr Valcke may be coming to Athens for the announcement and offered that: "If you want to discuss further of this issue call me anytime".

161. On 11 February 2013 Mr Dalmiglio emailed Mr Radrizzani and Mr Silva stating that he had raised with Mr Deris the possibility of working on obtaining the FIFA World Cup rights for Italy. Mr Deris's "very important friendship" (a reference to Mr Valcke) was noted as a key factor in TAF Sports having the agreement in relation to the rights to Greece.

162. Mr Dalmiglio proposed a meeting with Mr Deris in Milan, and that Mr Radrizzani also attend. Mr Silva indicated that he would attend and emailed both Mr Radrizzani and Mr

Dalmiglio asking them to spare half an hour at the end of the meeting with Mr Deris to discuss another matter.

163. The meeting in Milan was on 20 or 21 February 2013. Mr Silva told Mr Deris that he wanted MPS Group to enter into an agreement with FIFA similar to that enjoyed by TAF Sports. Very shortly after that meeting, Mr Deris contacted Mr Valcke and asked to discuss something "privately" on 22 February 2013. Mr Valcke responded that he could meet in Zurich, which they did on 12 March 2013. There Mr Valcke and Mr Deris discussed the possibility of a contract with MPS Group.

164. Jinxin infers from the matters leading up to the meeting in Zurich and subsequently, that at that meeting Mr Deris and Mr Valcke agreed that Mr Deris would pay to Mr Valcke half the amount of any sums that Mr Deris would receive from the MPS Group, in return for Mr Valcke supporting the award of the 2018 and 2022 FIFA World Cup rights for Italy. Jinxin further infers that this arrangement between Mr Deris and Mr Valcke had been discussed, planned and agreed at the earlier meeting between Mr Silva and Mr Deris, as the means by which the MPS Group would obtain the FIFA rights. Jinxin contends that the arrangement involved bribery of the decision-maker at FIFA, Mr Valcke, in return for preferential treatment in the allocation of the rights. Mr Valcke was, contends Jinxin, acting in breach of his duties to FIFA owed under FIFA's internal rules and pursuant to Articles 321 and 423(1) of the Swiss Code of Obligations.

165. Whatever the merits of the inference Jinxin draws about an arrangement between Mr Deris and Mr Valcke, on the evidence at trial I am not persuaded that Mr Silva discussed planned and agreed this as Jinxin alleges. I am persuaded only that Mr Silva sought Mr Deris' assistance to persuade FIFA, led by Mr Valcke, that MPS Group should secure 2018 and 2022 rights for Italy.

166. On 15 March 2013 Mr Valcke asked Mr Deris, by text message, whether he had yet signed a contract with Mr Silva. Mr Deris responded that he was working on (a draft of) the contract and he would send it to Mr Valcke to read. On 20 March 2013, Mr Deris requested Mr Valcke's personal email address so that he could send Mr Valcke a draft which he did later that day. By email dated 25 March 2013, Mr Valcke told Mr Deris that the draft contract was fine and provided some comments as to the inclusion of rights in relation to the Confederations Cup competition.

167. The draft included a provision for the payment of a success fee to Mr Deris. On 26 March 2013 Mr Deris sent the draft to Mr Silva for comment. For MPS Group, Avv. D'Addio reviewed the draft and proposed amendments including the removal of the provision for the payment of a success fee. Mr Silva sent a revised draft to Mr Deris on 15 April 2013.

168. Mr Deris complained the next day that what he had been sent was a "new contract". He wrote:

> "[t]he problem is that he has read and agreed the contract that was sent[t] to you from us. There are two major differences that we need to discuss before I will communicate to him."

The removal of the success fee was one of those differences. I accept Jinxin's contention that the person being referred to as "he" and "him" in the passage just quoted

from this email was Mr Valcke and further that it was clear to Mr Silva that Mr Valcke was involved with the draft contract and his approval of it was required as far as Mr Deris was concerned.

169. Mr Silva agreed to call Mr Deris. On 17 April 2013 Avv. d'Addio sent a revised version of the draft contract to Mr Silva stating that he had amended the draft to add a "signature fee" as instructed. The "signature fee" provided by the draft was in the sum of €1 million.

170. The next day Mr Deris emailed Mr Silva with a further draft of the contract stating that it included the "changes that were discussed between us". Mr Silva sent a further revised draft to Mr Deris on 22 April 2013, adding "We can sign". Mr Deris replied that he believed the draft would be acceptable and asked Mr Silva to have it signed and sent to him ahead of a meeting on 26 April 2013. I am satisfied that this meeting was to be with Mr Valcke.

171. Mr Silva sent the draft contract to Mr Auletta, Mr Radrizzani and Mr Dalmiglio under cover of an email marked "Strictly confidential" and stating (in Italian):

> "Marco please sign the attached contract and send it to me in pdf. The contract says that if this "friend Sirona Investments" gets us a contract with FIFA for the World Cup Rights for Italy 2018 and 2022, and the contract suits us and we will sign it, we will pay this "friend" a commission (1 million). We will only pay if we have the rights to the World Cup from FIFA, on conditions that are good for us, otherwise we will pay nothing. These are rights worth [more than] 300 million euros, not bad. There's an ["aumma-aumma"] behind it that I'll tell you verbally. The contract was prepared by Mr d'Addio, everything is ok, sign and send it back to me in pdf so that I can collect the signature of the "friend". I wanted to update you on this, don't tell anyone about it not even internally for now (only the four of us know)."

172. As Mr Silva had explained, the contract (the Sirona Agreement) was with a company named Sirona Investments. That company, incorporated in the Marshall Islands, was not one with which MPS Group had previously dealt. The contract provided that MP & Silva Limited (MPS London, a company within the MPS Group and a subsidiary of MPS Luxembourg), would appoint Sirona Investments "exclusive consultant in the negotiations with FIFA". Sirona Investments would be paid a €1,000,000 success fee in the event that an agreement was concluded between MPS London and FIFA for MPS London to act as sales representative for the 2018 and 2022 rights, together with two thirds of any profits earned by MPS London pursuant to that agreement.

173. By an email dated 12 June 2013 Mr Silva was also referring to rights "we have already for Italy". Following negotiation by Mr Deris, on 4 October 2013 MPS London concluded a written Sales Representation Agreement with FIFA (the FIFA Sales Representation Agreement).

174. The conclusion of the FIFA Sales Representation Agreement also followed presentations given by Mr Valcke to the FIFA Executive and Finance Committee meetings on 3 October 2013. As Jinxin points out, no other agencies were presented as potential candidates for the 2018 and 2022 rights. The Executive and Finance Committees did not object to MPS London's appointment.

175. By the terms of the FIFA Sales Representation Agreement, MPS London agreed to act as FIFA's exclusive sales representative in respect of the rights for the 2018 and 2022 World Cups in Italy, San Marino and Vatican City. MPS London guaranteed a minimum price for the rights of €185 million for 2018 and €195 million for 2022. These were very high figures. A commission would be paid on any amount received in excess of the guarantee.

176. Sirona Investments issued an invoice to MPS London for payment pursuant to the Sirona Agreement on 11 October 2013. On 21 October 2013, MPS London paid €1,000,000 into a bank account. It has since been alleged in criminal proceedings that the account was beneficially owned by Mr Deris and that on 1 November 2013 Mr Deris paid €500,000 from this bank account into a bank account owned by Sportunited, a company of which Mr Valcke was the beneficial owner.

177. In the course of 2014 and 2015, Mr Deris entered into negotiations with FIFA to extend the FIFA Sales Representation Agreement to the 2026 and 2030 World Cups. In March 2015, Mr Silva and Mr Deris negotiated a second agreement between MPS London and Sirona in relation to that extension, in materially similar terms to the Sirona Agreement. According to Jinxin, Mr Valcke's company received a further €750,000 from Sirona Investments. Even if that was correct, I am not satisfied it was known to Mr Silva or otherwise to MPS Group.

178. In the event the extension to the FIFA Sales Representation Agreement was not finalised. On 27 May 2015, a number of FIFA officials were arrested by the Swiss Police. This action was pursuant to a series of indictments in the United States relating to allegations of corruption in connection with the allocation of rights via intermediary Brazilian and Argentine agencies. Swiss prosecutors also announced an investigation into the award of the 2018 and 2022 FIFA World Cup competitions to Russia and to Qatar respectively.

179. These developments, and the spotlight on the role of agencies, were an immediate reputational concern for the MPS Group. An article was circulated among MPS Group in which an unnamed industry figure warned broadcasters that media rights agencies might present a money-laundering risk. MPS Group's in-house solicitor commented:

> "We are also a FIFA licensee, so there is a lot going on. Legally we are not exposed as we have done nothing wrong. If our broadcasters start to talk about Fee reductions due (relating to disrepute) then it is an issue."

180. On 3 June 2015, the MPS Group wrote to FIFA to terminate the FIFA Sales Representation Agreement. Mr Silva subsequently emailed Mr Deris to let him know, and to terminate the agreement with Sirona Investments. Referring to the FIFA Sales Representation Agreement, on 17 September 2015 Mr Silva wrote "We did well to get out of the contract in good time". The FIFA Sales Representation Agreement did not feature in the forecasts provided to Jinxin at the time of the SPA.

181. As a matter of record, for its part, FIFA did not accept the termination of the FIFA Sales Representation Agreement. Instead it sought to enforce the guarantees and an arbitration followed. The dispute had not been resolved as at the date of the SPA or its completion.

182. The Trial Defendants point out that Mr Silva was not suggested by Swiss prosecutors to have known of the alleged payment arrangements between Mr Deris and Mr Valcke. It is Mr Silva's evidence that he did not know that any payment was being made to Mr Valcke. I do not find it proved at this trial that he did know.

183. Jinxin contends that its case on knowledge on the part of the Trial Defendants is borne out by a number of points. Principal among these are the following, with my responses.

184. Jinxin contends that Mr Deris was not engaged by the MPS Group for his knowledge of FIFA's contractual or negotiation practices but for his special "friendship" with Mr Valcke. In my judgment both were present as factors. The factors do not prove knowledge by the Trial Defendants of Mr Deris agreeing to pay Mr Valcke.

185. Jinxin contends that the purpose of the Sirona Agreement was unclear and its terms uncommercial. Jinxin refers to the fact that the MPS Group was an established, international sports rights agency which, through Mr Silva, Mr Radrizzani and others already had long-held, pre-existing relationships with key individuals at FIFA. Jinxin argues that there was no obvious commercial need to engage Mr Deris to assist with contacting either Mr Valcke or FIFA, particularly in view of the comparatively much smaller size of Mr Deris' company TAF Sports and its more modest territorial reach of Greece and the Balkan countries. I am not persuaded by Jinxin's argument. It does not sit with the fact that the MPS Group had not been successful before the opportunity arose to work with Mr Deris, whereas Mr Deris had enjoyed success before.

186. Jinxin contends that it has "found no evidence of" Sirona Investments having performed services pursuant to the Sirona Agreement capable of justifying the payment of a €1,000,000 success fee up front, plus two thirds of any profits earned pursuant to the FIFA Sales Representation Agreement. The terms of the agreement, says Jinxin, are only explicable if it was intended to also benefit someone other than Mr Deris who could play a much greater role in determining whether MPS Group would be awarded the FIFA contract.

187. I am not persuaded by this. The success fee is a large sum, but not in context of the sums that MPS Group would pay for the rights. The price was payable for the result and not by reference to the size of the role that would be played. Although MPS Group would retain only one third of profits, that is a sign of the strength of Mr Deris' bargaining position. There is ample reason why that should remain attractive to it. The MPS Group, and Mr Silva, wanted involvement in the FIFA World Cups very much indeed. That involvement is to be seen in an overall context of adding to its presence in the market. To secure involvement in the rights for the 2018 and 2022 World Cups in Italy was a major step, with wider potential in the future.

188. Jinxin contends that if the Sirona Agreement was a legitimate contract for genuine consultancy services there would have been no need to treat it with great secrecy, whereas Mr Silva was at pains to ensure that it was known to as few people as possible, even within the MPS Group itself, with knowledge limited to four senior executives. In his evidence Mr Silva referred to commercial confidentiality, and that he did not want news to leak that MPS Group was acquiring the Italian World Cup rights. Jinxin suggests that this is unconvincing, but I disagree and I accept the evidence. Mr Silva went about explaining and handling confidentiality in a rather dramatic way, but having

seen him in the witness box I conclude that that was reflective of his personality rather than revealing of something more sinister.

189. Jinxin contends that the circumstances should have prompted questions about why the agreement be made with Sirona Investments rather than TAF Sports, and why Sirona Investments was requesting that payment be made to a Liechtenstein bank account. Even accepting that to be so, these points concern Mr Deris and his responsibilities to TAF Sports, rather than evidencing knowledge of payment to Mr Valcke.

190. Jinxin contends that any honest businessperson in the circumstances would take steps to satisfy themselves that any monies paid to Sirona Investments would not find their way to Mr Valcke or any other FIFA officers or employees, yet the Defendants took no such steps. I do not accept that that is so absent some firmer foundation for suspicion that monies might be passed by Mr Deris to Mr Valcke or other FIFA officers or employees.

191. Jinxin refers to the fact that from what Mr Silva was told by Mr Deris it appeared that Mr Valcke was taking an interest in the terms of the Sirona Agreement. Jinxin contends that there is no honest reason why Mr Valcke would have taken an interest in whether the Sirona Agreement contained a success fee, nor any honest explanation for why Mr Valcke's discussion or agreement was required for the terms of a contract which was ostensibly between MPS Group and Sirona Investments. This cannot, contends Jinxin, be reconciled with the Trial Defendants' claim that they were ignorant that Mr Valcke stood to benefit from the sums payable under the agreement.

192. These last points concerned me greatly. But, in the result, I am not satisfied that they are sufficient to show knowledge on the part of the Trial Defendants of bribery of Mr Valcke. The exchanges are consistent with Mr Deris taking every opportunity to emphasise his contact with Mr Valcke in order to get MPS Group to sign the Sirona Agreement on terms that were best for Mr Deris and Sirona Investments.

193. Jinxin then contends that had the Trial Defendants been unaware that Mr Valcke was benefiting from the sums paid to Sirona they would have taken steps to satisfy themselves that this was not the case, after the emergence of the FIFA scandal from May 2015. However here I accept Mr Silva's response in his evidence that he considered TAF Sports a respected company and Mr Deris had reassured him. Mr Auletta did not turn his mind to the matter, which is not impressive, but the fact is, I find, that he did not.

194. Also justifying criticism is that to the MPS Group's auditor, Grant Thornton, in a management representation letter dated 22 February 2016, signed by Mr Auletta, the Group confirmed that the Sirona Agreement met the requirements of its recently adopted anti-corruption and bribery policy and that Sirona Investments was a subsidiary of TAF Sports. Nothing had been done to carry out due diligence and risk assessments or establish that Sirona Investments was in fact a subsidiary of TAF. Mr Auletta's position was:

> "This scenario is not deemed possible, and there is no reason to believe that it is conceivable. Please note that a claim by MP&S on this matter could possibly give rise to a libel/slander charge from the persons/entities involved. Therefore, no step has been taken."

The Milan Investigation

195. The Public Prosecutor's Office of Milan issued a search warrant in respect of Mr Silva's home and computer equipment on 8 October 2015. As part of the search, the Milan prosecutor was to seize four laptops belonging to the MPS Group.

196. The terms of the search warrant served on Mr Silva in October 2015 included:

> Among the Italian clients of [a firm called Tax & Finance], the position emerged of the company INFRONT ITALY S.r.l. (INFRONT), managed by Marco BOGARELLI, Giuseppe Renzo CIOCCHETTI and Andrea LOCATELLI (respectively Chairman and Board Members) which operates in the sector of the purchase and sale of television rights relating to sport, is advisor to the Lega Calcio for the marketing, at national and international level, of those concerning the Italian championships of Serie A and B, the Italian Cup and the Italian Super Cup and also manages the marketing rights of some of the most important Italian football teams, including A.C. Milan, S.S. Lazio, Genoa C.f.C. and U.C. Sampdoria.
>
> The in-depth investigations relating to INFRONT have shown how this company sometimes operates undue financing - even foreign to foreign - in favor of some football clubs, in order to allow them to evade the checks that on their financial balance are ordinarily ordered by the F.I.G.C. through the CO.VI.SO. C., thus hindering its supervisory functions."

197. Mr Licciardi, of the public relations consultants Edelman engaged by MPS Group, initiated an email chain with Mr Silva, Mr Radrizzani and Avv. d'Addio. Avv. d'Addio stated:

> "We are not yet in possession of the report, but the matters should be referred to cases of violation of article 2638 of the Italian Civil Code (impediment of the supervisory authorities) in relation to previous assignments of audiovisual rights"

Avv. d'Addio proposed text for a draft press release, as follows (translated from the original Italian):

> "With reference to the news published in today's press regarding the ongoing investigation into the assignments of television rights for the Serie A championship, Media Partners & Silva Limited – assignees of the Serie A international rights – confirms that its managers have offered full collaboration with the searches organised by the Public Prosecutor's Office of Milan. In the same way, the company intends to cooperate fully with the further investigation, in order to clarify its complete lack of involvement in the matter under investigation. Media Partners & Silva wishes to clarify at this point that none of the facts reported in today's news can be attributed to the actions of the company or its managers, which always have been based on the highest principles of transparency and commercial fairness."

198. An article dated 28 January 2016 published by *Il Fatto Quotidiano*, referenced allegations into bid-rigging and specifically the "obstruction of supervision and bid-rigging, for the assignment of Series A TV rights in the three year period 2015-18".

199. On 30 January 2016 the newspaper *La Repubblica* stated that:

> "Two reports by the Guardia di Finanza (Italian Finance Police), which has been investigating the Serie A TV rights auction for some time, clearly outline what everyone has known all along. Namely, there is a "real 'system' with Infront at the centre... And that this system "was able to influence the awarding of TV rights and mask the actual financial situation of certain clubs through the provision of ad-hoc financing".

The article went on to report that Mr Silva was suspected to play a key role in the system and was "a kind of hidden partner to Bogarelli, with whom he is in constant contact".

200. On 30 and 31 January 2016 there was an email discussion between Mr Marinelli of UBS and Mr Silva, Mr Radrizzani, Mr Ciocchetti, Mr Auletta, and Mr Cappelletti. This concerned a bidder's concerns about the potential loss by the MPS Group of Serie A. Mr Marinelli advised that the "commercial team" should "stress our belief in the ability to retain Serie A" and "clarify that the discussions is on the commercial issues around Serie A and we WIL NOT [sic] discuss the investigation."

201. An interview with *La Repubblica* given by Mr Silva and published on 1 February 2016 stated:

> "The idea that the prosecutors have formed is simple: Infront keeps Serie A clubs alive by overpaying contracts for commercial rights "at a guaranteed minimum", or through cash injections conveyed from Switzerland. In exchange, the presidents handed over the management of the company's policy to Bogarelli. In all this, a key role would be played by Riccardo Silva, owner of the company that won the foreign rights auction. They accuse you of having bought the rights for Serie A at bargain prices. And of using the large margins generated to consolidate the Infront network."
>
> "The Italian one is just one of the almost 70 packages of rights that we manage. We have Roland Garos, F1, the NFL for Europe. The auction for the foreign rights of Serie A is one of the most transparent in the world. There is a public tender, a notary. Our offer was the best. 30% more than the second. I was even hurt .. And there was no one who complained."

202. A later article published in *SportsBusiness*, a publication ultimately owned by Mr Silva and Mr Auletta, was to report that the Milan prosecutor's office had informed Mr Silva in October 2015 that it had opened a criminal investigation into Mr Bogarelli, Mr Ciocchetti and Mr Silva "for bid rigging in relation to the 2015-2018 domestic rights sales process for Serie A" and unlawful funding of Serie A clubs. The reference is to domestic rather than international rights.

203. A decision of the Milan Review Court dated 21 June 2017 would later describe the investigation as extending to:

> "… committing an unspecified series of crimes, including bid tampering, money laundering, aggravated fraud, obstructing supervisory duties, tax evasion and all crimes necessary at any time to control the exploitation of audiovisual rights to football, with the appropriation of money which, in a fair competitive system, should have been received by LEGA Calcio and, therefore, pro rata, by the clubs forming part of it"

The matters alleged were said to be in contravention of articles 110 and 416, paragraphs 1, 3 and 5 of the Italian Criminal Code.

204. Jinxin highlights the specific allegation made in these terms:

> "The organization existed from 2009 to the end of 2015, the fundamental role of advisor to LEGA CALCIO being held by the company INFRONT ITALY srl in which BOGARELLI and CIOCCHETTI were directors, able to alter and control the results of the tenders held by the LEGA to market the television rights, as well as the equally fundamental role played by Riccardo SILVA, the constant successful bidder with his company MP SILVA Ltd for the audiovisual rights intended for the foreign market, thus able to market, produce and distribute among his associates the illegal income resulting from the criminal organization, through his offshore corporate structures."

205. As Jinxin properly acknowledged in its written opening, although the request lodged by the Milan Public Prosecutor was (as summarised by Jinxin) for the precautionary detention of Mr Silva, Mr Bogarelli and Mr Ciocchetti on suspicion of conspiracy to commit bid tampering, money laundering, aggravated fraud, obstructing supervisory duties and tax evasion in relation to the sale of Serie A rights in the period 2009 to 2015, that request was denied in April 2017 and the prosecutor's appeal against that decision was rejected in June 2017, effectively bringing the criminal investigation against Mr Silva to an end.

EBITDA

206. A FY2016 EBITDA figure of US$77.7 million appeared in the EY VDD Report and one of US $82.7 million in the UBS Business Plan.

207. During the due diligence process, KPMG had drawn Baofeng's attention to numerous issues with the reliability of MPS Group's financial information. KPMG specifically advised that a new FY2016 EBITDA forecast should be produced. KPMG's 'Draft finance and tax red flag report' dated 13 January 2016 was circulated on 23 January 2016 and it stated that the financial results being presented to Jinxin should be treated with 'caution' and 'significant caution'.

208. As DealGlobe put it in their own summary of KPMG's work, 'more analytical work is needed' on MPS Group's EBITDA calculations. Upon being informed of KPMG's conclusions, Clifford Chance advised that a binding offer should not be made. Clifford Chance subsequently advised on 22 January 2016 that Jinxin had 'good logical reasons' for inserting a downwards adjustment mechanism for FY2016 EBITDA in the SPA.

209. Jinxin contends that there were a number of issues with potential negative impacts, with an overall worst-case scenario that would reduce the 2015-16 EBITDA from US$81 million to US$53 million. The issues were as follows:

    a. The UEFA European Football Championship (Euro 2016) in Hong Kong, involving up to US$11 million.

    b. The Football Association of Malaysia in respect of domestic Malaysia football, involving up to US$4 million.

c. The English FA Cup in Hong Kong, involving up to US$8 million.

d. The English Football League and the English Football League Cup in Thailand, involving up to US$2 million.

A further issue on Opex involved up to US$3 million.

210. Mr Cappelletti described the issues in an email dated 1 February 2016 to Mr Auletta as:

> "some commercial and operating issues that might have a significant impact on corporate profit in relation to the estimates in the current Business Plan."

211. Mr Auletta removed reference to the Opex issue and amended the stated impact of the remaining issues, concluding that the worst-case scenario was a reduction in EBITDA to US$58 million but that a more realistic scenario was US$72 million. He sent this to Mr Silva, Mr Radrizzani, Mr Pozzali and Mr Cappelletti.

212. In an email chain that followed Mr Pozzali wrote:

> "I can't believe what I'm reading. Either we are crazy or something isn't working and I would like to know what."

Mr Radrizzani wrote:

> "In any case, even if the EBITDA is lower, we are getting less money but it is better than nothing. We cannot go on like this anyway, so let's see the bids and if they then adjust them based on the lower EBITDA well never mind… we certainly won't die of hunger."

Mr Cappelletti wrote:

> "… deviating a significant magnitude from the plan might have a negative impact on the perceived credibility of that plan by the various bidders and potentially … significantly increase the risk of not receiving bids or blowing the deal, even though negotiations are at an advanced stage."

213. In a separate email dated 1 February 2016 from Mr Dalmiglio to Mr Radrizzani, Mr Silva, Mr Pozzali, Mr Auletta and Mr Cappelletti, Mr Dalmiglio circulated a "sales report" in respect of the first half of the 2015/16 financial year. He referred to this as containing "an explanation of the major issues experienced throughout the first part of the fiscal year".

214. The attached report indicated that the MPS Group had not achieved its expected level of sales in the first half of the fiscal year and would miss its sales forecast for the remainder of the year by between USD 4,356,369 and USD 13,356,369. The report further identified a number of "Points to Raise" and "Trouble properties" in respect of sales targets that had not been met. Some of these (including Euro 2016 in Hong Kong, FA Cup in Hong Kong and France Ligue 1) were described as being a "Red Flag Property".

215. Around and after the time of these emails, discussions and presentations continued in connection with the proposed sale. These included the presentation of the EY Databook

Addendum, the presentation of two further updated UBS Business Plans and various meetings between principals and advisers on 16 and 17 February 2016 and between principals on 18 February 2016.

216. However, the EBITDA figures in Vendor Documents were not adjusted to reflect the issues referred to above and remained at approximately US$81 million. Specifically, the US$82.7 million figure was not changed when the final iteration of the UBS Business Plan dated 20 February 2016 was produced.

217. Jinxin infers, in the light of the above emails, that a conscious decision was taken not to amend or adjust the EBITDA figures lest this interfere adversely with the sales process. In one sense I can accept this, but I do not accept Jinxin's further conclusion that this left the EBITDA figures falsely inflated to the knowledge of among others the Trial Defendants. The EBITDA figures must be considered in the context of other material documents and facts that I address below. In my judgment, the decision not to adjust the figures has not been shown to be dishonest.

218. On 21 January 2016, Baofeng and Everbright offered to purchase the MPS Group shares on the basis of a FY2016 EBITDA estimate of US$80 million, with a downward adjustment mechanism (no upward adjustment). By 15 February 2016 a draft of the SPA provided that the '2016 EBITDA Target' was US$80 million.

219. On 17 February 2016, there was a meeting at A&O's offices between principals. The agenda included 'adjustment to consideration', and stated: 'concept of EBITDA adjustment to be discussed'. At that point, the sellers' position was said to be 'adjustment not accepted'. On 18 February 2016, there was a second meeting.

220. On the morning after those meetings (19 February), Mr Zhang Zonghui, a member of Everbright Capital's project team, received an email with the attachment 'Golden Apple Project Trading Plan 1_20160219_PICC'. The attachment was a 'transaction structure and fund plan' containing a valuation table, which took the figure US$70 million for '2016 Audited EBITDA'. Applying a multiple of 15.7, this analysis produced an overall valuation of MPS Group of US$1.1 billion. Mr Zhang agreed in his evidence that the use of a US$70 million EBITDA estimate had come out of the meetings between principals on 17-18 February 2016. The board of Everbright Capital was told that MPS Group had 'promise[d] to reach' an FY2016 EBITDA projection of US$70 million.

221. That same day, on 19 February 2016, the MPS Group produced what was known as the Pending Rights Document. This addressed different sports media rights properties which remained unsold as at 19 February 2016 (eight months through MPS Group's financial year), and identified that this could produce a gap to reforecast of US$14 million on FY2016 EBITDA. MPS Group shared this document with Jinxin. Mr Zhang understood that a failure to complete those sales would have a significant impact on EBITDA, even if it represented a relatively small proportion of MPS Group's total revenues.

222. That evening, Mr Marinelli sent an email to UBS and A&O summarising the commercial terms that had been agreed with various bidders. The consideration was set at a "minimum EBITDA of 70m" with an upward adjustment "if EBITDA is above 72m" by "amount of overperformance x 16" and a downward adjustment, for "underperformance", "if EBITDA is below 68m".

223. This arrangement was formalised at clause 3.8(a) of the SPA, with the 'Negative EBITDA Adjustment' defined at Schedule 9. These provisions are included in Annex 1 to this Judgment. In summary the parties agreed that if actual FY2016 EBITDA turned out to be less than US$68 million, then Jinxin would receive the amount by which it was less than US$68 million, multiplied by 10.4, subject to a maximum return of US$100 million.

224. Jinxin says of the adjustment mechanism as follows:

> "Absent disclosure of the true position, the negotiation of the price adjustment mechanism was the perpetuation of the [Trial] Defendants' fraud, not an answer to it."

However, on the facts, the true position was disclosed, and the negotiation of the price adjustment mechanism reflected the fact that Jinxin was aware that the figure of US$82.7 million in the UBS Business Plan no longer represented the full picture as the point of entry into the SPA approached.

225. Jinxin did not call any witnesses from Baofeng or Clifford Chance. Mr Zhang could not recall being told about the exchanges with Clifford Chance and could not assist with whether the downward adjustment mechanism was designed to mitigate concerns that KPMG had identified with the reliability of MPS Group's financial information, and the robustness of MPS Group's EBITDA estimate. Nevertheless, I agree with the Trial Defendants that, given the terms of Clifford Chance's advice, this is likely.

226. What was known as the 'misty mountain' presentation delivered on 29 February 2016, and also distributed to potential investors, stated under the heading 'going concern risk of assets' that the SPA had a 'Value Adjustment Mechanism clause for 2016 performance'.

Euro 2016

227. The Euro 2016 rights concerned the sale of Euro 2016 in Hong Kong and Japan. The Euro 2016 Championship was scheduled to take place in June and July 2016. MPS Group's financial year ended in June 2016, and so the tournament straddled both FY2016 and FY2017.

228. The rights-in cost for the Euro 2016 rights was US$46 million across two years. The projected rights-out revenue for Euro 2016 was US$47.8 million across two years. This produced a forecast profit for the Euro 2016 rights in the single year FY2016 of US$900,000.

229. By 19-20 February 2016, MPS Group had sold US$16.68 million for Euro 2016, against half of the projected US$47.8 million or US$23.9 million. MPS Group informed bidders (including Jinxin) that, as at 19-20 February 2016, it had sold US$16.68m for Euro 2016, and that this produced a shortfall against the overall forecast for Euro 2016 of US$7.22 million.

230. The figure of US$16.68 million sales for Euro 2016 included additional revenues being booked against Euro 2016 as Japan sales as part of a wider deal with SoftBank, which covered several different sporting competitions. This was brought to UBS' attention at

the time, and Mr Auletta's evidence, which I accept, was it was common practice for a sports media rights business to allocate sales of rights in a contract such as this 'in the best way possible' from both a 'commercial point of view [and] a cash flow point of view'.

231. The UBS Business Plan showed a current sales shortfall of US$7.214 million. The Pending Rights document stated that US$7.214 million remained "available for sale". The Pending Rights document also identified that a reason for the sales shortfall was a lack of sales in Hong Kong, and that Hong Kong discussions were only likely to conclude in March or April 2016 (that is, after the SPA would have been signed). KPMG reviewed the Pending Rights document, and informed Jinxin of the position in its financial and tax due diligence report of 2 March 2016.

232. On 27 January 2016 Ms Lee (MPS Group's Managing Director for the Asia-Pacific Region) had provided an internal update on Euro 2016 sales in Hong Kong, and on the interest levels of various Asian broadcasters. She explained that the package had been split into 'FTA' (free-to-air), pay-TV and 'OTT' rights ('over-the-top', such as via the internet). NowTV had offered US$7 million for FTA and pay-TV rights (US$3.5 million for FY2016), and had offered to partner with MPS Group to push the OTT offering in Hong Kong. TVB was interested in the OTT package, and would revert with a budget in mid-February 2016. Ms Lee recommended that a deal be closed with NowTV, and that MPS Group also aim to secure a deal with TVB for the OTT package for US$7-8 million (US$3.5-4 million for FY2016), along with a revenue share for advertising and commercial subscriptions. She stated that the position would be revisited in mid-February after the Lunar New Year, and the target was to get everything in place by March 2016.

233. In the email of 1 February 2016 sent by Mr Auletta to (among others) Mr Silva, it was noted that there may be 'over-performance' in Japan worth US$10 million (US$5 million for FY2016). Depending on those factors, there could be a potential negative impact on EBITDA of US$1-11 million (US$0.5-5.5 million for FY2016).

234. At the same time, two additional courses were proposed in a 'Sales Performance Issues Document'. The first was bundling Euro 2016 with the FA Cup. The second was delaying the sales process. This document also stated that, depending on how events turned out, the best and worst case for Hong Kong sales was thought to be US$11-7 million ($5.5-3.5 million for FY2016).

235. On 4 February 2016, Ms Lee confirmed that her plan of 27 January 2016 remained 'our game plan'. On 6 February 2016, Ms Lee explained that the worst case was US$3.5 million from NowTV and US$1.5 million in OTT sales for FY2016. If the game plan worked, this would have resulted in an additional US$3.5 million and $3.5-4 million in sales for Euro 2016 in FY2016, bringing the total projected revenue to US$23.68- 24.18 million.

236. The position continued to develop over February 2016. On 19 February 2016 MPS Group's internal sales team was informed that TVB would not be in a position to make an offer for the OTT package. Mr Nikolaou advised that MPS Group close the US$7 million deal with NowTV, and decide whether to pursue the sale of its own OTT package directly to consumers (as opposed to via a broadcaster). Ms Lee produced a

document titled 'EURO 2016 Hong Kong Project Plan Feb 19th2016'. This set out in detail MPS Group's plan for the sale of OTT rights direct to consumers in Hong Kong, including proposals for partnerships with local media organisations, local broadcasters, social media advertising, pricing strategy and a proposed partnership with Samsung to deliver the OTT package over Samsung devices. Ms Lee's plan concluded with a project implementation timetable, which envisaged launching the platform on 23 May 2016.

237. There is no evidence that persuaded me that it was unrealistic. Mr Sandy Cowan, an expert called by Jinxin in the field of business forecasting and company valuation, accepted that Ms Lee's plans showed the position in Hong Kong was still fluid at the time. Cross examined by Mr Daniel Benedyk for the Trial Defendants, he confirmed that he had not seen Ms Lee's plan before, and that in order to reach a reliable view on the material inaccuracy of the Euro 2016 forecast, he would need to take some time to look at it. In his view, a "key factor" was whether or not the rights could be sold through Samsung.

238. The Euro 2016 tournament was not scheduled to begin until June 2016. The MPS Group expected to be able to make significant sales close to the start of tournaments of that kind, and this was explained to Jinxin. The EY VDD Report explained that for Euro 2016 "management expects to secure available for sale amounts in the lead up to the event, in June/July 2016". The DealGlobe report noted that an event such as Euro 2016 would be "offered for sale just before the beginning of matches". Mr Silva explained in his evidence that there was 'so much that could have changed in the final five months' between the email of 1 February and the start of Euro 2016. In particular, on Mr Silva's evidence, which I accept, Euro 2016 sales in Hong Kong could have been sold "at any time up until the competition started in June 2016 – we could have sold a lot at the last minute, which is normal".

239. In the event LeTV did purchase the rights, for US$5.6 million (US$2.8 million for FY2016). This sale went through on 13 May 2016, just before the tournament started, and the MPS Group secured US$21.2 million rights-out revenue for Euro 2016 across Hong Kong and Japan for FY2016. As the Trial Defendants point out this approached 90% of US$23.9 million.

The Football Association of Malaysia

240. Pursuant to a contract between the MPS Group and the Malaysian Football Association (FAM), the MPS Group was appointed to market and distribute rights to Malaysian football. This did not involve the MPS Group purchasing any rights to Malaysian football, so it had no 'rights-in' costs. However, in order to secure any commission, it had to achieve a minimum return for FAM of 70 million Malaysian Ringgit for 2016. In the UBS Business Plan, MPS Group projected that it would sell enough under the contract to become entitled to commission in the sum of US$975,000.

241. On 7 March 2016 A&O produced a further version of a disclosure letter which was sent to Jinxin's legal team and signed the following day. This explained the FAM issue and stated:

> "MPS [Group]…believes the maximum potential negative impact on 2016 estimated EBITDA to be equal to the loss of the projected advis[o]ry fee (i.e. USD 975,000)".

After the SPA had been signed, Baofeng's finance team confirmed that it had been aware of a potential shortfall under the FAM contract for FY2016 during the due diligence period prior to the SPA, but that this had been 'parked for resolution later'.

The FA Cup

242. In 2012, MPS Group acquired the rights to distribute the FA Cup in Asia for the 2011/12 to 2017/18 seasons. Initially, it had been thought that the MPS Group would be able to secure a sale to LeTV for US$8 million per season. However, the email of 1 February 2016 reported that LeTV was "no longer interested in the rights to 15-16", and that an alternative broadcaster had not been identified.

243. The potential negative impact on FY2016 EBITDA was thought to be in the region of US$8 million - US$6 million, depending on whether an alternative broadcaster could be identified.

244. On 4 February 2016, and before the next iteration of the UBS Business Plan on 20 February 2016, LeTV wrote to Ms Lee to confirm that after a "long discussion internally" LeTV would in fact like to purchase the Hong Kong rights, although for US$25 million across several seasons. Ms Lee responded on 16 February 2016, attaching a draft contract. The draft contract envisaged selling to LeTV the Hong Kong rights to the FA Cup for US$6.4 million in 2015/16, a reduction in MPS Group's projections by US$1.6 million.

245. As the Trial Defendants put it, the UBS Business Plan did not pick up this change when the next iteration was issued on 20 February 2016. Mr Auletta could not assist as to the reasons why, and said he assumed that the commercial management of MPS Group considered that they could still achieve the original figure, since there were many examples in MPS Group's history where it had over-achieved. I accept his evidence here as truthful. It was not suggested to Mr Auletta in his evidence that he had sought deliberately to ensure no change was made to the UBS Business Plan.

The English Football League and the English Football League Cup

246. The MPS Group held the rights to distribute the English Football League and the English Football League Cup in various Asian territories. For FY2016, the 'rights-in' cost for the Football League was US$4.3 million, and the projected 'rights-out' revenue was US$8.9 million. This produced an anticipated gain of US$4.6 million

247. In the email of 1 February 2016, MPS Group noted that a sale in Thailand for US$2 million had been regarded as "highly probable", but that no sale had been completed and now more than half the season had been played. The anticipated negative impact this could have on FY2016 EBITDA was said to be US$2 million. By 20 February 2016 (the date of the last iteration of the UBS Business Plan), the MPS Group had secured contracted revenue for the Football League in FY2016 of US$7.58 million, a shortfall, at that stage, of US$1.32 million.

248. MPS Group disclosed this shortfall to Jinxin. First, within the "secured and not sold" section of the Business Plan, which gave the US$1.3 million figure. Second, within the Pending Rights document, which provided the same figure and described it as "available for sale". The Pending Rights document also identified, within the 'comments' section, that in addition to Thailand, the other unsold territories were Mongolia, Taiwan, Indonesia, Australia and the Pacific Islands. Mr Cowan, the expert called by Jinxin, did not conduct any analysis of MPS Group's prospects of meeting the US$1.3 million shortfall through sales in any of those territories.

If representations were made, were they made to Jinxin?

249. Mr Xiang Tong was the sole director of Jinxin at the time of the SPA. The Court heard evidence from Mr Zhang and from Mr He Mannian a board director of Everbright Capital and Mr Wu Hao of the Investment Decision Committee at Everbright Capital.

250. It is convenient to mention here that there are matters to criticise in Mr Zhang's behaviour in the transaction. An example is his involvement in creating a record of a meeting on 27 April 2016 when there had been no such meeting. As he gave evidence it became clear that he is not self-aware, and at the time was out of his depth in a transaction as significant as the SPA. But I am able to accept his evidence where I draw on it in this judgment.

251. Jinxin's case is:

> "Each Representation was made in the context of and for the purpose of facilitating the sale of MPS shares. In such circumstances, it is to be inferred that this was with the intention that the Representations be relied upon by each individual party to whom the Vendor documents were made available, by the corporate parties (namely Baofeng and Everbright) who would make the operative decisions to enter into and complete any transaction of purchase and by such if any vehicle or vehicles (in the event, Jinxin) established by such parties to effect the transaction."

252. Of course, the words or conduct must reach the representee, but the representee need not be aware of the making of the representation. As described by Lord Leggatt in Credit Suisse Life (Bermuda):

> "165. … Generally, no claim can arise if the claimant was not even aware of the conduct itself, particularly where it takes the form of words. In Leeds, para 70, Cockerill J gave the example of a very clear representation made just at the moment when a meeting participant's wifi dropped out momentarily or when a pneumatic drill had started up outside her window so that she could not hear anything but that noise for the crucial 30 seconds. In such a case the representation clearly can have no impact, whether conscious or unconscious, on the mind of the claimant. And as Lord Toulson observed in Zurich Insurance Co plc v Hayward [2017] AC 142, para 62:
>
> > "A misrepresentation which has no impact on the mind of the representee is no more harmful than an arrow which misses the target."
>
> 166. Yet such examples do not justify the conclusion drawn in Leeds, para 70, that "[i]f there is no awareness of the making of the representation, logically it cannot

> operate". The requirement is not one of logic but a feature of the factual situation. Cases such as Gordon v Selico in which defects are deliberately covered up show that it is possible to make a fraudulent misrepresentation that gives rise to liability for deceit without the claimant even being aware of the conduct which gives rise to the representation. Another illustration is the case mentioned earlier of a computer which acts automatically in response to the input of information known by the person entering it to be false. There is no reason in principle why in such a case that person should not be held liable in deceit, even though the claimant is unaware of the making of the representation. The requirement to prove reliance can be met by showing that the claimant assumed and acted on the assumption that the information received by the computer was true, when it was not."

253. In the circumstances of the case it is in my judgment sufficient that (if they were made) the representations reached Mr Zhang. He received and engaged on behalf of Jinxin. True, Jinxin did not come into existence until 11 February 2016 but what he had received by then was then intended for Jinxin. He did not meet the Trial Defendants before the SPA was signed, but he did receive the relevant Vendor Documents.

The alleged Business Practices Representations

254. Jinxin alleges that two representations were made expressly:

> (ER1) "as to the absence of bribery, corruption or any other dishonest illegal or unlawful conduct in the operation of the Group's business involving any Group company or their employees, officers or directors";
>
> (ER2) "that Management had a present intention to introduce an anti-corruption and bribery policy with a zero tolerance approach".

255. For these representations Jinxin relies on these passages in the UBS Presentation, which Jinxin describes as a management presentation:

> "Management confirmed there are no past, pending or threatened complaints, allegations, incidents, non-compliances, investigations, enforcement actions, proceedings and/or litigation in relation to bribery, corruption or similar misconduct against or involving any Group Company or any of their employees, officers or directors."
>
> "MP & Silva is currently drafting an Anti-Corruption and Bribery Policy, which is expected to be adopted by the end of 2015.
>
> The draft policy provides a zero tolerance approach to bribery and corruption and applies to all staff and employees of the Group. Management has confirmed that training will be provided across the Group in respect of anti-bribery and corruption."

256. Jinxin also relies on these passages in the A&O Legal VDD Report:

> "However, we understand from Management that there are no past, pending or threatened complaints, allegations, incidents, non-compliances, investigations, enforcement actions, proceedings and/or litigation in relation to bribery, corruption

> and similar misconduct against or involving any Group Company or any of their employees, officers or directors."
>
> "We understand from Management that an anti-corruption and bribery policy is intended to be adopted by the Group before the end of 2015. Management has confirmed that, prior to this adoption, no formal policy has been in place at an entity or group level, nor has any formal anti-bribery training been provided to employees…
>
> …The draft policy provides for a zero tolerance approach to bribery and corruption and applies to all staff and employees of the Group, as well as consultants, contractors, trainees, seconded staff, homeworkers, casual workers, agency staff, volunteers, interns, agents sponsors, or any other person associated with the Group, or any of our [sic] subsidiaries or their employees, wherever located, as well as any third parties acting on behalf of the Group."

257. The UBS Presentation and the A&O Legal VDD Report also contained the passages set out in Annex 2 to this Judgment.

258. As to the alleged express representations, the words "as to" used for representation ER1 are unsuitable for the purpose in hand. This is because they address what the representation was about and not what it was.

259. I can accept that representation ER2 can be found in the passages relied on. But as the representation recognises, there was no representation that there was an anti-bribery policy in place. In fact, the passages included an express statement that:

> "Management has confirmed that, prior to this adoption, no formal policy has been in place at an entity or group level, nor has any formal anti-bribery training been provided to employees …".

260. Alleged representation ER1 too must be understood in the context of that express statement. Absent the clearest words, in a business of this scale, range and complexity I cannot accept that a representation in those sweeping and comprehensive terms, admitting of no exception, was made when it was expressly stated that there had been neither policy nor training.

261. Representation ER1 refers to "any other dishonest illegal or unlawful conduct" in addition to "bribery, corruption and similar misconduct", when the former words are not found in the passages relied on. Nor is the allegation made by the former words clear. They could mean only illegal or unlawful conduct that is dishonest, or they could mean any dishonest conduct, any illegal conduct or any unlawful conduct.

262. The UBS Presentation was a business document, and not a statute or even a contract. Its language was repeated in the A&O Legal VDD Report, but not as a due diligence matter for which A&O was offering reliance. Approaching the language of the UBS Presentation in a businesslike way, and not over technically, it is directed to the presence of actions claiming that conduct amounted to bribery, corruption or similar conduct. This is clear from the words "past, pending or threatened complaints, allegations, … investigations, enforcement actions, proceedings and/or litigation in relation to" bribery, corruption or similar misconduct "against or involving any Group

Company or any of their employees, officers or directors". I accept there are also the words "incidents" and "non-compliances" but consider that a businesslike construction requires that they too are to be understood to refer to occasions where bribery or corruption had been asserted and as a result matters were to be looked into. It is notable that the words are not included in the formulation of alleged representation ER1.

263. Understood in this way, the passage in the UBS Presentation was not false. But even taking representation ER1 in its terms, but confined to "bribery, corruption and similar misconduct", the representation was not false. The payments and transactions reviewed in this judgment do not warrant that description.

264. Alleged representation ER2, also, was not false. When the statements were made in the passages relied upon by Jinxin I accept that the management of the MPS Group did have "a present intention to introduce an anti-corruption and bribery policy with a zero tolerance approach".

265. In addition to the alleged express representations ER1 and ER2, Jinxin contends that the following representations were made impliedly:

> (IR1) "that Management's approach to bribery and corruption, reflected in the intended policy, was and would be one of zero tolerance"
>
> (IR2) "through the presentation of Vendor Documents, including the UBS Business Plan, the EY VDD Reports, the EY Databook and EY Databook Addendum and [the UBS Presentations], for the purpose of facilitating the proposed sale, that (alternatively to the best of the Trial Defendants' honest and reasonable belief, that):
>
> (a) The business and business model of the MPS Group described in the Vendor Documents was honest, legal and lawful.
>
> (b) The historical financial information contained in the Vendor Documents derived from honest, legal and lawful business.
>
> (c) The forecast financial information in the Vendor Documents was calculated on the basis of a continuation of honest, legal and lawful business.
>
> (d) The Group had not previously pursued, and the Trial Defendants had no present intention that it should pursue, a business and business model which was dishonest, illegal or unlawful".

266. If statements are properly characterised as statements of belief on the part of Management, Jinxin contends that they carried an implied representation (IR3) that such belief was honestly and reasonably held by Management.

267. As to representation IR1, given the statements made in the passages, the foundation for a representation that management's approach to bribery and corruption was one of zero tolerance even before the intended policy, and training, was introduced is not made out by Jinxin. The statements made clear enough that it was the draft policy that would provide a zero tolerance approach, and do not support the alleged implication of a representation that there was already a zero tolerance approach.

268. Representation IR2 refers to the act of presentation of the Vendor Documents. The allegation underlying each is very wide: that "the business" or "the business and business model" was and always had been and was intended for the future to be honest, legal and lawful. A business may be illegal or unlawful but not dishonest. An example might be a business that required a licence but, relying on advice and in good faith, did not have one.

269. By way of further context, as seen above when dealing with express representation ER1, while the passages relied on by Jinxin included a statement about dishonesty in the form of bribery or corruption, there was not one about legality or lawfulness. And even if the allegation of an implied representation is confined to the honesty to date of the business, and the business model, the allegation is difficult to accept when there were statements that made clear that there had not been an anti-corruption and bribery policy, and that training on one would be needed.

270. I find myself unable to accept that there was an implied representation as wide as that alleged by Jinxin under representation IR2.

271. In any event even if representation IR2 is implied it was not false. Jinxin has not satisfied me that the "business and business model" was dishonest, unlawful or illegal. The presence of the payments and contracts reviewed in this judgment does not justify that characterisation, especially when taken against the scale, range and complexity of the business as a whole. When Jinxin described the MPS Group at trial as a corrupt business with "fake contracts" it tended to major overstatement.

272. The details reviewed in this judgment do not add up to that description. The contracts were for something rather than nothing. In particular, those with Domino, MESED, Latam and FE Media may not have described accurately the work to be done and may have been designed to achieve particular levels of payment, but they existed because work had been done by Mr Bogarelli from the beginning of the MPS Group and payment was required. Even those in relation to Mr Bendoni and Ms Pappas are to be understood in the same way.

273. Alleged representation IR3 (that if the statements relied on by Jinxin are properly characterised as statements of belief on the part of Management, such belief was honestly and reasonably held by Management) does not add to the conclusions reached.

274. Jinxin has not shown me that it understood the words or conduct alleged to found the representations in a different way to that which I have found or that the Trial Defendants intended it to understand the words or conduct in a different way.

275. In any event if the alleged Business Practices Representations were made and they were incorrect, the Trial Defendants were, in my judgment, mistaken but not dishonest (that is, without believing them to be true) in making them;

276. In any event, if there were the alleged Business Practices Representations, the Trial Defendants have satisfied me that Jinxin did not rely on them. Where there were matters on which Jinxin wished to rely it sought and obtained warranties in the terms found in the SPA, and from the Sellers defined in the SPA.

The alleged Serie A Representations

277. By statements on which it relies made in the Vendor Documents, Jinxin contends that the Trial Defendants made three express representations, "according to their terms, that (alternatively, to the best of the Trial Defendants' honest and reasonable belief, that)":

> (ER3) "The Serie A business was based upon a long-standing relationship between the MPS Group and La Lega, including the Group's success in building Serie A's visibility outside its domestic market."
>
> (ER4) "Management was confident that, because of this relationship, the rights to Serie A would be renewed in 2017 and beyond."
>
> (ER5) "There were no undisclosed business dealings between Mr Silva or the Group and either Infront Italy or any potential competitor of the Group."

278. The statements relied on included as follows, in the version of the UBS Presentation prepared on about 29 January 2016:

(a) that the MPS Group had "Developed long-term relationships with rightsholders and broadcasters" and "established deep relationships with all stakeholders" and "Deep and long-term relationships with key partners."

(b) that the MPS Group had a "close collaboration" with Serie A which "has been beneficial to both parties and MP & Silva has been rewarded by successful renewals of the rights across the years."

(c) that it was "MP & Silva['s] superior knowledge of the international market for Serie A rights" that "allowed the Company to be selected as the sole International holder of the media rights (excluding Italy)" and that, on this basis, the MPS Group had successfully renewed its contracts as exclusive holder of international media rights for Serie A in 2009 for the 2010/11 and 2011/12 seasons, in 2011 for the 2012/13, 2013/14 and 2014/15 seasons, and in 2014 for the 2015/16, 2016/17 and 2017/18 seasons.

(d) that "MP & Silva has helped Serie A to gain increasing visibility outside its domestic market since its inception and has therefore been rewarded by successful renewals of the rights across the years."

(e) that Serie A was a key relationship for the MPS Group, that growth in Serie A revenue had been a main driver of revenue growth, and would continue to be a key driver for football revenue growth.

279. Jinxin alleges that other versions of the UBS Presentation variously repeated a number of the above representations or made similar statements. These included as follows:

(a) describing Serie A as one of the MPS Group's two "flagship properties";

(b) stating that "Due to the successful, long-lasting relationship with the Lega, MP & Silva is very confident that it will be able to renew the rights in 2018"; and

(c) "Gross profit is forecast to increase from $82m to $130m as a result of growth across key properties, new properties, increase in digital & production revenues, and advisory contracts."

280. Jinxin further relies on the following:

(a) "In the EY VDD Report (Financial), that "GoldApple [i.e. the MPS Group] has a longstanding relationship with Serie A, having retained its position as sole holder of all international media rights (excluding Italy) since 2004, successfully renewing the current cycle, seasons 2015/16 to 2017/18."

(b) "A similar statement as to Management's confidence in renewing the Serie A rights was provided by UBS in its Q&A responses dated 17 February 2016, in a response to a question from DealGlobe, that:

> "In the future, MP & Silva expects to renew the property [Serie A] given its long standing relationship with [La Lega], its extensive relationships with broadcasters and global and local presence across multiple territories…. Management expects to renew Serie A and has conservatively estimated a 15% markup as evidence in the BP post FY 18 file."

(c) In a further Q&A response, in response to a question, "Please describe in detail the relationship among Infront, Milan Channel and MPS Group (Dublin/Luxembourg)", it was stated that:

> "Neither Riccardo Silva nor other founder of MPS Group is personally related to Infront Italy [SrL]. That Company is a technical service consultant and supplier for Italian Football League, and MPS Dublin and Infront Italy are business partners on Italian Series A satellite distribution signal management, Italian Series A magazine editing and archiving right on Italian Series A football clubs.
>
> Mr Silva is not involved in any business of Infront Group and is personally not related to Infront Group.
>
> Neither of the founders of MPS nor members of the management of MPS Group are involved in Infront Group or any other potential competitor of MPS Group."

281. The Vendor Documents also contained the passages set out in Annex 2 to the Judgment.

282. There are aspects of the framing of alleged representations ER3 and ER4 that add an unwarranted gloss to the statements on which they are said to be based. An example is the introduction of "2017 and beyond" in representation ER4 when this compass is not found in the statements. Another is the way in which representation ER3 is limited to the long-standing relationship between the MPS Group and La Lega, rather than the multiple factors found in the statements.

283. In any event, no evidence at trial persuaded me that what is alleged to have been represented as representation ER3 (that "the Serie A business was based upon a long-standing relationship between the MPS Group and La Lega, including the Group's success in building Serie A's visibility outside its domestic market") was not the case.

284. Similarly, no evidence at trial persuaded me that what is alleged to have been represented as representation ER4 (that "Management was confident that, because of

this relationship, the rights to Serie A would be renewed in 2017 and beyond") was not true.

285. I am troubled by the way in which alleged representation ER5 is framed.

286. It appears to be based at least principally on the statements in the further Q&A response that "Neither of the founders of MPS nor members of the management of MPS Group are involved in Infront Group or any other potential competitor of MPS Group", "Neither Riccardo Silva nor other founder of MPS Group is personally related to Infront Italy [SrL]" and "Mr Silva is not involved in any business of Infront Group and is personally not related to Infront Group".

287. The statements do not refer to the subject of whether business dealings were "undisclosed", and yet the alleged representation does. The representation does not make clear from whom the business dealings were not disclosed. The statements refer to involvement "in" Infront Group or other potential competitors of the MPS Group, or any business of Infront Group, and to being related to Infront Italy or Infront Group. That is narrower than the alleged representation.

288. In my judgment representation ER5 was not made. Understood in a more limited way, that is, in the terms of the statements made, there was no misrepresentation. The statements in the further Q&A response were correct.

289. Jinxin also contends, further or in the alternative, that the statements made carried implied representations that (alternatively, to the best of the Trial Defendants' honest and reasonable belief, that):

> (IR4) "The Serie A business was not based upon dishonest, illegal or unlawful business practices or covert dealings with Infront Italy and/or potential competitors of the Group."
>
> (IR5) "Insofar as Management did have confidence that the rights to Serie A would be renewed, such confidence was honestly and reasonably held, and was justified by honest, legal and lawful business practices."

290. Representation IR4 is very wide. Similarly to representation IR2, representation IR4 cannot in my judgment properly extend to illegality or unlawfulness. The same is true for "covert dealings" if that is said to go beyond "dishonest practices".

291. Again the context includes the fact that, as the treatment of representation ER1 above shows, the Vendor Documents included a statement about dishonesty in the form of bribery or corruption but not one about legality or lawfulness.

292. But even if a version of representation IR4, confined to dishonest practices, is implied it was not false. Whatever the position in competition law at the time, including in Italy, Jinxin has not satisfied me that the Serie A business was "based upon dishonest … business practices". In particular, the fact that transactions with IMG, Mediapro, Sportfive and UFA Sport were capable of compromising competitiveness or being anti-competitive in the ways that they were, does not make them dishonest.

293. The counterparties, and to some extent the lawyer Avv. D'Addio, were all prepared to engage at the time and I can accept that the Trial Defendants honestly (even if wrongly) thought they were permissible. The reality is that Serie A was not run in a rigorous way and self-interest was given a lot of room at the time.

294. As for representation IR5 (that "insofar as Management did have confidence that the rights to Serie A would be renewed, such confidence was honestly and reasonably held, and was justified by honest, legal and lawful business practices.") I approach this on the basis that (as I find) management did have confidence that the rights to Serie A would be renewed.

295. The alleged representation would require not only that the confidence was honestly held, but also that it was reasonably held and further that it was justified ("by honest, legal and lawful business practices"). I do not accept that the argument for such an implied representation is realistic.

296. In any event, the evidence at trial persuaded me that at that time the confidence was honestly and reasonably held and was justified by honest legal and lawful practices. The confidence was still justified independently of any anti-competitive conduct to reach that point.

297. Jinxin has not satisfied me that it understood the words or conduct alleged to found the representations in a different way to that which I have found or that the Trial Defendants intended it to understand the words or conduct in a different way.

298. Even if there were the alleged Serie A Representations, and they were incorrect, the Trial Defendants were, in my judgment, mistaken but not dishonest (that is, without believing them to be true) in making them.

299. Further, if there were the alleged Serie A Representations, the Trial Defendants have satisfied me that Jinxin did not rely on them. Where there were matters on which Jinxin wished to rely it sought and obtained warranties in the terms of the SPA, and from the Sellers defined in the SPA.

The alleged Investigation Representations

300. The allegation of deceit based on the Investigation Representations is advanced only against Mr Silva among the Trial Defendants.

301. Jinxin contends that by the statements referred to below, the Trial Defendants made two express representations (ER6 and ER7), in accordance with their terms:

> "… as to the limited scope of the investigation and its irrelevance to the conduct of business of the MPS Group".

302. On 16 November 2015 Mr Marinelli of UBS requested the law firm Studio Legale Associato to liaise with Avv. D'Addio and with criminal counsel advising Mr Silva, Avv. Spagnolo, to prepare a note for the data room. What has been termed the "Silva Prosecution Memorandum" was prepared by Studio Legale Associato and dated 21 December 2015.

303. Jinxin refers to these points in the Silva Prosecution Memorandum:

(a) It was stated that Mr Silva was under criminal investigation pursuant to articles 2638 of the Italian Civil Code and articles 81 and 110 of the Italian Criminal Code in relation to a loan allegedly advanced by Mr Silva to Infront Italy, and from Infront Italy on to the football club Genoa Calcio, in the sum of €15 million, and which may have not been appropriately recorded in the club's accounts (the Genoa Loan Allegations).

(b) Mr Silva had declared his complete non-involvement with the matters comprising the subject of the Genoa Loan Allegations.

(c) From the decree authorising a search warrant at Mr Silva's home and from meeting with Mr Silva's criminal counsel, at that stage no company in the MPS Group (including MPS Dublin) had been referred to or was implicated in the investigation.

304. A request was made by Clifford Chance, using the Q&A procedures of the sale process, for "an update of the status of the criminal tax investigation of Riccardo Silva (as set out in the [Silva Prosecution Memorandum])". The request was made as one of two questions described as "high priority" legal questions. The response, provided in a document described as "Pre-Binding Offer Q&A" on 27 January 2016, was that:

> "… the criminal investigation is still in course and the relevant contents are not accessible to Mr Silva, his criminal counsels and/or third parties. Mr Silva and his legal counsel are currently waiting for the conclusion of the preliminary investigations and will, only then, have the chance to read and obtain a copy of all the documents concerning the inquiries."

305. In representations ER6 and ER7 the phrasing "as to" is used again, as it was for alleged express representation ER1. It is again unsuitable for the purpose in hand. The words address what the representations were about and not what they were.

306. An express representation that the investigation was of "limited scope" or was "irrelevant to the conduct of the business of the MPS Group" is not found in the passages from the Silva Prosecution Memorandum referred to or the response to the request made by Clifford Chance. Representation ER7 in particular suggested an evaluation that was for Jinxin to make rather than the Trial Defendants.

307. Jinxin has not satisfied me that the contents of the Silva Prosecution Memorandum were false. At this trial Jinxin did not establish Mr Silva's involvement with the matters comprising the subject of the Genoa Loan Allegations. Nor did Jinxin satisfy me that Studio Legale Associato's had prepared a false Memorandum in what they wrote about the decree authorising the search warrant or the meeting with Avv. Spagnolo on the subject of reference to or implication of a company in the MPS Group (including MPS Dublin) in the investigation.

308. Jinxin goes on to contend that the statements made carried implied representations that (alternatively, to the best of the Trial Defendants' honest and reasonable belief, that):

> "(IR6) The Genoa Loan Allegations comprised the known extent of the investigation"

and

> "(IR7) There was nothing in the investigation which gave rise to any reputational or financial risk to the MPS Group's business."

309. Jinxin has not satisfied me that there is room for implying these alleged representations when the "Pre-Binding Offer Q&A" of 27 January 2016, provided in response to the request made by Clifford Chance, expressly stated what it did.

310. In particular, as to the known compass of the investigation (the subject of alleged representation IR6), the Silva Prosecution Memorandum stated expressly that the contents of the investigation were not accessible to Mr Silva and his criminal counsel and that it was at the conclusion of the preliminary investigations that they would have the chance to read and obtain "a copy of all the documents concerning the inquiries."

311. Like alleged representation ER7, representation IR7 seeks to imply an evaluation that would be for Jinxin to make rather than the Trial Defendants.

312. Far from the alleged representation IR7 being made, the Silva Prosecution Memorandum described an investigation which could give rise to reputational or financial risk to the MPS Group's business. It is clear the response to the question asked by Clifford Chance did not address whether there was or was not reputational or financial risk to the MPS Group's business.

313. The statements in the Silva Prosecution Memorandum and the Pre-Binding Offer Q&A were not forthcoming, but they were not dishonest.

314. In any event, KPMG explained that the Milan Investigation had a scope which extended beyond the Genoa Loan Allegations, and flagged the "potential impact of the case".

315. Where there were matters on which Jinxin wished to rely, it sought and obtained warranties in the terms of the SPA. Indeed, in connection with the Milan Investigation Clifford Chance recommended that Baofeng seek warranties, but this step was not taken.

The alleged EBITDA Representations

316. Jinxin contends that the provision of the Vendor Documents carried two implied representations that (alternatively, to the best of the Trial Defendants' honest and reasonable belief, that):

> (IR8) "The financial information contained therein, including in respect of historical and forecast EBITDA, was true, materially accurate and based upon full and correct information"; and
>
> (IR9) "There was no reason why such financial information should not be true or materially accurate, and there was no information and were no circumstances which would render them untrue or materially inaccurate".

317. In its Re-Amended Reply, Jinxin put the alleged implied representations in this way; that (alternatively, to the best of the tort Defendants' honest and reasonable belief, that):

> "[] The EBITDA forecasts were materially accurate, meaning in this context that they were based on reasonable and credible assumptions and were free from inaccuracies, misstatements and/or errors, and that they were based upon full and correct information, meaning in this context that the forecasts were based on all of the latest available information available at the time they were provided and were not based on information was which incorrect or out of date.
>
> [] There was no reason why the EBITDA forecasts should not be true or materially accurate, meaning in this context that the Vendors were not aware: (i) that any of the assumptions on which the forecasts were based were not reasonable or credible; or (ii) of any errors or inaccuracies in the forecasts; or (iii) that any of the information on which the forecasts were based was incorrect or out of date; or (iv) of any information of material relevance to the forecasts which had been excluded or not properly taken into account in preparing the forecasts; and that there was no information and were no circumstances which would render them untrue or materially inaccurate, meaning in this context that the Vendors were not aware of any information or circumstances which had a real chance of preventing the forecasts from being realised and/or which had not properly been taken into account in the forecasts."

318. The financial information on which Jinxin focussed for this part of its case was the EBITDA forecast for FY2016 contained in the UBS Business Plan. The fact that it was carried forward in the 20 February edition of the UBS Business Plan does not mean that it was remade at that date.

319. Representation IR8 is framed as an unqualified assurance of truth, material accuracy, and fullness and completeness of information on which the financial information was based. That is, in my judgment, simply unrealistic in the context of a transaction of this nature where for the financial information to achieve that quality would require a major exercise, and might even be impossible in the case of a forecast.

320. Much the same can be said in relation to alleged representation IR9.

321. The alternative (in terms of "the best of the Trial Defendants' honest and reasonable belief") at least admits some qualification. Mr Adrian Beltrami KC put to Mr Silva in cross examination that the information provided to Jinxin "was being presented to the purchasers as honestly prepared" (and to Mr Auletta when referring to his representing that he "believed these figures were … honestly prepared"). This is within the language of alleged representations IR8 and IR9, although of course narrower.

322. In the present case, a combination of three express statements in the UBS Business Plan, and of the express treatment of EBITDA in the SPA, leaves no room for the alleged implied representations. These express statements are:

> "All statements in this Business Plan have been prepared on the basis and assumptions described herein and are preliminary and tentative only.
>
> This Business Plan may include certain statements, estimates and projections with respect to anticipated future circumstances. Such statements, estimates and projections reflect various assumptions which may or may not prove to be correct."

> "… [N]either MP&S nor any of the Connected Persons make any representation or warranty, express or implied, nor accept any responsibility with respect to the accuracy or completeness of such information or the projections contained in this Business Plan […]"
>
> "… No representation or warranty is made as to the accuracy of such statements, estimates or projections by members of MP&S or any of the Connected Persons. Neither MP&S nor any of the Connected Persons undertakes to update this Business Plan or to correct any inaccuracies therein which may become apparent. […]"

323. But further I am not satisfied that the Trial Defendants did not honestly believe the EBITDA forecast at that level when it was first made. Nor has Jinxin satisfied me that an EBITDA forecast at that level was false after taking into account the fuller circumstances discussed in this judgment, and after identifying and aggregating areas of any projected over-performance and not just under-performance.

324. In any event by the time of the SPA neither Jinxin nor the Trial Defendants were treating an EBITDA of US$82.7 million as shown in the UBS Business Plan (even in its 20 February 2016 edition) as accurate. With respect, Jinxin's claim is simply unrealistic in trying to adhere to the UBS Business Plan when it did not exist in isolation. The Pending Rights document, in particular, informed the position and showed that things had moved on. There are many other facts summarised above.

325. Jinxin was not relying on the figure for EBITDA in the UBS Business Plan but at most on an EBITDA of US$68 million, the level below which it did not protect itself under Clause 3.8(a) of the SPA. There was no "reliance in belief" on the relevant part of the UBS Business Plan.

326. Jinxin has not satisfied me that it understood the conduct and words as conveying something other than that the forecast was honestly prepared when first prepared but was even then not to be relied on, or that the Trial Defendants intended Jinxin to understand the conduct and words in any different way.

Overall

327. I should also stand back and look at the overall position. This is not to bring in misrepresentations that were not alleged in Jinxin's statements of case (were "not pleaded").

328. The overall position does not improve Jinxin's case. The fact that it does not prevail on the many express or implied representations it alleges does not lead to some better overall case. The new owners bought a business that was overall an honest business.

329. In his closing address on behalf of Jinxin, Mr Beltrami KC argued for:

> "[a] broad principle that where financial information is provided in a commercial setting in order that it be relied upon and for the purpose of reliance, and especially where there is a disparity of information, then it will carry basic assurances that make it capable of being relied upon".

The basic assurances discussed by Mr Beltrami KC would take the form of representations, which could be implied. These might be that the business was honest or that the information was honestly believed.

330. If there was an implied representation that the Trial Defendants honestly believed the business to be an honest business and the financial information to be honest, Jinxin has not satisfied me that the representation was false.

331. I take the main elements. The payments to Mr Bogarelli were not bribes to secure the Serie A rights but were made pursuant to the arrangements dating from 2004 described by Mr Silva. There were agreements with Serie A competitors that were capable of being anti-competitive, but there was not the knowingly unlawful and corrupt "bid-rigging" alleged by Jinxin. It has not been established that Mr Deris bribed Mr Valcke to obtain the FIFA Sales Representation Agreement for the MPS Group and that, if he did, the Trial Defendants knew that. Taken as a whole, the financial information provided in relation to or relevant to EBITDA was honest and the Trial Defendants honestly believed it.

332. But further, the suggested broad principle is, in terms, only directed to information provided "in order that it is to be relied upon and for the purpose of reliance". Information may instead be provided as a step in the process of parties reaching a decision about what matters are to be relied upon. They are then able to make that clear in or in advance of any contract that they enter into. In a transaction such as the SPA, what is to be relied upon will generally be established by terms preceding or accompanying the provision of information or by the SPA. Where there is a vendor due diligence process, in some areas the reliance can sometimes be offered, on clearly expressed terms, by a third party, such as law firm or a business consultancy.

333. By Clause 9 and Schedule 5 of the SPA, RSH and Mr Auletta as sellers warranted to Jinxin that, except as fairly disclosed and subject to other provisions in the SPA, the warranties at Schedule 5 were true and accurate in all material respects. These were warranties and not representations. They addressed compliance with laws, bribery, litigation, accounts and financial matters, contracts and competition. By Clause 19.2(a) of the SPA, each party acknowledged:

> "that in agreeing to enter into this agreement and the other Transaction Documents it has not relied on any express or implied representation, warranty, collateral contract or other assurance made by or on behalf of any other party before the entering into of this agreement".

Other language of disclaimer at stages before the SPA and accompanying the Vendor Documents is set out in Annex 2 to this Judgment.

334. This is some answer to Mr Beltrami KC's challenge that for the provision of information to make sense there must be the "basic assurances" referred to. It distinguishes the present case from Briess v Wooley [1954] AC 333 cited by Mr Beltrami KC (where, as he fairly recognised, it was not in issue that a representation was made).

335. As Mr Beltrami KC also recognised, each case will turn on its facts. Lindsay v O'Loughnane [2010] EWHC 529 (QB) concerning the basis on which orders for forex

trading were accepted was quite different. So too with the swaps in Property Alliance Group v Royal Bank of Scotland (above). In Man Nutzfahreuge AG v EY [2005] EWHC 2347 (Comm), Bennet Gould v O'Sullivan [2018] EWHC 2450 (QB) and Vald. Nielsen v Baldorino [2019] EWHC 1926 (Comm), also cited by Mr Beltrami KC, the Court concluded that financial information carried a representation, but that is simply to say that, on the facts and circumstances of those cases, the information was provided in order that it was to be relied upon and for the purpose of reliance.

336. Of course, Clause 19.3 of the SPA also provides that "[n]othing in this clause limits or excludes any liability for, or remedy in respect of, fraud". But I have dealt with that above.

Conspiracy

337. The case on conspiracy took almost no separate time at trial, including in Jinxin's opening and closing.

338. Given the conclusions I have reached on the allegations of deceit, the case on conspiracy is unsustainable. There was no combination or agreement between the Trial Defendants to injure Jinxin by unlawful means. Jinxin alleges that the making of the alleged Representations constituted unlawful means, but as discussed, the Representations were not in my judgment (and so far as material) made. Accepting, as Jinxin argues in its closing, that deceit can constitute unlawful means, in the present case I have found there was no deceit.

Conclusions

339. In the result, Jinxin has not succeeded in the particular case it has alleged against these Trial Defendants.

340. There were limits to what was said and done by the Trial Defendants. It was open to the purchasers to require more than they did, including more by way of contractual warranty or representation, or to decline the purchase if these were not forthcoming. Where there were contractual warranties oit was open to Jinxin to seek to invoke them, but that is not the subject matter of this trial.

341. It can probably fairly be said that, at least by today's standards, Mr Silva was a businessman who brought to business life standards that are below those to be expected. But that is not enough for Jinxin to prevail. It might be asked why does the law not lead to a different result? In context, the answer to that question includes that to relax the precision of the law that holds sellers to account would produce uncertainty and instability, of wide-reaching effect in commercial life.

342. Given the conclusion I have reached, it is also natural to ask why the business of the MPS Group failed after the purchase by Jinxin?

343. In the event, key people left the MPS Group after the sale. I had the clear impression that some within the new owners of the business lost interest. Mr Seamus O'Brien, who joined the business after the purchase, would put the failure of the business down to Jinxin and its owners not providing or raising the further capital that he would expect more experienced owners of a business like this to do. Certainly, there was not the

relationship between the business and its new owners that there needed to be for a business of this scale.

344. These all played their part. But the fundamental matter from what I have seen was the risk to sustainability that was inherent in the business. The business depended on success in achieving a margin between the purchase and the sale of media rights. It was always uncertain, required enormous energy and sustained relationships, and success was always fragile.

345. Jinxin and those on the purchase side, including when considering and pricing the acquisition, approached buying a chance as though it was a certainty. It was open to question – more than the experts at trial did – whether this business, properly understood and at this point in its life and the changing life of the market, was best seen through the lens of a high-multiple discounted cash flow.

346. From all I heard at trial I had the clear sense that the new owners did not understand the business they were buying. They lost a large amount of money. But that is not because they were deceived by the Trial Defendants.

Annex 1

SPA Clause 3.7, 3.8:

> 3.7 The parties (including the Company) agree that the 2016 EBITDA Result shall be determined in accordance with the provisions of this agreement and Schedule 8 and the Purchaser undertakes to the Sellers that the provisions of Part 2 of Schedule 8 shall apply to the Group until the end of the financial period relevant to the calculation of the 2016 EBITDA Result. Each of the parties shall comply with their respective obligations under Part 1 of Schedule 8.
>
> 3.8 No later than 20 Business Days after the date on which the 2016 EBITDA Result has been calculated in accordance with the provisions of this agreement and Schedule 8:
>
> (a) each Seller shall pay such percentage of any Negative EBITDA Adjustment (if any) as is set out opposite the name of each Seller in column E of the Consideration Schedule to the Purchaser, provided the proportion of any Negative EBITDA Adjustment which relates to such Seller shall in the first instance be set off against that part of the Completion Holding Amount which relates to that Seller (as determined in accordance with this agreement) and the amount of such set-offs shall be paid by the Company to the Purchaser out of the Completion Holding Account; and
>
> (b) the Purchaser shall pay into the Completion Holding Account an amount equal to the Positive EBITDA Adjustment (if any).

SPA Clause 9:

> **9. SELLERS' WARRANTIES, INDEMNITIES AND UNDERTAKINGS**
>
> 9.1 Subject to clause 9.2, each of the Sellers severally warrants to the Purchaser that, except as fairly disclosed to the Purchaser in the Data Room, the Disclosure Letter, the Transaction Documents and any Vendor Due Diligence Report (in each case with sufficient details to identify the nature and scope of the matter disclosed) (**Disclosed**), each of the Warranties is as at the date of this agreement and, in the case of the Fundamental Warranties only, also at Completion will be true and accurate in all material respects.
>
> 9.2 Clauses 9.1 shall apply as if:
>
> (a) none of the Warranties, other than those set out in paragraph 4 of Schedule 5, relate in any way to the Material Properties or any of them; and

(b) none of the Warranties, other than those set out in paragraph 6 of Schedule 5, relate in any way to Taxation.

9.3 The limitations and other provisions set out in Schedule 6 apply.

9.4 The Sellers shall severally indemnify each member of the Group on an after-Tax basis against the full amount of each loss, liability and/or cost (other than any loss, liability or cost in respect of Tax, to which the provisions of the Tax Deed shall apply) which the Group incurs whether before or after the start of an action arising (directly or indirectly) in connection with:

(a) the sale of beIN Asia Limited of 18 September 2015 and related documents;

(b) the termination of any contract relating to the Serie A rights granted to MPS Dublin by La Lega Calcio Serie A (the "**Serie A Rights**") on grounds that the rights-out agreements in connection with the Serie A Rights have been entered into by Subsidiaries other than MPS Dublin;

(c) the two guarantees dated 9 October 2013 entered into in connection with the joint venture memorandum of understanding between MP & Silva Pte Ltd and Al Jazeera Media Network; or

(d) the loss of the register of members and other statutory registers of MP & Silva Limited.

9.5 The Sellers shall severally indemnify each member of the Group on an after-Tax basis against the full amount of each loss, liability and/or cost (other than any loss, liability or cost in respect of Tax, to which the provisions of the Tax Deed shall apply) which the Group incurs whether before or after the start of an action arising directly as a consequence of the Reorganisation.

9.6 The liability of each of the Sellers in connection with an Indemnity Claim (other than a Tax Deed Claim except where specifically provided for in the relevant paragraph of Schedule 6) shall be subject to paragraphs 1.1(a), 1.2, 2, 4, 5, 7, 8, 10, 11, 12, 14 and 15 of Schedule 6 (which shall be read as if such liability were for a Warranty Claim), but not to any of the other limitations in Schedule 6.

9.7 Each Core Seller severally undertakes to the Purchaser that he shall use his best endeavours to ensure that:

(a) the Ancillary Reorganisation Steps are completed before Completion; and

(b) in the event that the Ancillary Reorganisation Steps are not completed before Completion, procure that any outstanding Ancillary Reorganisation Steps are completed no later than 90 days after Completion.

9.8 In the event that, as a result of any requirement to repay any amounts drawn under the Barclays Facility and such repayment is triggered by or in connection with the execution of this agreement, the Company has insufficient cash at its disposal to satisfy such obligation, Aser Media Pte Limited and Riccardo Silva Holding Limited shall be severally liable to provide such funding as may be required to satisfy the obligation by means of one or more loans of an equivalent amount and duration (provided such duration is no longer than 12 months) on arm's length terms, provided that the parties shall procure that the Company shall repay any such loan(s) as soon as reasonably practicable after the necessary cash becomes available to do so, having regard to the ordinary course working capital and cash requirements of the Group.

SPA Schedule 9 ("Interpretation")

"**Negative EBITDA Adjustment** means if the 2016 EBITDA Result is less than $68,000,000, an amount equal to the amount by which the 2016 EBITDA Result is less than $68,000,000 (expressed as a positive number) multiplied by 10.4, provided that the maximum amount of the Negative EBITDA Adjustment shall not exceed $100,000,000 and if the 2016 EBITDA Result exceeds $68,000,000 the Negative EBITDA Adjustment shall be zero"

Positive EBITDA Adjustment means if the 2016 EBITDA Result exceeds $72,000,000, an amount equal to the amount by which the 2016 EBITDA Result exceeds $72,000,000 multiplied by 10.4, provided that the maximum amount of the Positive EBITDA Adjustment shall not exceed $100,000,000 and if the 2016 EBITDA Result does not exceed $72,000,000 the Positive EBITDA Adjustment shall be zero".

Annex 2

The UBS Business Plan also contained these passages:

> "This Business Plan is intended for such recipients only who have expressed an interest in the possible acquisition of a majority interest in MP&Silva Holding SA ("MP&S") (the "Proposed Transaction") […]
>
> The information contained in this Business Plan has not been verified in any detail and no recipient of this Business Plan should rely on the information contained herein. Rather, each recipient of this Business Plan is recommended to make his own independent investigation, inquiry and assessment prior to any investment decision. Accordingly, neither MP&S nor any of the Connected Persons make any representation or warranty, express or implied, nor accept any responsibility with respect to the accuracy or completeness of such information or the projections contained in this Business Plan nor accept any liability arising from the use of this Business Plan or its contents or reliance on the information contained herein. This Business Plan is being delivered for information purposes only to a limited number of addressees. […]
>
> All statements in this Business Plan have been prepared on the basis and assumptions described herein and are preliminary and tentative only.
>
> This Business Plan may include certain statements, estimates and projections with respect to anticipated future circumstances. Such statements, estimates and projections reflect various assumptions which may or may not prove to be correct. No representation or warranty is made as to the accuracy of such statements, estimates or projections by members of MP&S or any of the Connected Persons. Neither MP&S nor any of the Connected Persons undertakes to update this Business Plan or to correct any inaccuracies therein which may become apparent. No person has been authorized by MP&S to give any information not contained in this Business Plan.
>
> This Business Plan has been prepared exclusively for the proposed transaction and should not be used for any other purpose. This Business Plan may not be used or relied on by any person other than MP&S. Nothing in this Business Plan is, or should be relied on as, a legal, tax or economic advice or recommendation. […]
>
> In this notice, "Connected Persons" means any subsidiary or holding company, or any subsidiary of that holding company, of MP&S as well as any of MP&S or their directors, officers, employees, counsel, consultants and *[sic]*."

The UBS Process Letters also contained these passages:

> "[First Process Letter]
>
> None of the Company, its subsidiaries, the Shareholders or any of their respective directors, officers or employees, or UBS, their directors, officers, agents or employees, or any of their respective advisers will make any representation or warranty, express or

> implied, as to the truth, accuracy or completeness of any information furnished in relation to the Potential Transaction (whether written or oral) and no liability or responsibility shall attach to such persons by reason of making available such information to you.
>
> The Shareholders will only make those representations and warranties set forth in the definitive share purchase agreement when and if such agreement is ultimately executed and delivered, and subject to such limitations and restrictions as may be contained therein.
>
> By submitting an Indicative Offer, you acknowledge that you are relying upon your own independent investigation and valuation of the Company.
>
> [Second Process Letter]
>
> None of the Company, its subsidiaries, the Shareholders or any of their respective directors, officers or employees, or UBS, their directors, officers, agents or employees, or any of their respective advisers will make any representation or warranty, express or implied, as to the truth, accuracy or completeness of any information furnished in relation to the Potential Transaction (whether written or oral) and no liability or responsibility shall attach to such persons by reason of making available such information to you. Without limitation to the foregoing, please note that the Information Memorandum is provided to you subject to the declaration set out in its introduction.
>
> By submitting a Binding Offer, you acknowledge that you are relying upon your own independent investigation and valuation of the company.

The UBS Presentation also contained these passages:

> "Any statements, estimates, projections or other pricing are accurate only as at the date of this presentation […] Actual results will vary from the projections and such variations may be material."
>
> "This presentation should not be regarded by the Recipient as a substitute for the exercise of its own judgment and the Recipient is expected to rely on its own due diligence if it wishes to proceed further.
>
> …
>
> Nothing contained herein is, or shall be relied upon as, a promise or representation as to the past or future. This presentation speaks as at the date hereof (unless an earlier date is otherwise indicated in the presentation) and in giving this presentation, no obligation is undertaken and nor is any representation or undertaking given by any person to provide the recipient with additional information or to update, revise or reaffirm the information contained in this presentation or to correct any inaccuracies therein which may become apparent.

…

By accepting this presentation, the Recipient acknowledges and agrees that UBS is acting, and will at all times act, as an independent contractor on an arm's length basis and is not acting, and will not act, in any other capacity […]"

The A&O Legal VDD Report also contained these passages:

[In the covering letter]

"This legal vendor due diligence report has been prepared by Allen & Overy LLP at MP&S Monaco's request in connection with the proposed sale by the shareholders of MP & Silva Holding SA (MP&S Topco) of an interest in MP&S Topco.[…]

Reliance, scope, basis and assumptions

Details of who may see and rely on this report, its scope, the basis and assumptions on which it has been prepared, and the limits on our liability under it, are set out in part C of this report.

Disclosure and reliance

This report may not be used or relied upon by any person other than MP&S Monaco. It may not be disclosed in whole or in part to any person other than MP&S Monaco without our prior written consent and we accept no liability, duty or responsibility to any person other than MP&S Monaco relating to it.

However, at MP&S Monaco's request we are prepared to make copies of this report available:

[…]

(b) on a non-reliance basis, to Potential Purchasers and Potential Financiers who may be prepared to provide initial financing to such Potential Purchasers: (i) provided that: (A) each such person's identity has been disclosed to us in advance; and (B) each such person has provided us with a signed copy of the Non-Reliance Letter; and

(ii) on the further terms and conditions of this report and the Non-Reliance Letter; and

(c) on a reliance basis on completion of the Transaction, to the Purchaser and its Financiers:

(i) provided that: (A) each such person's identity has been disclosed to us in advance; (B) each such person has provided us with a signed copy of the Reliance Letter; and (C) each such person has provided Donald Manasse Law Offices with a signed copy of the DM Reliance

> Letter; and (ii) on the further terms and conditions of this report and the Reliance Letter and DM Reliance Letter."

[In Part C] ["Reliance, Scope, Basis, Assumptions and Limits"]

"[…]

2.3 We accept no liability for any matter outside the scope of this report and the purpose for which it is prepared. Neither Allen & Overy nor Donald Manasse Law Offices is responsible for work performed by the other firm.

2.4 Our review has only summarised the specific legal documentation made available to us and subject to our review. We do not comment on or report on any legal or other matters relating to such documentation.

2.5 We do not report on, and give no evaluation of, commercial, financial, tax, social security, accounting or actuarial issues, the adequacy of any insurance arrangements, the value of any asset or any matter that falls outside the scope of this report.

[…]

3.2 The purpose of this report is to draw MP&S Monaco's attention to certain legal matters which may be relevant to MP&S in its evaluation of the Transaction. This report may not necessarily include all matters relevant to MP&S Topco or to a prospective purchaser or financier to whom this report is disclosed in accordance with its terms. MP&S Monaco and any Permitted Recipient of this report should each conduct its own investigation into the commercial and financial objectives and risks of the Transaction. We only report on legal matters and those matters of fact which appear to us to be material from our understanding of the Transaction but, as lawyers, we cannot assess the business or financial implications of the matters covered in this report.

3.3 Except where otherwise expressly stated, we have not verified the accuracy of any facts or the basis of any opinions supplied to us. Where any facts or opinions were supplied orally, as is sometimes indicated by phrases such as Management informed us, Management advised, Management confirmed or we understand that, we have in some cases relied on this without documentary verification. […]

3.10 Our review has been conducted with only MP&S Monaco's concerns and interests in mind. The matters covered and the emphasis placed on any issue in our report may not address concerns or interests of the Permitted Recipients. There may be matters of concern or interest to the Permitted Recipients that are not addressed in this report. The Permitted Recipients should review the Documents and engage legal and other advisers to assess their significance and advise in the context of their own individual requirements

[…]

5.1 All work regarding this report and all related matters have been performed exclusively by Allen & Overy and Donald Manasse Law Offices. Each of Allen & Overy and Donald Manasse Law Offices is solely responsible for the work undertaken by it."

[In Appendix 2] ["Reliance Letter"]

"1.1. We have, at the request of MP&Silva SARL (Monaco) (our Client), prepared a legal vendor due diligence report (our Report) in connection with Project Gold Apple, being the proposed disposal (the Disposal) by the shareholders of MP&Silva Holding SA of an interest in the issued share capital of MP&Silva Holding SA (the Company) […]

1.4 In consideration of our agreeing to accept that you may rely on our Report, you acknowledge and agree to the terms of this letter. […]

2.1 You will be entitled to rely on the final version (and only the final version) of our Report dated [λ] 2015, solely on the terms set out in this letter. […]

2.3 Our Report should be read in the context of the background to, the limitations and restrictions on, the assumptions to, and within the scope set for, the legal due diligence exercise described in our Report.

2.4 You acknowledge and agree that:

> (a) our Report is subject to the various limitations and restrictions on, the assumptions, and within the scope set for, the legal due diligence exercise described in our Report; …

2.5 Our Report was prepared for our Client in response to its instructions (or instructions given to us on its behalf) and on the assumptions and bases described in our Report. Consequently, the matters covered in our Report, and the emphasis placed on them, may not address or reflect those matters that may be important to you, or a person in your position, in connection with the Disposal

…"

[In Appendix 4] ["Scope of Vendor due diligence"]

"This note sets out the scope of the legal vendor due diligence to be carried out on MP & Silva Holding S.A. (the Company) and its subsidiaries and Media Partners and Silva Ltd (MPS Dublin) (together referred to as the Group or Group Companies) and the manner in which we will report our findings to you.

[…]

10. Compliance, Litigation, Disputes and Anti-Competitive and Anti-Bribery Arrangements

10.1 We will report on significant disclosures in these areas.

> 10.2 We will report on disclosed litigation, but we will not be able to opine or report on the merits of litigation or its likely outcome.
>
> 10.3 We will review any internal guidelines and manuals on anti-competitive, anti-money laundering, and anti-bribery matters and comment on the policies to the extent necessary."

The EY Financial VDD Report and Databooks also contained these passages:

> [Covering Letter to VDD Report and Databooks]
>
> "In accordance with your instructions, we have prepared a report on the basis described in our engagement agreement dated 5 June 2015 and subsequent extension of scope letter dated 5 August 2015 (together, the "Engagement Agreement") (a copy of which we attach as an appendix to the report) in connection with the proposed sale of an equity interest in the Target (the "Transaction"). The Engagement Agreement contains important information which should be read for a proper understanding of our work and report.
>
> Our report has been prepared in order that you can make it available to interested parties on the basis set out in the Engagement Agreement as part of the sale process and, accordingly, we only accept responsibility for any use which is made of the report on the basis of the Engagement Agreement […]
>
> Although some or all of the equity shares to be sold are currently owned by private individuals, this report was prepared on the specific instructions of the directors of MP & Silva SARL. It has been prepared solely for the benefit of an ultimate purchaser (The "Ultimate Purchaser") and the Ultimate Purchaser's funding banks (the "Funding Banks") to whom we have agreed to accept a duty of care in connection with the Transaction. It should not be used or relied upon by any other party, including, for the avoidance of doubt, the private individual whose equity interests in the Target are to be sold, for any other purpose. […]
>
> We accept no responsibility or liability to any person other than to our client, or to such party that we have agreed in writing to accept a duty of care in respect of this report, and accordingly if such other persons choose to rely upon any of the contents of this report they do so at their own risk. […]
>
> The scope and nature of our work, including the basis and limitations, are detailed in the Engagement Agreement. […]
>
> Our work commenced on 1 June 2015 and was completed on 17 November 2015. Therefore, our report does not take account of events or circumstances arising after that date."
>
> [Attachment to EY VDD Report – Engagement Letter Appendix A: Statement of Work**]**

"Phase 1 – a databook […] presented in a form that may be useful for the evaluation of the business by potential purchasers, containing specific financial information in respect of the Target […]

The Databook should not be used for any purpose other than that set out above, and for the avoidance of doubt should not be used or referred to in providing representations and warranties on your belief. It is not intended to be a substitute for the due diligence enquiries and procedures that potential purchasers would normally carry out prior to the acquisition of a business. […]

Phase 2 – a due diligence report […]

We are prepared to accept a duty of care in relation to our report only to the ultimate purchaser of the Target, including members of their investing syndicate, provided that they agree to our duty of care letter on terms and conditions acceptable to us […]

Our report will be prepared on the basis set out below. In preparing our report we will not take account of your interests. […]

Where a director or employee of Client is also a shareholder of Client, our Databook and report (including drafts thereof) may only be disclosed to them for the purposes of fulfilling their duties as a director/employee and not in their capacity as a shareholder […]

The Services will be performed as a due diligence engagement. Due diligence is a term used to describe work commissioned by a client involving enquiries into agreed aspects of the accounts, organisation and activities of an undertaking (the Target). […]

The Services will not constitute an audit in accordance with generally accepted auditing standards, or a review, examination or other assurance engagement in accordance with auditing and assurance standards issued by the Institute of Chartered Accountants in England and Wales, the Auditing Practices Board, the International Auditing and Assurance Standards Board or similar bodies […]

The Services will not include procedures to detect fraud or illegal acts or to test compliance with the laws or regulations in any jurisdiction [...]

We will submit a draft of the Databook and due diligence report to you…. We will consider any comments you may make on matters of our professional judgment, but you should understand that what we include in the report is ultimately our decision alone."

[2C. Attachment to EY VDD Report – Engagement Letter Appendix C: General Terms and Conditions]

"[…]

3. We will provide the Services to you as an independent contractor and not as your employee, agent, partner or joint venture. Neither you nor we have any right, power or authority to bind the other. […]

15. […] We shall not be required to update any final Report for circumstances of which we become aware, or events occurring, after its delivery."

[2D. Attachment to EY VDD Report – Engagement Letter Appendix E: Draft Duty of Care Letter**]**

"[…]

9.2 In consideration of us agreeing to assume a duty of care to you in relation to the Report as a Purchaser or an Original Lender, you agree to the terms set out in this letter upon which we agree to assume a duty of care to you and which explain certain matters in respect of the Report.[…]

10.1 You understand and agree that:

10.1.1 the Report was prepared solely on the instructions of the Instructing Client and on the basis set out in the Engagement Letter […]

10.1.4 information in the Report may be superseded by subsequent information material events may have occurred since the date of completing the Report which will not be reflected in the Report, which may mean that it is inappropriate to rely on information in the Report [...]"

Annex 3

SPA Schedule 5 ("Sellers' Warranties")

SCHEDULE 5

SELLERS' WARRANTIES

1. GENERAL

1.1 Capacity of Sellers

Each Seller (in respect of himself or itself only) has the power to execute and deliver this agreement, and each of the other Transaction Documents to which it is or will be a party, and to perform its obligations under each of them and has taken all action necessary to authorise such execution and delivery and the performance of such obligations.

1.2 Valid obligations

(a) This agreement constitutes, and each of the other Transaction Documents to which each Seller (in respect of himself or itself only) is or will be a party will, when executed, constitute legal, valid and binding obligations of each Seller in accordance with its terms.

(b) The execution and delivery by each Seller (in respect of himself or itself only) of this agreement and of each of the other Transaction Documents to which it is or will be a party and the performance of the obligations of each Seller (in respect of himself or itself only) under it and each of them do not and will not conflict with or constitute a default under any provision of:

(i) any agreement or instrument to which that Seller is a party; or

(ii) for a Seller which is a corporate entity, the constitutional documents of that Seller; or

(iii) any law, lien, lease, order, judgment, award, injunction, decree, ordinance or regulation or any other restriction of any kind or character by which a Seller is bound.

1.3 Filings and consents

All authorisations from, and notices or filings with, any governmental or other authority that are necessary to enable a corporate Seller to execute, deliver and perform its obligations under this agreement and each of the other Transaction Documents to which it is or will be a party have been obtained or made (as the case may be) and are in full force and effect and all conditions of each such authorisation have been complied with.

1.4 Schedules

The particulars relating to the Group Companies set out in Schedule 2 and Schedule 3 to this agreement are accurate in all material respects.

1.5 Incorporation of Group Companies

Each Group Company is a company validly existing under the laws of the jurisdiction of its incorporation in material compliance with all applicable legal requirements in that jurisdiction.

1.6 Constitutional documents, statutory registers

(a) The constitutional documents of the Company are contained in the Data Room and are accurate.

(b) The register of members and other statutory registers of each Group Company have been kept in all material respects in accordance with applicable law and no written notice that any of them is incorrect or should be rectified has been received by any Group Company.

1.7 Sale Shares

Each Seller (in respect of himself or itself only) is entitled to transfer or procure the transfer of the full legal and beneficial ownership in the Sale Shares which it owns to the Purchaser on the terms and subject to the conditions set out in this agreement.

1.8 Ownership of Shares

(a) As at the date of this agreement:

(i) the shares, details of which are set out opposite "issued capital" in Schedule 2 constitute the whole of the issued share capital of the Company and are fully paid up;

(ii) the Sellers (other than Media Partners and Silva, LLC) are together the legal and beneficial owners of the whole of the issued share capital of the Company;

(iii) there is no Encumbrance on, over or affecting, any of the Sale Shares; and

(iv) other than this agreement and those documents to be entered into in accordance with the Reorganisation Plan, there is no agreement, arrangement or obligation requiring the creation, allotment, issue, transfer, redemption or repayment of, or the grant to a person of the right (conditional or not) to require the allotment, issue, transfer, redemption or repayment of, a share in the capital of the Company (including an option or right of pre-emption or conversion).

(b) Immediately prior to Completion:

(i) the shares, details of which are in the column B of the Consideration Schedule, will constitute the whole of the issued share capital of the Company and are fully paid up;

(ii) the Sellers will be together the legal and beneficial owners of the whole of the issued share capital of the Company and each Seller will be the legal and beneficial owner of that portion of the Sale Shares set out opposite against the name of such Seller in column C of the Consideration Schedule;

(iii) there will be no Encumbrance on, over or affecting any of the Sale Shares;

(iv) MPS Newco will be the legal and beneficial owner of the whole of the issued share capital of MPS Dublin;

(v) the Company will be the legal and beneficial owner of the whole of the issued share capital of MPS Newco; and

(vi) the Company and MP & Silva Limited will together be the legal and beneficial owners of the whole of the issued share capital (or equivalent interests) of MP & Silva LLC (Miami).

(c) The shares, details of which are set out opposite "issued capital" under a Subsidiary's name in Schedule 3 constitute the whole of the issued and allotted share capital of that Subsidiary and are fully paid up.

1.9 Subsidiaries and associates

(a) Other than as set out in Schedule 3, no Group Company:

(i) is the holder or beneficial owner of, nor has agreed to acquire, any shares of any other corporation other than a Group Company;

(ii) is, nor has agreed to become, a member of any partnership (whether incorporated or unincorporated) or other unincorporated association, joint venture or consortium; or

(iii) is or has agreed to become a director of any body corporate (other than another Group Company).

(b) There is no Encumbrance, and there is no agreement, arrangement or obligation to create or give an Encumbrance, in relation to a share or unissued share in the capital of a Subsidiary.

1.10 Information

Except in the ordinary course of business, all material records and information belonging to a Group Company (whether or not held in written form) are in its possession or under its control, and all such records and information are subject to access by it.

1.11 Licences

(a) Each Group Company has all licences, permissions, authorisations and consents required for the carrying on of the business now carried on by it in the places and in the manner in which that business is now carried on and which are material and, so far as the Sellers are aware, such licences, permissions, authorisations and consents are in full force and effect.

(b) No Group Company has, since the Relevant Date, received written notice that it is, as at the date of this agreement, materially in default under any material licence, permission, authorisation or consent.

1.12 Compliance with laws

(a) Each Group Company has conducted its business and corporate affairs in all material respects in accordance with all applicable laws and regulations.

(b) Each Group Company has conducted its business and corporate affairs in all material respects accordance with applicable Anti-Bribery Laws.

(c) There are no investigations or proceedings against any Group Company or any of its officers or employees or, so far as the Sellers are aware, any of its agents (in their role as officer, employee or agent of a Group Company) under any applicable Anti-Bribery Laws and no Group Company nor, so far as the Sellers are aware, any of its officers, employees or agents have been convicted of any offence involving bribery, corruption or fraud.

1.13 Litigation

(a) Except as claimant in the collection of debts arising in the ordinary course of business, no Group Company is a claimant or defendant in or otherwise a party to any material litigation, arbitration or administrative proceeding which is in progress nor has any such proceeding been expressly threatened in writing by or against any Group Company since the Relevant Date.

(b) So far as the Sellers are aware, there are no circumstances which are likely to give rise to a material legal action, litigation, prosecution, regulatory investigation, mediation, arbitration or administrative proceeding.

1.14 Solvency

(a) No administrator, receiver or administrative receiver has been appointed in respect of the whole or any part of the assets or undertaking of any Group Company.

(b) No order has been made and no resolution has been passed for the winding-up of any Group Company and no petition has been presented for that purpose.

(c) No Group Company is insolvent or unable to pay its debts and no Group Company has stopped paying its debts as they fall due.

(d) No voluntary arrangement, compromise or similar arrangement with creditors has been proposed, agreed or sanctioned in respect of a Group Company.

(e) Outside the United Kingdom, no event or circumstance has occurred or exists analogous to those described in paragraphs (a) to (d) above.

1.15 Guarantees and Indemnities

Other than in the ordinary course of its business, no Group Company is a party to or liable under a guarantee, indemnity or other agreement to secure or incur a financial or other obligation with respect to another person's obligation.

2. ACCOUNTS AND FINANCIAL

2.1 2015 Group Accounts

(a) The 2015 Group Accounts:

(i) have been prepared in accordance with Luxembourg GAAP and, save as Disclosed, are not subject to any reservation or qualification by the auditors;

(ii) give a true and fair view of the state of affairs of the Group (excluding for these purposes MPS Dublin) as at the Accounts Date and of the profit or loss of the Group (excluding for these purposes MPS Dublin) for the period ended on the Accounts Date;

(iii) contain such provisions as are required by Luxembourg GAAP to provide for the liabilities of the Group (excluding for these purposes MPS Dublin) as at the Accounts Date;

(iv) include all material adjustments proposed by the auditors;

(v) make disclosures to the extent required by Luxembourg GAAP of all balance sheet contingencies and liabilities, including but not limited to those with respect to rights purchased or to be delivered and management and employee incentive plans; and

(vi) make appropriate provision against or reserve as required by Luxembourg GAAP for any event or matter that may constitute or become a total or partial default in respect of any of the accounts receivable reported as such in the 2015 Group Accounts.

(b) The scope of review and opinion of the auditors has included off balance sheet items to the extent required by Luxembourg GAAP.

2.2 2015 MPS Dublin Accounts

(a) The 2015 MPS Dublin Accounts:

(i) have been prepared in accordance with Irish GAAP;

(ii) give a true and fair view of the state of affairs of MPS Dublin as at the Accounts Date and of the profit or loss of MPS Dublin for the period ended on the Accounts Date;

(iii) contain such provisions as are required by Irish GAAP to provide for the liabilities of the MPS Dublin as at the Accounts Date;

(iv) include all material adjustments proposed by the auditors;

(v) make disclosures to the extent required by Irish GAAP of balance sheet contingencies and liabilities, including but not limited to those with respect to rights purchased or to be delivered and management and employee incentive plans; and

(vi) make appropriate provision against or reserve as required by Irish GAAP for any material event or matter that may constitute or become a total or partial default in respect of any material accounts receivable reported as such in the 2015 MPS Dublin Accounts.

(b) The scope of review and opinion of the auditors has included off balance sheet items to the extent required by Irish GAAP.

2.3 Position since Accounts Date

Since the Accounts Date:

(a) there has been no material adverse change in the financial position of the Group (including increases in remuneration of Group Company employees and Senior Employees), except as a result of market conditions and other factors generally affecting similar businesses;

(b) the business of the Group has been carried on in the ordinary course;

(c) except for any dividends provided for in the 2015 Group Accounts or the 2015 MPS Dublin Accounts and any cash proceeds received by the Group in respect of the disposal of BeIN Asia Limited, no dividend or other distribution has been declared, paid or made by a Group Company;

(d) no Group Company has repaid, repurchased or reduced any of its issued share capital;

(e) no Group Company has incurred any debt (save for trade debt in the ordinary course of business) in excess of $5,000,000;

(f) no share or loan capital has been issued or agreed to be issued by a Group Company; and

(g) no shares in any Group Company have been transferred other than to another Group Company or save in accordance with the Reorganisation Plan.

2.4 Indebtedness

(a) No Group Company has, since the Relevant Date, received any written notice:

(i) to repay any borrowings or indebtedness under any agreement relating to any borrowing (or indebtedness in the nature of borrowing) which are repayable on demand; or

(ii) that an event of default has occurred and is outstanding under any agreement relating to any borrowing (or indebtedness in the nature of borrowing) or other credit facility of a Group Company.

(b) No Group Company has outstanding any loan capital or any money borrowed or raised other than any ordinary course overdraft facilities.

(c) No Group Company has, since the Relevant Date, lent any money which is due to be repaid and has not been repaid and no Group Company owns the benefit of any debt, other than debts accrued in the ordinary course of its business.

3. COMMERCIAL

3.1 Contracts

(a) No Group Company is a party to any:

(i) Material Contract, under the terms of which a counterparty to such Material Contract will have the right to terminate such Material Contract as a result of the change of control of the Company or any Group Company as a result of the execution or completion of this agreement;

(ii) Material Contract which is not in the ordinary course of business or not on arm's length terms;

(iii) material outstanding joint venture, consortium or partnership agreement;

(iv) outstanding Material Contract which is currently subject to any material default under which the counterparty could terminate either by notice or which would terminate automatically without counterparty conduct, by any Group Company or any party to any such agreement with a Group Company and, so far as the Sellers are aware, there are no circumstances which are reasonably likely to rise to such a default; or

(v) Material Contract not disclosed in the Data Room.

(b) No Group Company has, since the Relevant Date, received written notice that it is in default under any Material Contract or any mortgage, charge, lien or pledge which is material in the context of the Group as a whole.

(c) No Group Company has received any written communication from any counterparty of any Material Contract which could reasonably indicate that the counterparty would not renew the relevant Material Contract on substantially the same terms.

(d) No Group Company has received any written communication from any counterparty which could reasonably indicate that the counterparty intends or may intend to exercise any rights under the Material Contract as a result of a change of control in connection with the Transaction.

(e) No counterparty has exercised its right under any Material Contract to reduce the fees payable to a Group Company and, so far as the Sellers are aware, no Group Company has received any written communication from any counterparty of any Material Contract which could reasonably indicate that the counterparty intends to exercise any right to reduce the fees payable to a Group Company.

3.2 Intellectual Property Rights

(a) The Data Room contains details of all patents, registered and unregistered trademarks, registered service marks, registered designs or other registered Intellectual Property Rights of which a Group Company is the registered proprietor or for which application has been made by a Group Company which are material in relation to the Group taken as a whole.

(b) All Intellectual Property Rights used by each Group Company for the purpose of carrying on its business as currently carried on are vested solely and beneficially in or are licensed to a Group Company.

(c) There is no outstanding infringement claim nor, so far as the Sellers are aware, any threat of any claim for infringement of any Intellectual Property Rights referred to in subparagraph (b) above by a Group Company.

(d) No Group Company trades under any business name other than its corporate name.

3.3 Insurances

The Data Room contains copies of those insurances maintained by the Group which are material in relation to the Group taken as a whole and:

(a) such insurances are in full force and effect;

(b) there are no special circumstances which might lead to any liability under such insurances being avoided by the relevant insurers; and

(c) since the Relevant Date no material claims which remain outstanding have been made under any such insurances.

4. PROPERTIES

(a) One of the Group Companies is the legal and beneficial owner of, or is otherwise lawfully in possession of, each Material Property as shown in Schedule 4 free from any Encumbrance.

(b) The relevant Group Company has the benefit of all rights and facilities necessary for the current use and enjoyment of each Material Property and no party has challenged a Group Company's right to use and enjoy a Material Property as such Material Property is currently used and enjoyed.

(c) No Group Company has received written notice alleging material breach of any covenant, restriction, burden or stipulation in respect of the existing use of any of the Material Properties.

5. EMPLOYEES

(a) The Sellers have disclosed to the Purchaser in respect of the Group Companies:

(i) a list of, and the material terms and conditions of employment or engagement of, all senior employees, officers or directors (being those with a base salary or fee of more than $100,000 per annum) including without limitation the Founder Managers (together, the **Senior Employees**) showing, by reference to appropriate categories, remuneration payable and other principal benefits provided, as well as a brief description of their terms and conditions of employment;

(ii) brief details of the numbers of other employees and an anonymised list of those employees including details of title and base salary, benefits and incentives; and

(iii) each written (or brief details of any unwritten) employment practice or policy including policies relating to severance or redundancy or bonuses or for incentive payments or change of control entitlements or retention payments.

(b) Except as disclosed under subparagraph 5(a) above, there is not in existence any written or unwritten contract of employment between a Group Company and a director or an employee of a Group Company which cannot be terminated by 12 months' notice or less without giving rise to a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal).

(c) Except as disclosed under subparagraph 5(a) above, there is not outstanding any agreement or arrangement to which a Group Company is a party for profit-sharing or for payments to any of its directors or employees of bonuses or for incentive payments or other similar matters or change of control entitlements or retention payments and there are no other material payments to employees or directors or officers which have not been disclosed or are outstanding.

(d) None of the current directors or managing directors of the Company or any Group Company (a) is, so far as the Sellers are aware, in material breach of his or her employment contract or terms of engagement or statutory duties; or (b) has given or been given written notice to terminate his employment.

(e) No dispute has arisen since the Relevant Date between a Group Company and a material number or category of its employees or any Senior Employee or with any trade union or any other employee representative body.

(f) None of the employees, offers or directors of any Group Company is entitled or may become entitled to any severance payment or bonus arising in connection with the Transaction.

6. TAX

6.1 Taxation liabilities

All Taxation of any nature whatsoever for which a Group Company is liable and which has fallen due for payment has been duly paid within the statutory time limits.

6.2 Taxation returns

(a) All notices, computations and returns which ought to have been submitted to a Taxation Authority by a Group Company have been properly and duly so submitted and all information, notices, computations and returns submitted to a Taxation Authority are true, accurate and complete in all material respects and are not the subject of any material dispute nor are likely to become the subject of any material dispute with a Taxation Authority.

(b) All material records which a Group Company is required to keep for Taxation purposes have been duly kept and are available for inspection at the premises of the Group Company.

(c) No Group Company has asked for any extensions of time for the filing of any currently outstanding tax returns or other documents relating to Taxation.

(d) All claims or other requests for any particular treatment relating to Taxation that have been taken into account in computing any amount in the Accounts and the time limit for the making of which has passed have been duly made.

6.3 Penalties and interest

No Group Company has paid or become liable to pay any interest, penalty, surcharge or fine relating to Taxation.

6.4 Investigations

No Group Company has been subject to or is currently subject to any non-routine investigation, audit or visit by any Taxation Authority.

6.5 No foreign permanent establishments exist

No Group Company has any permanent establishment and/or dependent agents outside its respective jurisdictions of incorporation and each Group Company is resident for Tax purposes solely in its jurisdiction of incorporation.

6.6 Deductions and withholdings

Each Group Company has made all deductions in respect, or on account, of any Taxation from any payments made by it which it is obliged to make and has accounted in full to the appropriate authority for all amounts so deducted.

7. PENSIONS

(a) Material particulars of the Scheme are contained in the Data Room.

(b) Other than the Scheme, there are no other arrangements or legal obligations under which a Group Company makes or could become liable to make payments (including pursuant to the exercise of the UK Pensions Regulator's powers) for providing retirement, death, disability or life assurance benefits for or in respect of any employees or former employees of a Group Company or any dependant of any such employee or former employee.

(c) All due payments in respect of the Scheme payable by a Group Company have been made to the person to whom they are due by the due dates as required by the relevant scheme documents and any applicable contract or legislation.

(d) The Scheme is in compliance with the relevant Scheme documents and all applicable laws in all material respects.

(e) No claim (other than a routine claim for benefits) in relation to the provision, by any Group Company, of retirement benefits has been made or threatened against any Group Company or against the administrators of the Schemes or any person whom any Group Company is liable to compensate or indemnify.

8. COMPETITION AND RESTRICTIVE COVENANTS

(a) So far as the Sellers are aware, no Group Company is or has since the Relevant Date been a party to or is or has since the Relevant Date been concerned in any practices or arrangements (whether or not legally binding) which distort or restrict competition and which a Group Company has been advised may infringe competition law.

(b) No Group Company has since the Relevant Date given an undertaking to or, so far as the Sellers are aware, is subject to any judgment order or decision of, or investigation by, any competition authority or any court under any antitrust or similar legislation.