

Competition Act 1998: Decision of the Financial Conduct Authority

Anti-competitive conduct in the UK international money remittance sector

30 November 2023

© Financial Conduct Authority 2024

All rights reserved

Confidential information in the original version of the decision has been redacted from the published version. Redacted confidential information in the text of the published version of the decision is denoted by [X].

The names and specific roles of individuals mentioned in the original version of the decision have been removed from the published version. Names and specific roles have been replaced a general descriptor of the individual's role.

Contents

1	Introduction and summary	4
2	Factual background	6
	UK international money remittance sector	6
	The Parties	14
	The FCA's investigation	16
3	Conduct of the Parties	17
	Introduction	17
	Key individuals	17
	Commercial agreements between or involving the Parties in Glasgow	18
	Conduct of the Parties in the Relevant Period	22
4	The relevant market	41
	Purpose of assessing the relevant market	41
	Relevant product market	42
	Relevant geographic market	50
	Conclusion on the relevant market	53
5	Legal framework and assessment.....	54
	Introduction	54
	Overview: the Chapter I prohibition	55
	Undertakings	56
	Agency and competition law	56
	Agreements and concerted practices	61
	Restriction of competition by object	78
	Appreciable restriction of competition	83
	Effect on trade within the UK	84
	Duration of the infringement	84
	Exemption and exclusion	85
	Attribution of liability	86
6	The FCA's action	90
	Decision regarding infringement of the Chapter I prohibition	90
	Directions	90
	Financial penalties: legal framework	90
	Calculation of financial penalties	92
	Payment of penalties	106

Annex A: Abbreviations and defined terms 108

1 Introduction and summary

- 1.1 By this decision (**Decision**), the Financial Conduct Authority (**FCA**) has concluded that each of the undertakings listed at paragraph 1.2 has infringed the prohibition imposed by section 2(1) (**the Chapter I prohibition**) of the Competition Act 1998 (**the Act**).
- 1.2 This Decision is addressed to:
- (a) Dollar East (International Travel & Money Transfer) Ltd (**Dollar East**);
 - (b) Hafiz Bros Travel & Money Transfer Limited (**Hafiz Bros**); and
 - (c) LCC Trans-Sending Limited (trading as Small World) (**Small World**) and its parent company Small World Financial Services Group Limited,
- (each, a **Party**, together the **Parties**).
- 1.3 The FCA concludes that, between 18 February 2017 and 31 May 2017 (**the Relevant Period**), the Parties infringed the Chapter I prohibition by participating in a single continuous infringement through an agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of in-store, retailer-adjusted remittance services for the UK to Pakistan remittance corridor carried out in Glasgow (**the Infringement**).
- 1.4 The FCA finds that the Infringement took the form of the Parties' coordination of pricing practices with the object of reducing competition on price and reducing strategic uncertainty, in order to maintain or increase pricing levels in the market. The Parties carried this out by:
- (a) coordinating on the level of the retail exchange rate charged to in-store customers for making UK to Pakistan (GBP/PKR) remittances (**the FX conduct**); and
 - (b) fixing the level of the transaction fee charged to in-store customers of Small World (as the Money Transfer Operator) when making UK to Pakistan (GBP/PKR) remittances (**the transaction fee conduct**).
- 1.5 On 25 January 2023, the FCA issued a Statement of Objections (**Statement**)¹ and a Draft Penalty Statement² to the Parties.
- 1.6 In line with the FCA's stated policies,³ the FCA has decided to settle this case with each of the Parties (see Chapter 6, paragraph 6.80).
- 1.7 The FCA has imposed a financial penalty under section 36 of the Act in respect of the Parties' participation in the Infringement as follows:

¹ In accordance with section 31 of the Act and Rules 5 and 6 of The Competition Act 1998 (Competition and Market Authority's Rules) Order 2014, SI 2014/458.

² In accordance with section 36(6) of the Act.

³ See paragraphs 6.9 to 6.19 of FG15/8: The FCA's concurrent competition enforcement powers for the provision of financial services.

- (a) Dollar East must pay £3,600;
- (b) Hafiz Bros must pay £11,200; and
- (c) Small World and its parent company Small World Financial Services Group Limited must pay £139,500.

1.8 This Decision:

- (a) provides a factual background describing (i) the international money remittance sector in the UK, (ii) the Parties and (iii) the process of the FCA's investigation (Chapter 2);
- (b) sets out the facts on which the FCA relies (Chapter 3);
- (c) provides an analysis of the relevant market in which the Infringement occurred (Chapter 4);
- (d) sets out the applicable prohibition that the FCA considers the Parties have infringed (Chapter 5); and
- (e) sets out the FCA's action in imposing a penalty on the Parties (Chapter 6).

1.9 Annex A includes a table of abbreviations and defined terms used in the Decision.

1.10 Confidential information within the Decision has been replaced by approximate ranges (for figures) or general descriptors (for certain individuals). Where this has been done in the Decision, the range or descriptor appears in italics within closed brackets.

2 Factual background

- 2.1 This Chapter provides: (i) an outline of the UK international money remittance sector; (ii) an introduction to the Parties; and (iii) an overview of the investigatory steps taken by the FCA.

UK international money remittance sector

- 2.2 International money remittance is a financial service which allows consumers and businesses to transfer money abroad.⁴ Consumers may use money remittance for a variety of reasons, often to transfer money to family and friends based overseas.
- 2.3 This section (i) describes the activities of money transfer operators in the UK with a particular focus on the UK to Pakistan corridor and the Parties' business activities in Glasgow; and (ii) gives estimates of the size of the industry.

Money transfer operators

- 2.4 Money transfer operators (**MTOs**) are financial businesses (other than banks) which offer, among other things, consumer-to-consumer international money remittance services through the cross-border transfer of funds using their own internal system, or access to another cross-border network. MTOs tend to focus on high-frequency, low-value consumer-to-consumer international money transfers, although some offer services to businesses such as small and medium-sized enterprises.⁵ MTOs do not require customers to have a bank account to send or receive money.⁶ A particular transfer route (e.g. from the UK to Pakistan) is often referred to as a remittance or geographic 'corridor'.
- 2.5 The following sub-sections focus on the broad commonalities that are present across MTO business models, with a particular focus on the UK to Pakistan corridor based on submissions from the Parties. They cover:
- (a) the applicable regulatory regime;
 - (b) key steps in a remittance transaction from the UK to Pakistan;
 - (c) agent, branch and online distribution channels;
 - (d) pricing; and
 - (e) retailer-adjusted rates.

⁴ Although not the focus of this investigation, for completeness the FCA notes that the term 'money remittance', as defined in Regulation 2 of the Payment Services Regulations 2017, may also include the transfer of money taking place entirely within the UK.

⁵ Western Union Annual Report 2021 (page 106), available [here](#).

⁶ However, since 26 June 2017 customers are required to show identification (such as current passport or driving licence) to undertake a transfer. Regulations 27 and 28 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017/692. See also: Frequently Asked Questions: "What are acceptable ID documents for picking up money?"

<https://www.westernunion.com/gb/en/frequently-asked-questions/faq-send-money-in-person.html>;

Regulatory regime

- 2.6 The current applicable regulatory regime is set out in the Payment Services Regulations 2017 (**PSRs 2017**), rules and guidance in the FCA Handbook⁷ and guidance in the FCA publication '*Payment Services and Electronic Money – Our Approach*'.⁸ The PSRs 2017 replaced the Payment Services Regulations 2009 which were in force during the Relevant Period, but the authorisation regime and definitions described in paragraphs 2.7 and 2.8 below apply to both sets of regulations.
- 2.7 The PSRs 2017 apply to firms which provide payment services⁹ as a regular occupation or business activity in the UK. Money remittance is a payment service by virtue of Schedule 1 of those Regulations. Firms that can provide payment services include Payment Institutions (**PIs**) such as Authorised Payment Institutions (**APIs**) and Small Payment Institutions (**SPIs**). APIs are authorised and regulated by the FCA. Firms with lower payment volumes can instead apply to the FCA to become registered as an SPI and be subject to a lighter touch registration regime.¹⁰
- 2.8 PIs may provide payment services in the UK through agents, provided the PI has registered that agent with the FCA. The PSRs 2017 outline the specific requirements for registering agents.¹¹
- 2.9 Based on information held by the FCA for its Financial Services Register, during the Relevant Period Small World and Hafiz Bros were registered as APIs, while Dollar East was a registered 'PSD¹² agent' of a number of principal firms.
- 2.10 PIs that only provide money remittance services must be registered with His Majesty's Revenue and Customs (**HMRC**) under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**MLRs 2017**).¹³ Where a PI operates through agents, the PI is required to register each agent's premises separately with HMRC.

⁷ Principles for Business, GEN, BCOBs, CONC, the Fees Manual, SUP 5.3, 5.4, 9, 11.3. SUP 11 Annex 6G, 15.14, 16.13, 16.15, SYSC 9.2, DEPP and DISP.

⁸ Payment Services and Electronic Money – Our Approach Document – The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011 dated November 2021 (Version 5) ([Link](#)).

⁹ '*Means any of the activities specified in Part 1 of Schedule 1 (payment services) when carried out as a regular occupation or business activity, other than any of the activities specified in Part 2 of that Schedule (activities which do not constitute payment services).*' (Regulation 2 PSRs 2017); Money remittance is a payment service (Schedule 1 Part 1 (f) PSRs 2017)

¹⁰ Payment Services and Electronic Money – Our Approach Document – The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011 dated November 2021 (Version 5) Section 2 "Scope Part I: PSRs 2017 – Payment Institutions" page 13 ([Link](#))

¹¹ Regulation 34 PSRs 2017 and see Payment Services and Electronic Money – Our Approach Document – The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011 dated November 2021 (Version 5) Section 5 "Appointment of agents and use of distributors" page 70 (<https://www.fca.org.uk/publication/finalised-guidance/fca-approach-payment-services-electronic-money-2017.pdf>)

¹² Referring to the 2007 Payment Services Directive.

¹³ During the Relevant Period, money service businesses providing money remittance services were registered under the Money Laundering Regulations 2007.

Key steps in a remittance transaction to Pakistan from the UK

- 2.11 Based on submissions from the Parties, a remittance in the UK to Pakistan (GBP/PKR) corridor offered by an MTO typically operates as follows:¹⁴
- (a) There is an initial customer request for a GBP/PKR transaction, either within the shop (a branch or agent of the MTO), or through an online or telephony channel. Where agents offer transactions via multiple MTOs concurrently (i.e. on a non-exclusive basis), the customer chooses their preferred MTO. Several factors may influence this choice, including: discussions with the agent; the exchange rate offered by each MTO; compatibility with the preferred method of collecting the money in Pakistan;¹⁵ or other features of the service such as the speed of the transaction or brand recognition.¹⁶
 - (b) The customer will receive a quote, in the form of how much they will be charged in the UK (GBP) for delivery of a certain quantity of Pakistan Rupees (PKR) to Pakistan. The amount will depend on the exchange rate the customer is charged, and any transaction fee.
 - (c) If they wish to proceed, the customer makes a payment, either by cash or card when making a transfer via an in-store agent (although some agents only accept cash), or by card or other alternative payment methods through other channels (such as online channels) where these are accepted.
 - (d) The MTO arranges the transfer on behalf of the customer. This includes buying the desired currency, processing the transaction via a UK bank, and settling the transaction with a bank based in Pakistan. The funds are then made available to the recipient for collection in Pakistan.¹⁷ In the interim, funds transferred by the MTO do not form part of revenues of the MTO and are required by the FCA to be safeguarded on behalf of customers '*immediately on receipt of the funds*'.¹⁸
 - (e) When the transfer is made via an agent, software provided by the MTO may provide a breakdown of the full amount collected from customers (over the course of a day), and the amount charged by the MTO for the transactions. The amount owed to the MTO (including the funds to be remitted) is deposited by the agent. The agent may hold onto the residual as payment for services, which will depend on the agency agreement in place but could include a transaction

¹⁴ In addition to sources specifically referenced in this paragraph, key steps are drawn from the following sources: Dollar East's response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 6 May 2022. Question 4 (CA98.2020.01-001590). Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021 (CA98.2020.01-001273). Annex A of LCC's third response (Section A) to the FCA's fourth section 26 CA98 notice dated 21 April 2022 received by the FCA on 25 May 2022 (CA98.2020.01-001607)

¹⁵ Dollar East's response to the FCA's section 26 CA98 notice of 15 July 2022 received by the FCA on 5 August 2022. (CA98.2020.01-001660) (Question 2 – providing clarification on Dollar East's response dated 6 May 2022 to the FCA's section 26 notice of 21 April 2022 (CA98.2020.01-0001590))

¹⁶ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 8 (CA98.2020.01-001611).

¹⁷ LCC's third response (Section A) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 25 May 2022. Question 2 (CA98.2020.01-001606).

¹⁸ This is detailed in Chapter 10 of 'Payment Services and Electronic Money – Our Approach; The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011'. ([Link](#))

fee and the difference between the MTO rate and the final customer rate (see paragraphs 2.27 to 2.32 below).

- 2.12 The MTOs' services are distinct from bank transfer services as consumers generally do not need a bank account and are able to send (and have recipients collect) money in cash.¹⁹ MTOs buy and sell a number of global currencies and maintain a network of settlement accounts to facilitate the funding of money transfers and foreign exchange trades to ensure that funds are received on a timely basis.
- 2.13 In relation to the UK to Pakistan corridor, the Pakistan Remittance Initiative (**PRI**) is a Pakistan state-sponsored initiative, launched in 2009 and in force during the Relevant Period, which aims to subsidise formal remittance channels in order to encourage consumers to move away from informal methods (for example, sending cash via post) and towards formal channels for money remittance.²⁰ In respect of qualifying GBP/PKR transactions carried out pursuant to the PRI, domestic Pakistan banks would pay MTOs such as Small World a portion of a rebate for charges levied on certain categories of remittances.²¹

Agent, branch, and online distribution channels

- 2.14 Many large MTOs, such as Western Union, MoneyGram and Ria, offer global or near-global coverage. Regional (niche or specialist) MTOs provide the same services as global MTOs but focus on a smaller group of geographic corridors or services within one region. A common way for MTOs to reach customers and achieve scale is to distribute their services through a network of money transfer agents (**MTAs**). MTAs are typically existing businesses (such as travel agents, convenience stores, or currency converters) which can act as distributors for the MTO. For some MTAs, the costs of providing the physical infrastructure and staff required for money remittance may be covered by the MTA's primary business.²²
- 2.15 Small World stated that appointing MTAs is a '*quick, cost effective and economically efficient means of growing and increasing ... presence in any particular geographic region*'.²³ Provision of training and other administrative related factors are part of the overall costs incurred by the MTO.²⁴ Small World estimated the cost of on-boarding an MTA was approximately [*under £4,000*] taking into account the time spent by Small World's sales and compliance personnel to originate the relationship, gather documentation, conduct due diligence and seek approval from the FCA and HMRC.²⁵

¹⁹ *Eleventh survey on correspondent banking in euro*, European Central Bank, page 13. Available [here](#).

²⁰ Small World's voluntary submission dated 12 April 2021 regarding agency, paragraph 2.3 (CA98.2020.01-001476).

²¹ Small World's third response to the Fourth section 26 Notice dated 21 April 2022 Question 2a (CA98.2020.01-001606).

²² LCC's response to the FCA's second section 26 CA98 notice of 26 January 2021 received by the FCA on 19 February 2021. Question 2a (page 7) (CA98.2020.01-001465). See also page 111 of Western Union Annual Report 2020 and 2021 Proxy Statement. Available at: <https://ir.westernunion.com/investor-relations/financial-information/annual-reports/default.aspx>.

²³ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 5 (CA98.2020.01-001611).

²⁴ For instance, Dollar East told the FCA that Dex (a principal MTO) provided training to Dollar East staff on relevant skills such as anti-money laundering and risk assessments. See paragraph 14 of Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021 (CA98.2020.01-001273).

²⁵ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 5 (CA98.2020.01-001611).

- 2.16 Small World stated that its approach to identifying new MTAs was as follows:
- (a) A sales manager for the area would identify prospective agents, meaning those already active through other money remittance providers, by personal market knowledge or the FCA's Financial Services Register.²⁶
 - (b) The local sales team would contact prospective agents to persuade them to become a Small World agent. The sales team were incentivised with a commission that encouraged the recruitment of productive agents, based on the six-month total of transactions placed through the agent.²⁷
 - (c) Master agents (also known as 'referral agents') can act as an intermediary, or introducer, between an MTA and an MTO. During the Relevant Period, Hafiz Bros acted as a master agent on behalf of Small World, as well as also being a (non-active) MTA for Small World (see Chapter 3, paragraphs 3.14 and 3.18).
- 2.17 The choice of distribution channel may also determine the payment options accepted. For example, some MTAs (such as Dollar East) may only accept cash payments.²⁸
- 2.18 MTAs commonly act for more than one MTO. For example, Dollar East stated that it had direct permission from Dex International Ltd (**Dex**) to act for any other MTOs during the operation of the agreement with Dex. In addition, Dex was made aware of existing agreements between Dollar East and other MTOs at the beginning of the agreement.²⁹
- 2.19 When an MTA offers remittances through multiple MTOs concurrently, a combination of consumer preferences and competition determines the MTO chosen for any given transfer (as described above at paragraph 2.11(a)). A consumer may have a particular preference or be otherwise constrained to a particular MTO. For example, Dollar East stated that a customer primarily will request a particular MTO, or may ask for the rates offered by each available MTO and make a decision.³⁰ Small World stated that it sought to encourage its agents to place remittance transactions through Small World by offering lower costs to consumers, and competitive commissions to agents, as well as after-sales support.³¹
- 2.20 MTAs themselves may undertake some investment to become an agent. Dollar East stated that specific investments they undertook to perform money transfer services included licence fees paid to the MTO, security measures, marketing costs, and staff training costs.³²
- 2.21 While money remittance was traditionally a service offered by MTAs or in directly owned and managed branches of an MTO, in recent years the popularity of online

²⁶ *Ibid*

²⁷ *Ibid*

²⁸ Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021. Question 4. (CA98.2020.01-001273).

²⁹ Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021. Question 16. (CA98.2020.01-001273).

³⁰ Dollar East's response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 6 May 2022. Question 4 (paragraph C6). (CA98.2020.01-001590).

³¹ Small World's second response to the Fourth section 26 Notice dated 21 April 2022 Question 5 (CA98.2020.01-001611).

³² Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021. Question 5. (CA98.2020.01-001273).

remittance services has risen. While UK specific data is not available, US data suggests that in 2015 the percentage share of total transactions made digitally was between 5-10% for Western Union and MoneyGram, rising to around 20% in 2020 pre-pandemic, and around 35% in April 2020 during the initial phase of the Covid-19 pandemic.³³

- 2.22 Some MTOs provide services through online channels only.³⁴ In the UK, this includes TransferWise, WorldRemit and PaySend. While the incumbent MTOs have developed digital options alongside their other services, in recent years digital-only players have gained overall market share through offering lower fees (aided by the absence of physical branch infrastructure costs), greater transparency and quicker turnaround time.³⁵

Pricing of money remittance services

- 2.23 The pricing for money remittance services is often set by the MTO, with commissions agreed with MTAs in advance, but some MTOs may allow their MTAs some price-setting freedom, usually within a pre-agreed margin (see paragraphs 2.27 to 2.32 below).
- 2.24 For MTOs, Small World stated that prices are set to recover a variety of costs. Marginal (or variable) costs of sale included: (i) agent commission (in some cases also a payment to the master agent); (ii) collection costs, which are the costs of processing the amount transferred through a UK bank; and (iii) payer costs, which are per transaction fees paid to banks in Pakistan for settling the transferred amount with the recipient. Short run fixed costs (or 'overheads') included employees and office facilities.³⁶
- 2.25 Gross revenues earned by MTOs are primarily made up of transaction fees and the margin earned on the foreign exchange rate which is charged to the customer.
- 2.26 The two key variables which make up the consumer-facing price are the transaction fee and the currency conversion rate:
- (a) A transaction fee is a charge applied on a per transaction basis, or as a percentage of the transaction value.
 - (b) The currency conversion rate is the exchange rate offered to customers between the sender's currency and the recipient currency.

Retailer-adjusted pricing

- 2.27 Whether an MTA had a role to play in setting the final price paid by consumers differs depending on the terms of its agreement with the MTO. For some MTOs, the price paid by the consumer (including the currency conversion rate and transaction fee) is set by the MTO and the MTA has no ability to change the retail price. In those circumstances, the MTA's commission is pre-agreed as set out in the relevant agency contract. For

³³ Analysis via Forbes available [here](#). Source: Western Union, MoneyGram Public Filings, FXC Intelligence Analysis and trendline estimates (accessed online 16/02/2022).

³⁴ See 'The rise of digital remittances: How innovation is improving global money movement'. Visa Economic Empowerment Institute (2021). Available [here](#).

³⁵ [Article] Upcoming recession threatens the digital remittance rush. Megabuyte's CEOHub. Available [here](#).

³⁶ LCC's third response (Section A) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 25 May 2022. Question 2a (CA98.2020.01-001606).

example, Western Union does not provide any role for its MTAs in price setting and its MTAs (such as Dollar East when conducting transactions on Western Union's behalf during the Relevant Period) can only offer a set exchange rate and transaction fee.³⁷

- 2.28 By contrast, Small World and Sigue Global Services (**Sigue**) allowed agents some flexibility to set both the transaction fee and the currency conversion rate, which collectively amount to the price paid by the consumer.³⁸ In this case, MTAs vary the retail exchange rate provided by the MTO (which effectively becomes a wholesale rate); MTAs then retain any difference earned between the wholesale rate offered by the MTO and the final, retailer-adjusted, rate which is paid by consumers.
- 2.29 Small World has stated that '*Small World's agents began making use of their ability to reduce the GBP/PKR exchange rate³⁹ applied to the end customer (and retain the difference in full), and determine and retain the transaction fee, for the first time in or around July 2013*'.⁴⁰ The policy remained in effect throughout the Relevant Period.⁴¹
- 2.30 Small World provided a detailed rationale for the economic factors which determined its policy of allowing MTAs to vary exchange rates and set transaction fees, and to retain the difference for both.⁴² Small World stated that the primary commercial rationale for its pricing strategy was its desire to grow its presence in the UK to Pakistan corridor in the context of: (i) the PRI producing competitive conditions (and tight margins) in that corridor; and (ii) Small World's relatively less established reputation when compared with larger providers such as Western Union, MoneyGram and Ria.⁴³
- 2.31 Small World stated that its pricing strategy allowed agents to respond '*in real-time to the very competitive market conditions*' by taking up the opportunity to earn greater commission when the opportunity arose (by reducing the rate), or to forfeit commission, to win the customer and secure the transaction.⁴⁴

³⁷ See Dollar East's response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 6 May 2022. Question 1. (CA98.2020.01-001590). Statements made by Dollar East [X] in interview also confirm this lack of ability on the part of Western Union MTAs to amend the retail exchange rate offered to consumers for Western Union remittances. "*Well, the thing is Western Union have got a totally different way of dealing with their agents because they've got certain fees for different countries and those fees are, are not going to be given or handed out to us as an agent. They will be taking all the fees and later on at the end of the month they will be giving you the commission on the basis of the fees.*" Transcript of Interview with [Dollar East Employee 1] Part 1 lines 182-184 (CA98.2020.01-001866) and "*Like Western Union, they've got a set rate, we cannot change that rate.*" Transcript of Interview with [Dollar East Employee 1] Part 1 line 398 (CA98.2020.01-001866). See also Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021, paragraph 45, (CA98.2020.01-001273).

³⁸ See Transcript of Interview with [Dollar East Employee 1] Part 1 lines 386-388 and 399-308 and Transcript of Interview with [Dollar East Employee 2] Part 1 lines 277-280 and 313-318 and Part 2 lines 709-802 and 1187-1190 ((CA98.2020.01-001867).

³⁹ 'Reducing the rate' means reducing the PKR offered to customers per £ sterling, effectively increasing the price of the transaction to the customer.

⁴⁰ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Questions 6a-d (CA98.2020.01-001611).

⁴¹ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Questions 6a-d (CA98.2020.01-001611).

⁴² LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 8 (CA98.2020.01-001611).

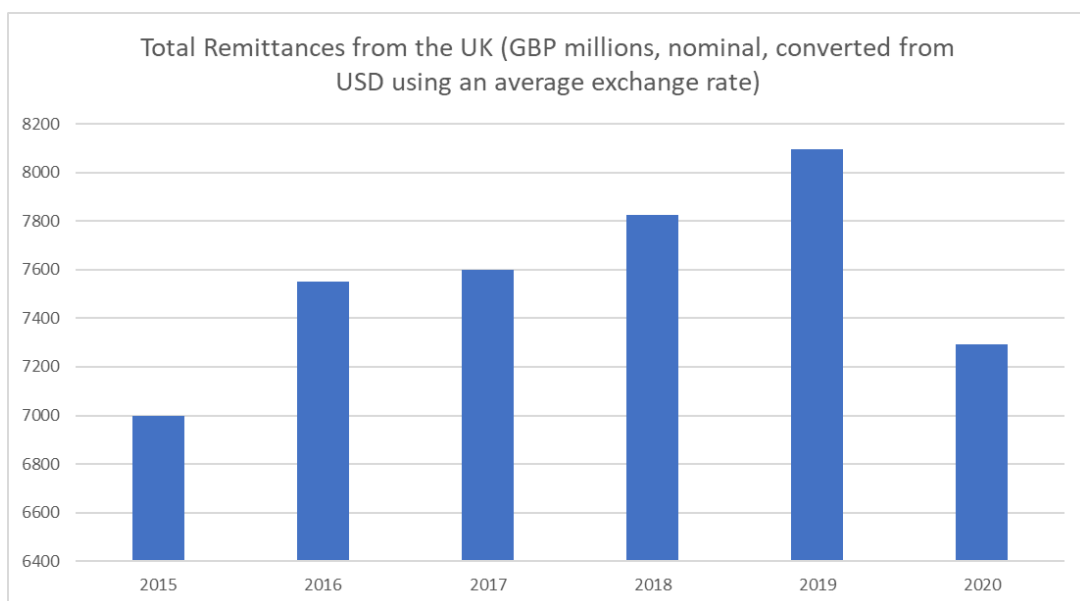
⁴³ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 7 (CA98.2020.01-001611).

⁴⁴ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 7 (CA98.2020.01-001611).

2.32 Small World stated that MTAs would have more opportunity to reduce the exchange rate offered (effectively increasing the price to the customer), after a period of time in which the customer had become comfortable with, or developed a preference for, that MTA and the use of Small World’s remittance services.⁴⁵

Industry size estimates

2.33 UK outflows of remittance reached an estimated maximum of around £8bn in 2019, before contracting around 10% in 2020. This includes all channels through which consumers can remit funds including MTOs. The chart below shows estimated remittances from the UK in GBP:



Source: World Bank Data⁴⁶

2.34 International remittances are challenging to measure because they are heterogenous, with numerous small transactions conducted through a large variety of channels⁴⁷ and because many remittances take place through unofficial channels (for example, through physical transfers of cash made by friends, relatives or couriers travelling abroad).

2.35 However, available data indicates remittance is an important source of income on a national level for Pakistan. On the basis of updated World Bank remittance data,⁴⁸ for the year 2020 it is estimated that Pakistan received US\$26,100 million from global inward remittances representing 9.9% of its GDP. As noted above in relation to the

⁴⁵ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 7 (CA98.2020.01-001611).

⁴⁶ World Bank Data:

<https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data> (World Bank data provided in nominal USD. Converted to GBP using an average closing exchange rate, as such estimates should be treated with caution).

⁴⁷ 'International Transactions in Remittances: Guide for Compilers and Users'. International Monetary Fund (2009). Available here. See paragraph 2.1.

⁴⁸ Accessed at: <https://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>

PRI, there are relevant government policies to take account of when considering formal remittances to Pakistan.

The Parties

Dollar East

- 2.36 Dollar East is a private limited company registered in Scotland, with company number SC304291. It was incorporated on 20 June 2006. Dollar East's registered address is 332 Pollokshaws Road, Glasgow, Lanarkshire, G41 1QS.
- 2.37 Dollar East provides money transfer agency services and airline travel and cargo services in Glasgow.⁴⁹ During the Relevant Period, Dollar East was registered by the FCA⁵⁰ as an agent under the Payment Services Regulations 2009 of multiple money remittance service providers. [redacted]⁵¹. [redacted].⁵²

Hafiz Bros

- 2.38 Hafiz Bros is a private limited company registered in Scotland, with company number SC300349. It was incorporated on 5 April 2006. Hafiz Bros' registered address is 144 Calder Street, Glasgow, Lanarkshire, G42 7QP.
- 2.39 Hafiz Bros provides online money transfer services.⁵³ During the Relevant Period, Hafiz Bros was registered as an agent under the Payment Services Regulations 2009⁵⁴ and acted (at different times) as a master/referral agent on behalf of Small World and Sigue (see paragraph 3.14). [redacted]⁵⁵ [redacted].⁵⁶

⁴⁹ Dollar East stated that 70% of its business is money transfer, while travel and cargo represent 25% and 5% respectively. See Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021 (CA98.2020.01-0001273)

⁵⁰ FCA firm reference number 526021.

⁵¹ Dollar East (International Travel & Money Transfer) Annual Return dated 20 June 2016 (Available at Companies House); Dollar East (International Travel & Money Transfer) Confirmation Statement dated 20 June 2017 (Available at Companies House). [redacted].

⁵² Document produced by Dollar East's in response to the FCA's section 26 CA98 notice of 15 July 2022 and received by the FCA on 5 August 2022. Content: Dollar East's Financial Statement for the financial year ending 30 June 2017 (CA98.2020.01-001655).

⁵³ Hafiz Bros Travel & Money Transfer Limited's first response to the FCA's section 26 CA98 notice of 16 September 2020 (001322) (Question 8) (CA98.2020.01-000203)

⁵⁴ FCA firm reference number 564945.

⁵⁵ Hafiz Bros Travel & Money Transfer Limited Confirmation Statement dated 22 November 2016 (available at Companies House); Hafiz Bros Travel & Money Transfer Limited Confirmation Statement dated 8 January 2021 (available at Companies House). [redacted].

⁵⁶ Hafiz Bros Travel & Money Transfer Limited total exemption full accounts (made up to 5 April 2017) (available at Companies House); Hafiz Bros financial statement for the year ended 5 April 2017, provided in response to the FCA's section 26 CA98 notice of 18 July 2022, received by the FCA on 05 August 2022 (CA98.2020.01-001642); Hafiz Bros financial statement for the year ended 5 April 2018, provided in response to the FCA's section 26 CA98 notice of 18 July 2022, received by the FCA on 05 August 2022 (CA98.2020.01-001643).

Small World and Small World Financial Services Group Limited

- 2.40 Small World is a private limited company registered in England and Wales with company number 04363859. It was incorporated on 30 January 2002. Small World's registered address is 209-215 Blackfriars Road, London, SE1 8NL.
- 2.41 Small World describes itself as a '*leading provider of consumer-originated cross-border payment services*'.⁵⁷ Small World provides these services globally, including in the UK.⁵⁸ In addition to in-store provision, Small World also provides online remittance services (via mobile application and website).⁵⁹
- 2.42 During the Relevant Period, Small World was authorised by the FCA to provide money remittance services under the Payment Services Regulations 2009.⁶⁰ It provided in-store remittance services through a network of outlets, which includes its own branches and outlets operated by third parties which act as its MTAs. [X]⁶¹ ⁶² ⁶³ Its issued share capital was held by Small World Financial Services Group Limited.⁶⁴
- 2.43 Small World Financial Services Group Limited⁶⁵ is a private limited company registered in England and Wales with company number 05405279. It was incorporated on 29 March 2005. Small World Financial Services Group Limited's registered address is 209-215 Blackfriars Road, London, SE1 8NL.
- 2.44 [X] ⁶⁶ ⁶⁷ ⁶⁸ ⁶⁹ ⁷⁰ ⁷¹ ⁷² ⁷³ ⁷⁴ ⁷⁵

⁵⁷ LCC Trans-Sending Limited annual report and financial statements – 18 Month Period ended – 31 December 2021 (available at Companies House).

⁵⁸ LCC Trans-Sending Limited Annual report and financial statements year ended 30 June 2020 (pages 4 and 26, available at Companies House).

⁵⁹ Small World's first response to the First section 26 Notice dated 16 September 2020 paragraph 11.2 (CA98.2020.01-000200) and Small World's third response to the First section 26 Notice dated 16 September 2020 paragraphs 11.1 and 11.2.2 (CA98.2020.01-000218).

⁶⁰ FCA Firm reference number 504482

⁶¹ [X].

⁶² [X].

⁶³ [X].

⁶⁴ During the Relevant Period, funds managed by FPE Capital LLP held approximately 34.2% of the issued share capital in Small World Financial Services Group Limited. FPE Capital's response to the FCA's section 26 CA98 notice dated 22 August 2022 received by the FCA on 5 September 2022 (CA98.2020.01-001876)

⁶⁵ Small World Financial Services Group Limited's parent company is SW Bidco Limited. SW Bidco Limited's parent company is SW Midco Limited. SW Midco Limited's parent company is SW Holdco Limited. SW Holdco Limited's parent company is SW Topco Limited. Annex A (Small World Corporate Group Structure) of LCC's first response to the FCA's section 26 CA98 Notice of 16 September 2020 (000200) (received by FCA on 7 October 2020) (CA98.2020.01-000192). In 2018 Equistone (more specifically the partnerships comprising the fund known as Equistone Fund VI and certain executive co-investment vehicles in which Equistone executives participate) acquired a 79.4% stake in Small World Financial Services Group Limited (UK) which is held indirectly through several intermediate companies. Equistone General Partner VI S.a.r.l. (Lux) is the general partner of the Fund VI partnerships and is indirectly wholly-owned by Equistone LLP (UK) through intermediary companies. LCC's first response to the FCA's section 26 CA98 notice of 16 September received by the FCA on 7 October 2020 (CA98.2020.01-000200).

⁶⁶ [X].

⁶⁷ [X].

⁶⁸ [X].

⁶⁹ [X].

⁷⁰ [X].

⁷¹ [X].

⁷² [X].

⁷³ [X].

⁷⁴ [X].

⁷⁵ [X].

The FCA's investigation

2.45 This section provides a brief summary of the FCA's investigation:

- (a) On 16 September 2020, the FCA launched the investigation, following a case allocation decision by the CMA, and sent each of the Parties a case initiation letter and initial information requests under section 26 of the Act. The FCA sent further information requests under section 26 of the Act to the Parties and to third parties during the course of the FCA's investigation.
- (b) On 16 June 2022, the FCA held compulsory interviews under section 26A of the Act with [Dollar East Employee 1] and [Dollar East Employee 2] of Dollar East.⁷⁶
- (c) On 30 June 2022, the FCA held a compulsory interview under section 26A of the Act with [Hafiz Bros Employee 1] of Hafiz Bros.⁷⁷
- (d) On 25 January 2023, the FCA issued the Statement and Draft Penalty Statements addressed to the Parties. Following the issuance of the Statement and Draft Penalty Statements, a Competition Decisions Committee was appointed in relation to the FCA's investigation.
- (e) By the end of October 2023, Settlement Decision Makers authorised by the FCA for this case approved a settlement with each of the Parties. Accordingly, the Competition Decisions Committee was stood down and this Decision is issued by the Settlement Decision Makers.⁷⁸

⁷⁶ Transcript of an interview with [Dollar East Employee 1] held remotely under section 26A of the Competition Act 1998 on 16 June 2022 (CA98.2020.01-001866); Transcript of an interview with [Dollar East Employee 2] held remotely under section 26A of the Competition Act 1998 on 16 June 2022 (CA98.2020.01-001867).

⁷⁷ Transcript of an interview with [Hafiz Bros Employee 1] held remotely under section 26A of the Competition Act 1998 on 30 June 2022 (CA98.2020.01-001868).

⁷⁸ See paragraph 6.17 of FG15/8: The FCA's concurrent competition enforcement powers for the provision of financial services.

3 Conduct of the Parties

Introduction

- 3.1 This chapter sets out the key facts in relation to the Infringement. It:
- (a) lists the key individuals;
 - (b) describes the relevant commercial agreements between or involving the Parties in Glasgow; and
 - (c) details the relevant conduct of the Parties.

Key individuals

- 3.2 The table below lists key individuals referred to by name in this chapter.⁷⁹ Certain Small World employees who were not directly involved in the relevant conduct, but who were involved in the Small World internal compliance investigation (see below at paragraph 3.70), are identified in this chapter by a high-level description of their job-title while at Small World during the Relevant Period.

Firm	Individual	Position
Dollar East	[Dollar East Employee 1]	[REDACTED]
	[Dollar East Employee 2] ⁸⁰	[REDACTED]
Hafiz Bros	[Hafiz Bros Employee 1]	[REDACTED]
Small World	[Small World Employee 1] ⁸¹	[REDACTED]
	[Small World Employee 2]	[REDACTED]
	[Small World Employee 3]	[REDACTED]
	[Small World Employee 4]	[REDACTED] ⁸²
	[Small World Employee 5]	[REDACTED]

⁷⁹ Job titles for Small World employees are taken from paragraph 4.2.2 of LCC's second response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 16 October 2020 (CA98.2020.01-000211) and Annex A of LCC's fifth response to the FCA's section 26 CA98 Notice of 16 September 2020 received by FCA on 30 November 2020 (CA98.2020.01-001051).

⁸⁰ Also known as [REDACTED].

⁸¹ Commonly referred to as '[REDACTED]' within the internal Small World correspondence outlined in this Chapter.

⁸² Also identified within internal Small World documents during the Relevant Period as [REDACTED].

Commercial agreements between or involving the Parties in Glasgow

3.3 The Parties were involved in various commercial agreements during the Relevant Period. This section summarises these commercial relationships where relevant to the UK to Pakistan corridor.

Dollar East

3.4 Dollar East acted as an MTA in the UK to Pakistan corridor on behalf of the following firms during the Relevant Period:

- (a) Directly for Small World (since July 2013⁸³)
- (b) Indirectly for Small World as an MTA recruited by Hafiz Bros (from September 2016 to September 2018⁸⁴)
- (c) Western Union Money Transfer Services (since 2013⁸⁵).

3.5 Dollar East's 'Agency Agreement' with Small World⁸⁶ provided that, for remittances in the UK to Pakistan corridor, Dollar East could earn commission by (i) optionally charging customers a transaction fee of between £3 and £5 (which would be retained by Dollar East) and (ii) reducing (and therefore worsening) the retail exchange rate given to customers so that the difference between the retail exchange rate and the wholesale exchange rate offered by Small World to Dollar East would be retained as commission by Dollar East.⁸⁷ As outlined later in this chapter and in Chapter 2 (see paragraphs 2.28 to 2.32), this commission structure represented Small World's standard scheme for Glasgow MTAs conducting GBP/PKR transactions on Small World's behalf during the Relevant Period.

3.6 In respect of Dollar East's agreement with Western Union, Dollar East could only – in contrast to the Small World remuneration model – charge set fees and offer retail exchange rates to customers that were specified by Western Union. Dollar East's

⁸³ Small World/Dollar East agency agreement dated 23 July 2013 (CA98.2020.01-000189) and Small World/Dollar East agency agreements dated 12 October 2017 (CA98.2020.01-000206) and (CA98.2020.01-000209).

⁸⁴ Hafiz Bros/Dollar East agency agreement dated 15 September 2016 (CA98.2020.01-000208).

⁸⁵ Email chain between the FCA and Dollar East clarifying the timing of Dollar East's commercial relationship with Western Union further to Dollar East's responses (001273 and 001590) to the FCA's s26 CA98 information requests of 26 January 2021 (and 21 April 2022. (CA98.2020.01-001983).

⁸⁶ Dollar East's agency agreement with Small World in operation during the Relevant Period (commencing 23 July 2013) does not provide specific details on the nature of the commission payable to Dollar East by Small World for GBP/PKR transactions. In relation to commission payable, the 23 July 2013 contract only specifies that Dollar East was an 'Agent set as Net' (CA98.2020.01-000189). However, Dollar East separately confirmed that the commission model described in its later October 2017 agency agreement with Small World was also in operation during the Relevant Period. See CA98.2020.01-001590 (answer 4). See also: Transcript of interview with [Dollar East Employee 1], Part 1 of 3, lines 172 to 184 (CA98.2020.01-001866).

⁸⁷ See page 10 of both CA98.2020.01-000206 and CA98.2020.01-000209. Small World has stated that during the Relevant Period its MTAs were ordinarily able to reduce the exchange rate applied to the end-customer by a range of up to only 3%. See LCC's response to the FCA's second section 26 CA98 notice of 26 January 2021 received by the FCA on 19 February 2021 (Question 3b) CA98.2020.01-001465.

revenue from its agreement with Western Union derived from a set commission based on the transaction fee paid by the customer.⁸⁸

3.7 The FCA notes that Dollar East and Hafiz Bros signed an agreement (where Hafiz Bros is described as a '*remittance service provider operating in the UK*') on 15 September 2016.⁸⁹ In response to the FCA's information requests, Dollar East identified Hafiz Bros as one of its principal MTOs alongside Small World and Western Union in the Relevant Period.⁹⁰

3.8 The terms and conditions of the 15 September 2016 agreement between Hafiz Bros and Dollar East specify the obligations of Hafiz Bros in relation to money transfer transactions conducted by Dollar East. These include the following term:

'Before agreeing to undertake a transaction we [Hafiz Bros] will provide you [Dollar East] with the following information which we are obliged to provide to you:

[...]

- An indication of the exchange rate that we will apply to your transaction, or the reference exchange rate upon which the actual exchange rate will be based.⁹¹

3.9 In interview, [Hafiz Bros Employee 1] stated that agreements like the one signed with Dollar East on 15 September 2016 were used by Hafiz Bros for onboarding MTAs on behalf of Small World or Sigue (and for those firms to act as the principal MTO to the relevant MTA rather than Hafiz Bros).⁹² In relation to the contractual term shown above in paragraph 3.8 and how Hafiz Bros would provide an indication of the exchange rate to agents, [Hafiz Bros Employee 1] stated that this term related to the agents' use of Small World's or Sigue's remittance services (and it was these MTOs that would provide the rate to the MTAs rather than Hafiz Bros).⁹³

3.10 The FCA notes that in October 2016, shortly after the Hafiz Bros/Dollar East agreement was signed, Dollar East is identified within internal Small World records as being an MTA operating under a commission template named 'LCC UK HAFIZ BROTHERS' indicating that it was part of Hafiz Bros' master agent network operating on behalf of Small World.⁹⁴

3.11 Small World also stated that:

⁸⁸ Transcript of interview with [Dollar East Employee 1], Part 1 of 3 lines 398 to 402. (CA98.2020.01-001866).

⁸⁹ CA98.2020.01-000208.

⁹⁰ See Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021, paragraph 9 (CA98.2020.01-001273). Dollar East's response to the FCA's section 26 CA98 notice of 15 July 2022 received by the FCA on 5 August 2022 (CA98.2020.01-001660).

⁹¹ See Annexure II – Terms and Conditions, 1. Money Transfers – Our Obligations, paragraph 1.1 (CA98.2020.01-000208).

⁹² See CA98.2020.01-001629 and Transcript of Interview with [Hafiz Bros Employee 1] Part 2 of 4 lines 603-639 (CA98.2020.01-001868).

⁹³ Transcript of Interview with [Hafiz Bros Employee 1] Part 2 of 4 lines 685-695 (CA98.2020.01-001868). See also Hafiz Bros's response to the FCA's section 26 CA98 notice of 26 September 2022 (received by the FCA on 10 October 2022) (CA98.2020.01-001870); and clarificatory response (CA98.2020.01-001979).

⁹⁴ CA98.2020.01-000296; CA98.2020.01-000297.

- (a) its master agents, such as Hafiz Bros during the Relevant Period, were not in a position to act as a principal MTO given that they lacked the necessary UK-based bank/credit accounts needed for processing remittances in compliance with regulations;⁹⁵
- (b) during the Relevant Period, Small World did not consider Hafiz Bros to be an active competitor to Small World in respect of the provision of UK to Pakistan remittance transactions;⁹⁶ and
- (c) during the Relevant Period the computerised transaction systems of Hafiz Bros and Small World were integrated, meaning that MTAs within Hafiz Bros' master agent network were able to make Small World transactions via Hafiz Bros' own computer system.⁹⁷

3.12 On the basis of the evidence set out in paragraphs 3.8 to 3.11 above, the FCA considers that during the Relevant Period Hafiz Bros was not active as a principal MTO in competition with Small World (and that any MTO/MTA relationship between Hafiz Bros and Dollar East that operated under the terms of the 16 September 2016 agreement took place after the Relevant Period⁹⁸).

Hafiz Bros

3.13 During the Relevant Period, Hafiz Bros did not provide money remittance services direct to consumers.⁹⁹ Hafiz Bros' main business was instead operating as a 'master agent' (also known as a 'referral agent') on behalf of MTOs that wished to grow their network of MTAs. In this role, Hafiz Bros was responsible for identifying and recruiting MTAs on behalf of these MTOs.¹⁰⁰

3.14 Hafiz Bros acted as a master agent for the following MTOs operating within the UK to Pakistan corridor during the Relevant Period:

- (a) Small World (from May 2014 to September 2018)¹⁰¹
- (b) Sigue (from October 2014 to March 2018)¹⁰²

⁹⁵ LCC's response to the FCA's second section 26 CA98 notice of 26 January 2021 received by the FCA on 19 February 2021 (CA98.2020.01-001465).

⁹⁶ LCC's first response to the FCA's section 26 CA98 notice of 16 September received by the FCA on 7 October 2020 (CA98.2020.01-000200) and Annex B (Companies active in the provision of GBP/PKR transactions) of LCC's first response to the FCA's section 26 CA98 Notice of 16 September 2020 (000200) (received by FCA on 7 October 2020) (CA98.2020.01-000202).

⁹⁷ LCC's third response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 30 October 2020. Paragraph 11.3. (CA98.2020.01-000218). LCC's second response to FCA's section 26 CA98 notice dated 15 July 2022 received by FCA on 12 August 2022. Question 3. (CA98.2020.01-001664).

⁹⁸ Hafiz Bros has stated that its own online remittance service started in April 2020. Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022 received by the FCA on 23 May 2022 (CA98.2020.01-001628).

⁹⁹ See CA98.2020.01-001628; and [Hafiz Bros Employee 1] interview transcript, lines 263 to 272 (CA98.2020.01-001868).

¹⁰⁰ [Hafiz Bros Employee 1] interview transcript, lines 277 to 282 (CA98.2020.01-001868).

¹⁰¹ Small World/Hafiz Bros collaboration agreements of 1 May 2014 (CA98.2020.01-000190), 1 April 2015 (CA98.2020.01-000191) and October 2017 (CA98.2020.01-000001) which expired in September 2018 (see Hafiz Bros first response to the FCA's section 26 CA98 notice of 21 April 2022 (CA98.2020.01-001628) Question 5.

¹⁰² Sigue Global Services / Hafiz Bros agency agreement of 7 October 2014 (CA98.2020.01-001632) which expired March 2018 (CA98.2020.01-001628). Hafiz Bros further confirmed that its agreement with Sigue Global Services operated in respect of the UK to Pakistan corridor (CA98.2020.01-001647).

- 3.15 In respect of its agreement with Small World, as master agent Hafiz Bros received a percentage of the 'net commission' that was generated from transactions made by the MTAs it recruited when those firms used Small World's remittance services.¹⁰³ During the Relevant Period, Hafiz Bros could earn 35% of net commission for transaction volumes over £5m during a monthly time period,¹⁰⁴ and 40% of net commission for transaction volumes over £8m.¹⁰⁵ The FCA notes that the calculation of 'net commission' was based on the exchange rate actually charged to customers (i.e. the retailer-adjusted rate if present) rather than Small World's wholesale exchange rate.¹⁰⁶
- 3.16 As outlined at paragraph 3.67, the FCA notes an internal Small World document which indicates that, during the Relevant Period, Small World's master agents (including Hafiz Bros) may have played a role in setting the wholesale GBP/PKR exchange rate for MTAs within those master agents' networks. However, MTAs within these master agent networks were nonetheless still able to increase their commission for Small World transactions by reducing the retail GBP/PKR exchange rate that was provided to customers in the manner described above (at paragraph 3.5).¹⁰⁷
- 3.17 In respect of Hafiz Bros' agreement with Sigue, Hafiz Bros received 35% of the transaction fee that was levied by recruited MTAs when they used Sigue's remittance services.¹⁰⁸
- 3.18 For completeness, the FCA notes that Hafiz Bros was also appointed as a direct, consumer-facing MTA of Small World between July 2013 and September 2018. However, the documentary and witness evidence indicates that Hafiz Bros did not act in this capacity during the Relevant Period.¹⁰⁹

Small World

- 3.19 During the course of 2017, Small World had agreements in place with around 30 MTAs based in Glasgow (including its agreement with Dollar East described above).¹¹⁰ Small World also had arrangements in place with three master agents: Frontier Global Consultants Ltd; Khyber Money Exchange Ltd and Hafiz Bros.¹¹¹

¹⁰³ See also [Hafiz Bros Employee 1] interview transcript, lines 197 to 205, 297 and 306 to 310 (CA98.2020.01-001868).

¹⁰⁴ LCC's response to the FCA's section 26 CA98 notice of 27 September 2022 (received by the FCA on 14 October 2022). Question 3 (CA98.2020.01-001873).

¹⁰⁵ CA98.2020.01-000191.

¹⁰⁶ Transcript of Interview with [Hafiz Bros Employee 1] Part 1 of 4, lines 193-217 and lines 292-310 (CA98.2020.01-001868); LCC's response to the FCA's section 26 CA98 notice of 27 September 2022 (received by the FCA on 14 October 2022). Question 2 (CA98.2020.01-001873).

¹⁰⁷ Transcript of interview with [Dollar East Employee 1], Part 1 of 3 lines 398 to 402 (CA98.2020.01-001866).

¹⁰⁸ See Clause 7.3 of CA98.2020.01-001632 and Schedule 2 (CA98.2020.01-001649).

¹⁰⁹ Small World / Hafiz Bros agency agreement of July 2013 (CA98.2020.01-000133). This is corroborated by Small World's list of agents, which confirms that Hafiz Bros was its agent until 5 September 2018 (CA98.2020.01-000198). See also Transcript of Interview with [Hafiz Bros Employee 1] Part 1 of 4 lines 263-266. The FCA also notes that Small World transaction data between 2016 and 2020 (CA98.2020.01-001860) does not show any transactions undertaken by Hafiz Bros on behalf of Small World.

¹¹⁰ CA98.2020.01-000198; the FCA also notes [Dollar East Employee 2]'s email of 15 June 2017 (paragraph 3.74) regarding the GMTA having 39 members (see CA98.2020.01-000527) and [Small World Employee 1]'s email of 18 February 2017 (paragraph 3.24) noting that most of the GMTA members were 'active and transacting agents of Small World' (CA98.2020.01-000462).

¹¹¹ LCC's response to the FCA's second section 26 CA98 notice of 26 January 2021 received by the FCA on 19 February 2021 (Question 7(d)) (CA98.2020.01-001465).

Conduct of the Parties in the Relevant Period

- 3.20 This section details the relevant conduct of the Parties that the FCA finds infringed the Chapter I prohibition, as set out in Chapter 5.

Initiation of the conduct

- 3.21 On 15 February 2017, Small World opened its first and only branch in Glasgow from which it offered, among other products and services, remittance services in the UK to Pakistan corridor.¹¹²
- 3.22 Small World's Glasgow branch (**the Glasgow branch**) was close to many of its MTAs,¹¹³ including Dollar East (see Chapter 4, paragraph 4.50). Shortly after Small World opened the Glasgow branch, and as described further below, certain agents applied pressure on Small World to change the level of its retail exchange rates and transaction fees for GBP/PKR remittances at the Glasgow branch.
- 3.23 In an internal Small World email entitled '*Glasgow Branch (Pak Rates & Charges)*' sent on 18 February 2017 (**18 February email**),¹¹⁴ [Small World Employee 1] contacted colleagues (including [Small World Employee 2], [Small World Employee 3], [Small World Employee 4] and [Small World Employee 5]), to explain that Small World had changed its pricing strategy for the UK to Pakistan corridor at the Glasgow branch:

'In Glasgow Branch we will have to keep £5 fee for Pakistan and we will have to offer fx rate which is advertised by the Hafiz Bros for the retail customers.'

- 3.24 [Small World Employee 1]'s 18 February email outlined the reasons for the Glasgow branch adopting this pricing strategy:

'In Glasgow the money transfer agents has made a GMT Association (Glasgow Money Transfer Association). About 90% of agents in Glasgow become a member of GMT Association and most of the member are active and transacting agents of Small World.

When the News Spread across Glasgow that the Small World has open a Branch then Few Bigger agents has Started the propaganda against Small World and urged to Boycott Small World in Glasgow by fearing that Small World as whole seller will give the Highest Rates to Pakistani Customers and will not Charge any Fee as well and siad [*sic*] not to place any Transaction on Small World

¹¹² LCC's first response to the FCA's section 26 CA98 notice of 16 September received by the FCA on 7 October 2020 (CA98.2020.01-000200, paragraph 9.1); LCC's second response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 16 October 2020 (CA98.2020.01-000211, paragraph 3.3).

¹¹³ In an internal Small World email on 18 April 2017, [Small World Employee 4] notes the high volume of GBP/PKR transactions conducted by eight money transfer agents located no more than a mile away from the Glasgow branch. See CA98.2020.01-000483, page 2. See also FCA transcript of interview with [Dollar East Employee 1], lines 722 to 723: '*Small World had opened up one of their outlets on... near our office location*'. (CA98.2020.01-001866).

¹¹⁴ CA98.2020.01-000462.

platform. The all [sic] GMT Association members are talking to each other via Whats App Group ..'

- 3.25 As part of an internal Small World compliance investigation (described below at paragraph 3.70), interviews conducted with [Small World Employee 1], [Small World Employee 5] and [Small World Employee 4] during May 2017 are consistent with the 18 February email in describing agents' unhappiness about the opening of the Glasgow branch due to fears that it would cause the agents to lose business (resulting in the threat of a boycott of Small World's remittance services).¹¹⁵
- 3.26 In reacting to agents' concerns, [Small World Employee 1]'s 18 February email described his interactions with certain agents forming part of the Glasgow Money Transfer Association (**GMTA**). [Small World Employee 1] stated that he had '*started doing meetings with the bigger and stronger members*' of the GMTA, which included meeting with a 'Mr [X]' at the Hafiz Bros Head Office in Glasgow. [Small World Employee 1] also stated that he had, during meetings with '*all Agents*', announced that Small World '*will be happy to become a member of GMT Association and Small World will Offer same rate as the GMT Association will announce daily and Small World will charge £5 fee for any amount to Pakistan as the GMT Association has agreed*'.¹¹⁶ [Small World Employee 1]'s email also confirmed that both he, and his Small World colleague [Small World Employee 2], had already joined the GMTA's WhatsApp group.
- 3.27 At the end of his 18 February email, [Small World Employee 1] indicated that the arrangement would reduce or remove price competition between Small World and the GMTA agents:
- 'By following the GMT Association rates and charges the profitability for any transaction to Pakistan will be as high as in comparison to transactions to Europe, Africa and the competition will be on the reliability and quality of the Service.'
- 3.28 The FCA notes that internal Small World compliance interviews conducted in May 2017 with [Small World Employee 1] and [Small World Employee 3] (see paragraph 3.70 below) are consistent with the account of events provided in [Small World Employee 1]'s 18 February email. In his internal interview, [Small World Employee 1] stated that he told the agents that he would follow their rates to '*balance the situation*' because

¹¹⁵ [Small World Employee 1] stated: '*I went to help for the opening as we have lots of agents there. We have many agents like Hafiz Brothers and much more there who have our agency. When we went for marketing I remember that many agents came and told us that they will 'boycott' the Small World branch. They were threatening us and saying that they will steal our customers [...] They kept saying that they are all together and they will not allow Small World to enter in the Glasgow Market. (CA98.2020.01-001155); [Small World Employee 3] stated: 'when we opened the branch [Small World Employee 1] and sales team went in Glasgow. We have most of the Pakistan agents there. They all contacted [Small World Employee 1] and told him that if we open the branch then we lose our business there' (CA98.2020.01-001160); [Small World Employee 5] stated: 'when we opened the branch we had a low fee for the Pakistan transaction than other agents in Glasgow. So agents started to complain to [Small World Employee 1] [...] After their complaints, [Small World Employee 1] came to me and [Small World Employee 4]. I remembered he mentioned about some association and then he emailed to me, [X], [Small World Employee 4] and Glasgow branch team to explained the agent's concerns. He mentioned that agents will stop our business and therefore [Small World Employee 4] wasn't happy. (CA98.2020.01-001161).*

¹¹⁶ CA98.2020.01-000462. However, in relation to the transaction fee, [Small World Employee 1] noted that he '*made all the agents aware that the 1st transaction by customer to any country will be free and fees will apply from 2nd transaction for same customer which was accepted by the agents.*'

the agents were *'not happy with our new branch'*.¹¹⁷ While in his internal interview, [Small World Employee 3] noted that the agents said that *'if we follow their same rates and charges then we will achieve benefit'*.¹¹⁸

3.29 Statements made by [Dollar East Employee 2] and [Hafiz Bros Employee 1] in interview corroborate [Small World Employee 1]'s 18 February email regarding agents' concerns about the opening of the Glasgow branch and its potential ability to offer customers a better exchange rate in the UK to Pakistan corridor.

3.30 In explaining the content of a later email he had sent to Small World to complain about rates at the Glasgow branch,¹¹⁹ [Dollar East Employee 2] told the FCA that:

*'whatever the rate you [Small World] are giving us, as a Agent, you are giving, offering the same rate to the retail customers, and it's not a fair trade with us because we cannot even compete you on that one. Even if we want to compete, even we cannot compete you because, and if you will give the same rate as your branch is offering, we have to close up office because we won't make any money.'*¹²⁰

3.31 During his interview with the FCA, [Hafiz Bros Employee 1] stated:

*'Small World they are wholesale dealer, because we also work with them, Small World, and I here see all the agent in Glasgow, many of agent work with Small World directly. Some are, work with through us and some are work with Small World directly [...] Small World is the wholesaler and they open their own shop in Glasgow, and it's not, I think, so it's not fair deal because they have all customer data in their system, and they open their own shop for the customer in Glasgow. And, I think so, it's not fair deal for the small companies because Small World is a big group, and they serve customer in their shop in Glasgow right now.'*¹²¹

and

*'[...] I give my opinion to you, you know Small World they are the big fish, they are the bigger company, and they open their own office in Glasgow and they are not doing fair trade. You know, fair trade, they are killing small agents ...'*¹²²

The FX conduct

Overview of the FX conduct

3.32 The first aspect of the Infringement concerned an arrangement to coordinate on the level of retail currency exchange rates offered for GBP/PKR remittances.

¹¹⁷ CA98.2020.01-001155. [Small World Employee 1] said: *'I and [Small World Employee 2] we went to meet some agents in Glasgow and then we found out that all the agents are not happy with our new branch. As I said, they told me that they will 'boycott' the small world branch and them not happy etc. [...] I just joined the group to calm down the agents and to support our business. [...] They said we have to follow their rate otherwise they will fight against us. So balance the situation I said them that we will follow your rates'*.

¹¹⁸ CA98.2020.01-001160.

¹¹⁹ CA98.2020.01-000253.

¹²⁰ Transcript of FCA interview with [Dollar East Employee 2], lines 1055 to 1070 (CA98.2020.01-001867).

¹²¹ Transcript of FCA interview with [Hafiz Bros Employee 1], lines 2945 to 2956 (CA98.2020.01-001868).

¹²² Transcript of FCA interview with [Hafiz Bros Employee 1], lines 3035 to 3038 (CA98.2020.01-001868).

- 3.33 The evidence gathered by the FCA shows that the FX conduct was carried out in relation to the sale of any in-store GBP/PKR remittance service where the retailer had the ability to determine the retail exchange rate given to customers (**retailer-adjusted remittance services**) (see Chapter 2, paragraphs 2.27 to 2.32). At the very least this included Small World's remittance services, but also the remittance services of other MTOs which likewise allowed MTAs the ability to determine the retail exchange rate, such as Sigue.¹²³
- 3.34 The FCA considers that the evidence indicates that there was an understanding between the Parties to maintain retail exchange rates at a higher level than would have been the case absent such an understanding, in order to increase the profitability of retailer-adjusted remittance services in the provision of in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR. There is also evidence of collusion between the Parties on the specific level of the exchange rate to be used, which was carried out through the regular circulation of proposed retail GBP/PKR rates between the Parties.
- 3.35 The FCA considers that the evidence shows that these regular contacts between the Parties were carried out through a GMTA WhatsApp group. Small World told the FCA that a *'WhatsApp group was used by the agents on a daily basis to circulate the particular GBP/PKR FX rate which was to be applied by the agents on that day.'*¹²⁴ Consistent with this statement, internal Small World documents created within the Relevant Period show Small World employees confirming that a WhatsApp group was used for the circulation of daily retail exchange rates. For instance:
- (a) In his internal Small World interview, [Small World Employee 1] stated: *'Hafiz Brother (one of our big agent) advertise the rate in the morning in the what's up group and stated that they will sell this rate today. They do this every morning.'*¹²⁵
 - (b) In his internal Small World interview, [Small World Employee 3] stated: *'They all have what's up [sic] to the group in Glasgow. I am part of that group. Even [Small World Employee 1] and [Small World Employee 2] also joined it. They send daily rates on the group.'*¹²⁶
- 3.36 The FCA notes that the evidence set out below in paragraphs 3.38 to 3.69 is not consistent with statements made by Hafiz Bros and Dollar East during the FCA's investigation that the WhatsApp group had no particular purpose and was *'only a social*

¹²³ While the FCA does not accept as accurate certain statements made by [Hafiz Bros Employee 1] in interview when discussing the rates Hafiz Bros circulated in the GMTA WhatsApp group (paragraph 3.65), the FCA does note [Hafiz Bros Employee 1]'s comments regarding the similarities between Small World and Sigue in that these remittance providers gave agents a wholesale rate rather than, like Western Union, a set exchange rate. See Transcript of FCA interview with [Hafiz Bros Employee 1], lines 345 to 356; lines 1133 to 1166; lines 1190 to 1209 (CA98.2020.01-001868). The FCA further notes that [Dollar East Employee 2]'s email of 15 June 2017 (paragraph 3.74) makes specific reference to Sigue as an alternative MTO to Small World for members of the GMTA.

¹²⁴ LCC's second response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 16 October 2020 (CA98.2020.01-000211).

¹²⁵ CA98.2020.01-001155.

¹²⁶ CA98.2020.01-001159.

group' (Hafiz Bros),¹²⁷ or that the WhatsApp group only shared general information about the industry (Dollar East).¹²⁸

- 3.37 The FCA considers that, while the Parties may have discussed legitimate topics (such as current affairs, sport, and religious matters), it is clear from the documentary evidence that another purpose of the WhatsApp group was to coordinate on the level of the retail exchange rate charged to customers for UK to Pakistan (GBP/PKR) remittances.

FX conduct between 18 February 2017 and 27 February 2017

- 3.38 Following the 18 February email (paragraphs 3.23 to 3.27 above), the FCA considers that the documentary evidence shows that Small World took immediate internal steps to ensure the implementation of its agreement to 'offer fx rate which is advertised by the Hafiz Bros for the retail customers' (paragraph 3.23). The evidence also indicates that three Small World employees, [Small World Employee 1], [Small World Employee 2] and [Small World Employee 3], joined a WhatsApp group for GMTA members on or around 18 February 2017.¹²⁹

- 3.39 At 10:15am on 21 February 2017, [Small World Employee 1] emailed Small World's Rates Controllers and his colleague [Small World Employee 2]. [Small World Employee 1]'s email reads:

'Hi [Small World Employee 2], Please keep an eye on the Glasgow GMT Association and please liaise with Glasgow Branch Staff for the PAK Fx Rates and Charges, If GMT Association changes their strategy please lets us know as soon as possible. Thanks for everyone's cooperation and support'.¹³⁰

- 3.40 At 10:33am on 21 February 2017, [Small World Employee 2] responded to [Small World Employee 1] with the following message:

'Thanks for your email related to the PAK FX rates and transfer fee for the particular matter as agreed with the GMT Association [sic] in Glasgow. I will explain the Staff in Glasgow Branch. If GMT Association change their strategy I will inform you ASAP'.¹³¹

- 3.41 During a later internal Small World interview, [Small World Employee 1] indicated that a GBP/PKR rate was regularly circulated by Hafiz Bros through a WhatsApp group between at least 18 February 2017 and 27 February 2017.¹³² During that interview

¹²⁷ Hafiz Bros Travel & Money Transfer Limited's second response to the FCA's section 26 CA98 notice of 16 September 2020 (001322), received by the FCA on 28 October 2020 (CA98.2020.01-000215).

¹²⁸ Dollar East (International Travel & Money Transfer) Ltd's first response to the FCA's section 26 CA98 notice of 16 September 2020 received on 14 October 2020 (CA98.2020.01-000210). See also Transcript of FCA interview with [Dollar East Employee 2], lines 982 to 989 (CA98.2020.01-001867): 'See, these are just like minded peoples. He did make a group, like, these are like minded people, he added all the competitors people, so because it's not only the same business, we also, and all of these peoples belong to the same background. When I'm saying, same background, means they are all from Pakistani backgrounds. So people do advertisement their rates over there and people also, as you will see in there, they also share any news, like, any social news or anything. There's no particular reasons to make this group.'

¹²⁹ LCC's second response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 16 October 2020 (CA98.2020.01-000211, see paragraph 3.6).

¹³⁰ CA98.2020.01-000466.

¹³¹ CA98.2020.01-000467.

¹³² CA98.2020.01-001155.

[Small World Employee 1] also recalled that the Glasgow branch charged customers at this same GBP/PKR rate until at least 27 February 2017.¹³³

- 3.42 The FCA notes submissions made by Dollar East which confirm that, by at least 18 February 2017, both [Dollar East Employee 2] and [Dollar East Employee 1] were members of a GMTA WhatsApp group¹³⁴ that had been created on 26 January 2017 by another MTA identified by Dollar East as '[X]'.¹³⁵ In interview, on being shown messages from the GMTA WhatsApp group that [Small World Employee 3] had joined (paragraphs 3.52 and 3.55 below), [Dollar East Employee 2] identified those WhatsApp messages as deriving from the same WhatsApp group that [X] had created previously.¹³⁶
- 3.43 The FCA notes that Hafiz Bros stated that [Hafiz Bros Employee 1] was added to a GMTA WhatsApp group 'sometime Summer 2017'.¹³⁷ However, based on the contemporaneous internal Small World documents referenced above which name Hafiz Bros as acting on behalf of the GMTA (paragraph 3.23), the FCA considers that the evidence in the round indicates that [Hafiz Bros Employee 1] had been a member of the relevant GMTA WhatsApp group from at least 18 February 2017.

FX conduct between 27 February 2017 and 31 May 2017

- 3.44 The evidence indicates that, from around 27 February 2017 until at least 31 May 2017, a GBP/PKR rate continued to be shared within the GMTA WhatsApp group. During this time Small World accessed that exchange rate information and, while ceasing to charge customers the exact rate circulated within the GMTA WhatsApp group, still used that information to inform the rate it offered customers at the Glasgow branch.¹³⁸
- 3.45 Internal Small World documentary evidence suggests that Small World had amended its pricing strategy from around 27 February 2017 onwards following concerns raised internally by employees based in the Glasgow branch [Small World Employee 6] and [Small World Employee 5] that Small World's pricing strategy of offering the same GBP/PKR rate as that being shared within the GMTA WhatsApp group could constitute a 'cartel'.¹³⁹

¹³³ When asked: 'do you know how long we stayed at the same rate as other agents?' [Small World Employee 1] replied: 'I think from the day we opened the branch till 27/02/2017'. CA98.2020.01-001155 (pages 2 and 3). During his internal Small World interview, [Small World Employee 1] repeatedly indicated that the Small World Glasgow branch had offered the same rate as circulated in the WhatsApp group until 27 February 2017 when it changed its approach and maintained a difference from the rate circulated within the WhatsApp group (see paragraph 3.46).

¹³⁴ Transcript of FCA interview with [Dollar East Employee 2], lines 939 to 947 (CA98.2020.01-001867).

¹³⁵ Dollar East (International Travel & Money Transfer) Ltd's additional response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 28 October 2020 (CA98.2020.01-000213) Dollar East stated that [Dollar East Employee 2] and [Dollar East Employee 1] were added 'just after' the WhatsApp group was created on 26 January 2017. See also CA98.2020.01-000210. As noted below at paragraph 3.71(b), on 31 May 2017 [Small World Employee 2] circulated a screenshot of the GMTA WhatsApp group which showed a creation date of 26 January 2017.

¹³⁶ [Dollar East Employee 2] identified the WhatsApp records in CA98.2020.01.000513 as being from the WhatsApp group created by '[X]' on 26 January 2017 as stated in (CA98.2020.01-000213). See Transcript of FCA interview with [Dollar East Employee 2], lines 938 to 963 (CA98.2020.01-001867).

¹³⁷ Hafiz Bros Travel & Money Transfer Limited's response to the FCA request of clarifications dated 21 October 2020 (001398), received by the FCA on 28 October 2020 (CA98.2020.01-000216).

¹³⁸ The FCA has not identified any evidence to suggest that Small World communicated this change in its pricing strategy to Dollar East, Hafiz Bros or any other GMTA member.

¹³⁹ CA98.2020.01-000483. On 24 February 2017, [Small World Employee 6] had raised concerns internally with [Small World Employee 5].

3.46 During his internal Small World interview held on 3 May 2017, [Small World Employee 1] made the following statements regarding the amended approach to pricing in the Glasgow branch:

'[...] I found about the Cartel on 27 February 2017 when [Small World Employee 5] sent an email to me and [Small World Employee 4] [...] She raised about Cartel in her email. I believe that from that day we change our rates. It's never the same. There is always 5p or 10p difference.

...

'After [Small World Employee 5]'s email, we never gave the same rates and it [*sic*] since 27/02/2017.'

...

'We are not following the rate. I and [Small World Employee 2] and [Small World Employee 3] are joined the what's up to group but only [Small World Employee 3] accessing the group and change the rates accordingly.

...

'[...] I am sure after 27/02/2017 we do not have same rates as other agents.'

...

'[Small World Employee 5] emailed on 27/02/17 and then we changed and maintaining 10 to 15p difference in rates [...].'¹⁴⁰

3.47 Internal Small World documents dating from March and April 2017, as outlined in the following paragraphs, are consistent with [Small World Employee 1]'s statements regarding Small World's continued access to the daily GMTA exchange rate for GBP/PKR remittances and subsequent actions in setting prices at the Glasgow branch in reference to the information on prices being exchanged within GMTA WhatsApp group.

3.48 On 10 March 2017, [Small World Employee 3] sent an email to Small World Rates Controllers with the subject title 'Pakistan Rate'. [Small World Employee 3]'s email read: '*Agent rate 127 Glasgow 126*'.¹⁴¹ Shortly after [Small World Employee 3]'s email, the Small World Rates Controllers replied: '*Thank you*'.¹⁴²

3.49 On 13 April 2017, [Small World Employee 6] sent an email to colleagues which indicated that, since the 18 February 2017 email, the Glasgow branch had amended its rates for the UK to Pakistan corridor so as to offer Glasgow branch customers a lower exchange rate when compared to other Small World branches.¹⁴³

3.50 On 18 April 2017, [Small World Employee 1] sent an email to colleagues¹⁴⁴ that read:

¹⁴⁰ CA98.2020.01-001155.

¹⁴¹ CA98.2020.01-000469.

¹⁴² CA98.2020.01-000470.

¹⁴³ CA98.2020.01-000483 (email on 13 April at 2.58pm).

¹⁴⁴ Including [Small World Employee 4], [Small World Employee 5] and [Small World Employee 3].

'the rates are set up for Pakistan for the Glasgow Branch is already different then the GMT Association is giving, for Example today the rates are set up by the rates controllers are 130.25 Pak Rupees for Glasgow Branch and the GMT Association had agree for them selves [*sic*] 130 Pak Rupee. So its a matter to checking the rates on daily basis, what we are applying for Glasgow Branch to be aware of the entire situation.'¹⁴⁵

- 3.51 Internal interviews with [Small World Employee 3] and [Small World Employee 5] also note this change in pricing strategy after 27 February 2017. For instance:
- (a) [Small World Employee 3] stated '*Once I saw [Small World Employee 6]'s email about the cartel and after that rather than keeping the same rates, I put higher or lower rates. My job is to look after rates controller.*'¹⁴⁶
 - (b) [Small World Employee 5] stated: '*after [Small World Employee 6]'s email, we made changes in our rates to support customers [...] I am sure that rate is different. We change our rates to give a better option for our customers. But again in London, we have better rates and fee then Glasgow.*'¹⁴⁷

WhatsApp evidence from 1 May to 24 May 2017

- 3.52 Small World submitted WhatsApp chat records that show that the Parties were members of a WhatsApp group in which, between 1 May 2017 and 24 May 2017, Hafiz Bros regularly circulated currency exchange rates with Dollar East, Small World and a number of other participants.¹⁴⁸
- 3.53 These WhatsApp chat records (**the May GMTA WhatsApp records**) include messages sent from mobile phone numbers associated with two key individuals at Dollar East and Hafiz Bros: [Dollar East Employee 2] and [Hafiz Bros Employee 1].¹⁴⁹ During their interviews with the FCA, [Dollar East Employee 2] and [Hafiz Bros Employee 1] did not dispute that WhatsApp messages sent from their mobile phone numbers were attributable to them personally.¹⁵⁰
- 3.54 Between 1 May 2017 and 24 May 2017, Hafiz Bros ([Hafiz Bros Employee 1]) sent a message in the WhatsApp group that provided a currency conversion rate every day

¹⁴⁵ See email chain between [Small World Employee 1] to [Small World Employee 4] copying in Glasgow Agency UK amongst others dated 18 April 2017 regarding the report by [Small World Employee 6] (CA98.2020.01-000483).

¹⁴⁶ CA98.2020.01-001160.

¹⁴⁷ CA98.2020.01-001161.

¹⁴⁸ CA98.2020.01-000513 (and full translation version CA98.2020.01-001977) The FCA's analysis of the WhatsApp chat records indicates that there were at least 19 unique participants within the group during this time (including individuals from the Parties).

¹⁴⁹ The FCA notes that the May GMTA WhatsApp records originate from a text file sent by [Small World Employee 3] to himself on 24 May 2017. The FCA further notes that, as outlined at paragraph 3.71, three Small World employees ([Small World Employee 1], [Small World Employee 2] and [Small World Employee 3]) would on 31 May 2017 confirm their exiting of the WhatsApp group to Small World compliance officers.

¹⁵⁰ The FCA notes that while no messages from [Dollar East Employee 1] are shown in the May GMTA WhatsApp records in the FCA's possession, Dollar East has separately confirmed that [⌘] ([Dollar East Employee 2] and [Dollar East Employee 1]) were members of the GMTA WhatsApp from shortly after 26 January 2017 (See response to question 1(ii) in Dollar East (International Travel & Money Transfer) Ltd's additional response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 28 October 2020 (CA98.2020.01-000213)).

except on Sundays.¹⁵¹ These messages were typically sent at around 10.00am each day.

3.55 There are twenty-one instances of messages from Hafiz Bros which provide a currency conversion rate. Following each of those instances, several other members of the WhatsApp group provided confirmatory responses in reply, including 16 confirmatory messages sent from Dollar East ([Dollar East Employee 2]).¹⁵² For instance:

(a) On 13 May 2017 at 9.52am, Hafiz Bros ([Hafiz Bros Employee 1])¹⁵³ wrote: 'Today rate is 133'. At 11.22am, Dollar East ([Dollar East Employee 2])¹⁵⁴ wrote 'ok'. Two other group participants acknowledged the rate at around the same time as Dollar East.

(b) On 16 May 2017 at 9.50am, Hafiz Bros ([Hafiz Bros Employee 1]) wrote: 'Today rate is 133.50'. At 11.22am, Dollar East ([Dollar East Employee 2]) wrote 'ok'. Two other group participants acknowledged the rate at around the same time as Dollar East.

(c) On 22 May 2017 at 9.43am, Hafiz Bros ([Hafiz Bros Employee 1]) wrote: 'Today rate is 134'. At 10.08am, Dollar East ([Dollar East Employee 2]) wrote 'ok'. Four other group participants acknowledged the rate at around the same time as Dollar East.

3.56 In interview, [Dollar East Employee 2] and [Hafiz Bros Employee 1] both confirmed that the three-digit numbers shared in the WhatsApp chat by Hafiz Bros ([Hafiz Bros Employee 1]) referred to a GBP/PKR exchange rate.^{155 156}

3.57 The GMTA WhatsApp chat records indicate that Dollar East monitored compliance with the FX conduct and addressed suspected breaches by GMTA members. On 1 May 2017, shortly after a currency conversion rate was posted by Hafiz Bros, Dollar East ([Dollar East Employee 2]) sent the message: 'Dear fellow GMT members plz respect this platform by not giving silly rates'.¹⁵⁷

3.58 In interview, [Dollar East Employee 2] stated that his message was to urge other members of the WhatsApp group to include a margin on the wholesale rate, particularly if money remittance was not those firms' main business activity. [Dollar East Employee 2] explained:

'Some peoples give the same wholesale rate to the customers because that's not their main businesses, and it's not a fair trade for those peoples who are in the business, because if we offered the same wholesale rate, we cannot even

¹⁵¹ No currency conversation rate is seen on 7 May 2017, 14 May 2017 and 21 May 2017.

¹⁵² The FCA notes that only one other participant of the GMTA WhatsApp group provided more confirmatory responses than [Dollar East Employee 2].

¹⁵³ In the WhatsApp chat, the telephone number is not visible but the participant name is shown as '[Hafiz Bros] Hafiz Bros'. In interview, [Hafiz Bros Employee 1] confirmed that messages from this participant name were sent from him. See Transcript of interview with [Hafiz Bros Employee 1] dated 30 June 2022 Part 2 of 4 lines 1117 to 1131 (CA98.2020.01-001868).

¹⁵⁴ Transcript of interview with [Dollar East Employee 2] dated 16 June 2022 Part 1 lines 128-181 (CA98.2020.01-001867).

¹⁵⁵ Transcript of interview with [Dollar East Employee 2] dated 16 June 2022 Part 1 lines 658-668 and Part 2 lines 852-864 (CA98.2020.01-001867).

¹⁵⁶ Transcript of interview with [Hafiz Bros Employee 1] dated 30 June 2022 Part 2 lines 1572-1578 (CA98.2020.01-001868).

¹⁵⁷ CA98.2020.01-000513 (see message at 01/05/2017 10:17:14 am).

make our end, end of the day we won't be making any profit, or hardly any profit. So that's the only reason, because sometimes people advertise the rate which is wholesale rate and it's not affordable for anyone who is doing the business there, the main business for a money transfer, to carry on.'^{158 159}

- 3.59 The FCA's analysis of transaction data provided by Small World shows that the Small World retail exchange rate for GBP/PKR remittances was generally between 0.17% to 0.27% higher (i.e., more favourable to the consumer) than the daily exchange rate circulated in the WhatsApp group between 1 May 2017 and 24 May 2017.¹⁶⁰ Consistent with the evidence described above (paragraphs 3.46 and 3.51 in particular), the transaction data therefore suggests that Small World took note of the exchange rate being circulated in the GMTA WhatsApp group and used it to inform its pricing strategy until at least 24 May 2017.
- 3.60 The FCA also conducted an analysis of transaction data provided by Dollar East when Dollar East considered itself to be acting as an agent of Hafiz Bros (see above at paragraphs 3.11 and 3.12). This analysis shows that the Dollar East retail exchange rate for GBP/PKR remittances was generally (with the exception of two days¹⁶¹) the same as the daily exchange rate circulated in the WhatsApp group between 1 May 2017 and 24 May 2017.¹⁶² The transaction data therefore suggests that Dollar East consistently applied the rate circulated within the GMTA WhatsApp group during the dates shown in the May WhatsApp records.
- 3.61 The latest date shown in the GMTA WhatsApp records is 24 May 2017. However, the documentary evidence, as set out at paragraph 3.71 below, indicates that WhatsApp communications between the Parties continued until at least 31 May 2017.

The 'rate' shared between the Parties in the GMTA WhatsApp group

- 3.62 The FCA considers that the evidence indicates that the exchange rate shared by Hafiz Bros in the WhatsApp group was understood by the Parties to be the proposed retail GBP/PKR exchange rate that was to be offered to customers by GMTA members.

¹⁵⁸ Transcript of FCA interview with [Dollar East Employee 2], lines 796 to 816 (CA98.2020.01-001867).

¹⁵⁹ In interview, [Dollar East Employee 2] explained that the 'wholesale rate' in the following terms: *See, whoever we work with, like, if we work with the Western... no, Western Union is a different platform, like, if we work with, let's say, Small World, right? Small World give us a rate. Suppose, they give us a rate, 200, and they [unclear] us, 'Okay, you can charge a customer 201, you can keep 1 rupee as your commission'. So the rate provided by our main people who do we work, like, Small World, that's what I mean by wholesale rate'* Transcript of FCA interview with [Dollar East Employee 2], lines 843 to 849 (CA98.2020.01-001867).

¹⁶⁰ FCA analysis of Small World transaction data CA98.2020.01-001860 and CA98.2020.01-000513. Methodology: the FCA compared 13 transactions within the Small World transaction data which were dated between 1 May and 24 May 2017 under the channel 'Branch' against rate circulated on the same day within the GMTA WhatsApp records. 10 of the 13 transactions were between 0.17% to 0.27% higher than the GMTA rate.

¹⁶¹ 23 May 2017 and 24 May 2017.

¹⁶² FCA analysis of Dollar East transaction data CA98.2020.01-000234 and CA98.2020.01-000513. Methodology: The FCA compared 290 transactions within the transaction data which were dated between 1 May and 24 May 2017 and compared the exchange rate applied (column D) to the rate circulated on the same day within the May GMTA WhatsApp records. Of the 290 transactions, the exchange rate applied in 231 transactions was the same as the rate circulated within the GMTA WhatsApp group for that same day. Of those transactions that differed from the GMTA rate, 38 took place on 23 and 24 May 2017. Of the remaining 21 transactions on other days in May 2017 which did not exactly match the GMTA rate, the FCA notes that the % difference is often very small (i.e. the majority are under 0.01%).

3.63 Internal Small World documents are consistent in identifying the exchange rate shared within the GMTA WhatsApp group as the proposed retail exchange rate to be charged to customers for UK to Pakistan (GBP/PKR) remittances. For instance:

(a) [Small World Employee 1]’s 18 February email stated that Small World would have to ‘offer fx rate which is advertised by the Hafiz Bros for the retail customer.’¹⁶³

(b) [Small World Employee 1]’s internal Small World interview:

‘Hafiz Brother (one of our big agent) advertise the rate in the morning in the what’s up group and stated that they will sell this rate today [...] I entered in the group to know the market rate so we can adjust the rate from outside not keep what they say.’¹⁶⁴

(c) [Small World Employee 3]’s internal Small World interview:

‘...when we opened the branch [⌘] [[Small World Employee 1]] and sales team went in Glasgow. We have most of the Pakistan agents there. They all contacted [Small World Employee 1] and told him that if we open the branch then we lose our business there. They said that if we follow their same rates and charges then we will achieve benefit [...] They all have what’s up to the group in Glasgow [...] They send daily rates on the group.’¹⁶⁵

3.64 In interview, [Dollar East Employee 2] stated that the rate circulated in the WhatsApp group was: ‘*the GBP to PKR currency exchange rate Hafiz Bros are offering in their office*’.¹⁶⁶ Elsewhere in his interview, when discussing a later email he had sent to Small World to complain about rates at the Glasgow branch,¹⁶⁷ [Dollar East Employee 2] also stated that the GMTA WhatsApp group was a platform whereby ‘*peoples advertisements, their rates*’.¹⁶⁸

3.65 In interview, [Hafiz Bros Employee 1] stated that the rates he circulated within the WhatsApp group constituted the Small World and/or Sigue ‘cost rate’ for remittance services to Pakistan (also referred to as a ‘wholesale’ or ‘admin’ rate), and that agents of these two MTOs were then free to adjust that rate when determining the retail exchange rate offered to customers.¹⁶⁹

3.66 In reference to [Hafiz Bros Employee 1]’s comments in interview regarding the rate he circulated being a ‘cost rate’, the FCA notes comments made by a senior Small World employee, [Small World Employee 4], which suggest that Hafiz Bros (alongside the other master agents working with Small World) played a role in establishing Small World’s cost/wholesale rates for MTAs that the master agents had previously onboarded with Small World.

¹⁶³ CA98.2020.01-000462.

¹⁶⁴ CA98.2020.01-001155.

¹⁶⁵ CA98.2020.01-001159.

¹⁶⁶ FCA transcript of interview with [Dollar East Employee 2], lines 626 to 669 and 853 to 865 (CA98.2020.01-001867).

¹⁶⁷ CA98.2020.01-000253.

¹⁶⁸ FCA transcript of interview with [Dollar East Employee 2], lines 1078 to 1079 (CA98.2020.01-001867).

¹⁶⁹ FCA transcript of interview with [Hafiz Bros Employee 1], lines 1139 to 1142 and line 1578. See also lines 1489 to 1192 and lines 1503 to 1507 (CA98.2020.01-001868).

3.67 In his internal Small World interview, [Small World Employee 4] outlined the following process:

'Hafiz does send rates in the morning. We go in our system change our rates. He shows that his rates are better but they can not pressure us to use the same rates. We have 3 master agents. In the morning they send rates to rate controller. I have an example; they send their rates 1.0405, 1.0435, 1.0465. So as soon as they send their rates we apply 0.6% on that and send it to all our branches and to our agents. Then its agent's [*sic*] do whatever they need to do but for branches, we take the decision.'¹⁷⁰

3.68 Following his internal Small World interview, [Small World Employee 4] followed up with practical examples of transactions undertaken on three specific dates during the Relevant Period.¹⁷¹ These documents indicate that, on each date, different Small World wholesale/cost rates were in operation between a Small World MTA recruited by Hafiz Bros when compared to a Small World MTA recruited by another master agent, Khyber.¹⁷²

3.69 Notwithstanding the above, the FCA does not consider [Hafiz Bros Employee 1]'s comments in interview, regarding how only cost rates were being circulated in the May GMTA WhatsApp records, to be credible based on the entirety of the evidence. In particular, the FCA notes:

- (a) As outlined above (at paragraphs 3.23 and 3.26 in particular), contemporaneous internal Small World documents clearly demonstrate that several Small World employees understood the rate circulated within the GMTA WhatsApp chat to be the retail exchange rate for GBP/PKR transactions that was to be offered to in-store customers. This understanding was the explicit reason why [Small World Employee 1], [Small World Employee 2] and [Small World Employee 3] joined the GMTA WhatsApp group in February 2017.
- (b) Interactions within the GMTA WhatsApp chat records suggest that group participants were aware that the rate initially circulated by Hafiz Bros differed from any Small World or Sique cost/admin rate. For instance, on 5 May 2017 at 10:01am, Hafiz Bros ([Hafiz Bros Employee 1]) circulated a rate ('134') after which group participants asked '*What's the admin rate*' and '*[&<] would you please have a look on admin rate?*'. Shortly after these questions were posted, at 10:37am, Hafiz Bros ([Hafiz Bros Employee 1]) wrote '134.75' after which, at 11:35am, a group participant wrote '*Which is the right amount*' and later, at 12:17pm, [Dollar East Employee 2] wrote '134'.

In relation to these interactions, the FCA notes that Small World transaction data shows that Small World's wholesale rates (also referred to as 'cost' or 'admin' rates) during 5 May 2017 ranged between 134.14 to 134.78 (including 22 instances where the wholesale rate was 134.75 – the same figure as [Hafiz Bros Employee 1]'s second message at 10:37am). Furthermore, of the 24 occasions on 5 May 2017 when a Small World MTA adjusted the retail exchange

¹⁷⁰ CA98.2020.01-001157.

¹⁷¹ CA98.2020.01-000501; CA98.2020.01-000502; CA98.2020.01-000503; CA98.2020.01-000504.

¹⁷² The highlighted 'customer rate' in these documents. See also LCC's third response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 30 October 2020 (paragraph 11.2.6) CA98.2020.01-000218.

rate it charged to customers, 20 of these adjustments were in order to charge customers a rate 134 – the same rate as initially circulated by [Hafiz Bros Employee 1] at 10:01am.¹⁷³

- (c) The FCA's analysis of Small World transaction data indicates that out of 2,123 GBP/PKR transactions conducted by Glasgow MTAs between 1 May to 24 May 2017, there were only six occasions where the rate circulated by Hafiz Bros within the May GMTA WhatsApp records matched the Small World wholesale rate provided to its MTAs over the course of any day within this period. In contrast, of the 925 transactions where Glasgow MTAs adjusted the retail exchange rate that they charged to customers, most of these (63.2%) were adjusted to the exact rate (specified to two decimal points) as circulated within the GMTA WhatsApp group on the relevant day.¹⁷⁴
- (d) As noted above at paragraph 3.60, Dollar East transaction data indicates that during May 2017 Dollar East consistently applied the same rate which was circulated within the GMTA WhatsApp group during the dates shown in the May WhatsApp records. Given [Dollar East Employee 2]'s (Dollar East) comments (paragraph 3.58 above) regarding the importance [X] of not charging the wholesale rate, and taking account of [Dollar East Employee 2]'s message, sent to others within the GMTA WhatsApp group, about not giving 'silly rates' (paragraph 3.57 above), the FCA considers it unlikely that between 1 May 2017 and 24 May 2017 Dollar East was consistently charging a wholesale rate (as circulated that day by [Hafiz Bros Employee 1]) to its customers.
- (e) As confirmed by [Hafiz Bros Employee 1] in interview, Small World MTAs may have had, outside of the GMTA WhatsApp group, access to the Omnex system where the Small World cost rate would have been directly displayed to MTAs.¹⁷⁵

31 May 2017 – Small World's exit from the WhatsApp group

- 3.70 During April 2017 and May 2017, Small World conducted an internal compliance investigation in relation to its interactions with GMTA members regarding the pricing of remittances in the UK to Pakistan corridor following an internal complaint.¹⁷⁶ According to a summary report of the investigation dated 24 May 2017, Small World compliance staff recommended that Small World employees remove themselves from

¹⁷³ FCA analysis of Small World transaction data CA98.2020.01-001860 and CA98.2020.01-000513. Methodology: The FCA identified 66 transactions in the Small World transaction data which took place on 5 May 2017. For these 66 transactions, the FCA compared data in the 'Customerrate' and 'Manual_customerrate' columns to the rate circulated within the May GMTA WhatsApp records.

¹⁷⁴ FCA analysis of Small World transaction data (CA98.2020.01-001860) and CA98.2020.01-000513. Methodology: The FCA identified a total of 2,151 transactions made by agents between 1 May 2017 and 24 May 2017. Of these, 2,123 transactions were made on days when a rate had been circulated within the GMTA chat records (i.e. transactions made on 7, 14 and 21 May 2017 were excluded from the analysis). The FCA compared the circulated GMTA rate to the 'Customerrate' column for these 2,123 transactions, finding that only six transactions showed a customer rate which matched the rate circulated within the GMTA WhatsApp group. Using the 'Manual_Customerrate' column, of the 2,123 transactions the FCA identified 925 transactions where the MTA had manually adjusted the exchange rate (i.e. two different rates were present in the 'Customerrate' and 'Manual_Customerrate' columns). The FCA compared the manually adjusted rate in these 925 transactions to the rate circulated within the GMTA WhatsApp group on the relevant day, finding that 585 transactions (63.2%) matched the GMTA rate.

¹⁷⁵ FCA transcript of interview with [Hafiz Bros Employee 1], lines 324 to 327 and lines 1494 to 1507 (CA98.2020.01-001868).

¹⁷⁶ CA98.2020.01-000483. [Small World Employee 6] having sent an email regarding their concerns to [Small World Employee 7] on 13 April 2017.

the GMTA WhatsApp group.¹⁷⁷ The FCA notes that, also on 24 May 2017, [Small World Employee 3] emailed to himself a zip file containing the May GMTA WhatsApp chat records (which Small World produced to the FCA during the FCA's investigation).¹⁷⁸

3.71 On 31 May 2017, [Small World Employee 8] sent an email to [Small World Employee 1], [Small World Employee 2] and [Small World Employee 3] (copying in [Small World Employee 4]) directing these individuals to remove themselves from the GMTA WhatsApp group '*with immediate effect*'.¹⁷⁹ Internal Small World emails sent in response to [Small World Employee 8] indicate that [Small World Employee 1], [Small World Employee 2] and [Small World Employee 3] then removed themselves from the GMTA WhatsApp group later that same day.¹⁸⁰ The FCA notes the following details within relevant emails sent on 31 May 2017:

(a) At 2.36pm, [Small World Employee 3] sent [Small World Employee 8] a screenshot of a WhatsApp chat which showed that a user identified as '[X] Hafiz Bros' sent a message at 10:07am that read '*Today rate 132.25*'. Following this, a user identified as '[X]' (shown using the phone number attributed to [Dollar East Employee 2]), sent a message that read '*Jazakallah*' ('thank you'). The screenshot also shows the phone number attributed to [Small World Employee 2] adding another user to the WhatsApp group at some point between 12:32pm and 3.30pm.¹⁸¹

(b) At 2.51pm, [Small World Employee 2] sent [Small World Employee 8] a screenshot which showed group information for the GMTA WhatsApp group. The bottom of the screenshot shows that the GMTA WhatsApp was '*Created by [X] Hafiz Br Mob*' on 26 January 2017'.¹⁸²

3.72 There is no evidence that Small World explicitly sought to distance itself from the FX conduct by communicating its actions in leaving the GMTA WhatsApp group to Hafiz Bros or Dollar East (or indeed to any other GMTA member). However, from 31 May 2017 onwards the evidence indicates that Small World could no longer access the GMTA WhatsApp group.

End of the FX conduct: evidence

3.73 There is documentary evidence to suggest that, following its exit from the GMTA WhatsApp group on 31 May 2017, Small World adopted a more aggressive pricing strategy at its Glasgow branch.

¹⁷⁷ CA98.2020.01-000507.

¹⁷⁸ CA98.2020.01-000512, CA98.2020.01-000513.

¹⁷⁹ CA98.2020.01-000516.

¹⁸⁰ CA98.2020.01-000519 (written confirmation from [Small World Employee 1] that he '*left the Group in front* [sic] of [Small World Employee 4] and [Small World Employee 3]; CA98.2020.01-000522 (written confirmation from [Small World Employee 3] that he had '*left the group and deleted it, witnessed by* [Small World Employee 4] and [Small World Employee 1]' provided alongside a screenshot of a WhatsApp group that showed users identified as 'you' and '[Small World Employee 1]' as having left the chat (CA98.2020.01-000855). CA98.2020.01-000524 (written confirmation from [Small World Employee 2] that '*I have exit from GMT group after getting your email*' provided alongside a screenshot which shows members of the GMTA WhatsApp group and the words 'You're no longer a participant of this group'.

¹⁸¹ CA98.2020.01-000522, CA98.2020.01-000855.

¹⁸² CA98.2020.01-000524.

3.74 On 15 June 2017, [Dollar East Employee 2] sent an email on behalf of the GMTA to Small World ([Small World Employee 2]), [Hafiz Bros Employee 1]¹⁸³ and 18 other email addressees.¹⁸⁴ Under the subject title 'RATE ISSUE', [Dollar East Employee 2] wrote:

'MY NAME IS [DOLLAR EAST EMPLOYEE 2]. I AM SENDING YOU THIS EMAIL ON BEHALF OF GLASGOW MONEY TRANSFER ASSOCIATION (GMTA) WHO HAVE 39 ACTIVE MEMBERS AT PRESENT.

I WANT TO BRING THE ISSUE FACED BY MY FELLOW ASSOCIATION MEMBER'S VIA YOURSELF TO SMALL WORLD LCC'S ATTENTION THAT WHAT WE ARE FACING CURRENTLY IN GLASGOW MONEY TRANSFER MARKET REGARDING RATE VIOLATION & CUSTOMER CHARGES BY LCC IS BEYOND A JOKE NOW. AS YOU ARE AWARE LCC'S FLAGSHIP VICTORIA ROAD GLASGOW BRANCH IS GIVING FULL RATE ALONG WITH £1 CHARGES TO CUSTOMERS LEAVING ZERO MARGIN FOR AGENTS WORKING WITH LCC. THIS IS NOT A FAIR POLICY APPLIED BY LCC AND IT'S CONSEQUENCES ARE BEING FELT BY BUSINESSES SUCH AS MAJORITY OF THE GMTA WHOSE MAIN BUSINESS INTEREST IS MONEY REMITTANCE. IF LCC CONTINUES WITH THIS STRATEGY TO PROMOTE THEIR OWN SHOPS AND DESTROY THEIR AGENTS BUSINESSES WE GMTA MEMBER'S WILL NOT HAVE ANY OTHER OPTION BUT TO STOP GIVING BUSINESS TO LCC. MY FELLOW GMTA MEMBERS ARE THE PEOPLE WHO ARE GIVING MAJORITY BUSINESS TO LCC AND IF IN RETURN THAT IS THE LOYALTY THEY ARE GOING TO GET IN RETURN FROM LCC, WE WILL MAKE SURE THAT THE EFFECT IS FELT BY BOTH PARTIES EQUALLY AS OUR BUSINESS INTEREST WILL REVERT TO SIGUE MONEY TRANSFER AND OTHERS'

3.75 On 16 June 2017, [Small World Employee 2] forwarded [Dollar East Employee 2]'s email to Small World colleagues (including [Small World Employee 4], [Small World Employee 5] and [Small World Employee 1]).¹⁸⁵ In his covering message, [Small World Employee 2] noted that he had received '*many calls from them* [the GMTA]' ahead of receiving the 15 June 2017 email from Dollar East. While [Dollar East Employee 2]'s email was discussed internally within Small World, the FCA has seen no evidence that Small World responded to [Dollar East Employee 2]'s (Dollar East) email.¹⁸⁶

3.76 The evidence in the FCA's possession does not indicate that, following Small World's exit from the GMTA WhatsApp group on 31 May 2017, either Dollar East or Hafiz Bros subsequently brought the FX conduct to an end or sought to distance themselves from the arrangement at any time.

3.77 However, the FCA does not make any finding of an infringement in respect of the FX conduct after 31 May 2017.

¹⁸³ Sent to the email address '[<]@hafizbros.com' which was used by [Hafiz Bros Employee 1] from at least September 2016 (see CA98.2020.01-000274).

¹⁸⁴ CA98.2020.01-000527. The 18 other email addresses included [Small World Employee 3], [Small World Employee 4], [Dollar East Employee 1].

¹⁸⁵ CA98.2020.01-000528. [Small World Employee 2]'s email was later forwarded another Small World employee, [<], to [Small World Employee 3]. CA98.2020.01-000529.

¹⁸⁶ See LCC's response to the FCA's clarificatory questions (dated 7 July 2021) of the first s26 notice dated 16 September 2020 received by the FCA on 22 July 2021 (CA98.2020.01-001306).

The transaction fee conduct

Overview of the conduct

- 3.78 The second aspect of the arrangement between the Parties in the Relevant Period concerned an agreement and/or concerted practice to set the level of the transaction fee charged to customers of Small World's remittance services for the UK to Pakistan corridor at £5.00 per transaction.¹⁸⁷ As with the FX conduct, the evidence indicates that this arrangement stemmed from an understanding between the Parties to maintain transaction fees at a higher level than would have been the case absent such an understanding, in order to increase the profitability of retailer-adjusted remittance services in the provision of in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR.

18 February 2017 to 31 May 2017

- 3.79 The documentary evidence shows that in response to [Small World Employee 1]'s 18 February email (paragraph 3.23 above), Small World took immediate internal steps to ensure the implementation of a £5 transaction fee at its Glasgow branch.
- 3.80 On 21 February 2017 (at 9:18am) Small World's Rates Controllers email address wrote '*As per request, 3958 LCC Glasgow for any amount, we are charging £5 fee for Pakistan*'.¹⁸⁸
- 3.81 As detailed above at paragraph 3.39, at 10:15am on 21 February, [Small World Employee 1] responded to Small World's Rates Controllers to thank them for their email, while also requesting that [Small World Employee 2] should '*keep an eye on the Glasgow GMT Association and please liaise with Glasgow Branch Staff for the PAK Fx Rates and Charges, If GMT Association changes their strategy please let us know as soon as possible*'.¹⁸⁹ [Small World Employee 2] responded to [Small World Employee 1] at 10:33am on 21 February 2017 to confirm that '*If GMT Associations change their strategy I will inform you ASAP*'.¹⁹⁰ [Small World Employee 2]'s email also stated that he would '*explain the Staff in Glasgow Branch*'.
- 3.82 Small World's decision to charge a £5.00 fee for all GBP/PKR transactions made from the Glasgow branch (except for first time customers – see above at paragraph 3.26, footnote 116), represented a marked difference from Small World's pricing policy at other branches in the UK. Prior to 18 February 2017, GBP/PKR transactions with a value of approximately £170.00 or less incurred a £3 fee in Small World's branches while transactions above that value incurred no transaction fee.¹⁹¹ The change in pricing policy is outlined in the internal Small World documents dating from this period. For instance:

¹⁸⁷ Except that, as described in paragraph 3.26 (CA98.2020.01-000462), Small World agreed with the GMTA agents that the Small World Glasgow branch would not charge £5 for first time customers, and only apply the £5 transaction fee for the second transactions made by a customer.

¹⁸⁸ CA98.2020.01-000465. The FCA notes that the code '3958' referred to the Glasgow branch (see CA98.2020.01-000387).

¹⁸⁹ CA98.2020.01-000466. Shortly afterwards, at 10:19am on 21 February 2017, [Small World Employee 1] forwarded his correspondence with the 'Rates Controllers' and [Small World Employee 2] to 'Glasgow Agency UK', the email address used by employees working at Small World's Glasgow branch. CA98.2020.01-000483.

¹⁹⁰ CA98.2020.01-000467.

¹⁹¹ CA98.2020.01-000296.

- (a) One employee based in the Glasgow branch [Small World Employee 6] wrote to colleagues in April 2017:

'When we opened Glasgow branch the rates to Pakistan were the same of our others branches and our fee was £3 per transaction. After [Small World Employee 1] e-mail the rates controllers changed the rate following his statement and changed the fee to £5 per transaction [...] Since then Glasgow branch has a lower exchange rate and a higher fee in comparison with our branches and has the same exchange rate and fee as the competitors.'¹⁹²

- (b) Consistent with this, in their internal Small World interview [Small World Employee 6] stated that:

'At the beginning we were using the same transaction fee as we had in all of our other branches in the UK for Pakistan customers. It was £3.00 [...] after [X]'s [[Small World Employee 1]'s] email on 18 February 2017 we changed the fee in Omnex from £3.00 to £5.00.'¹⁹³

- (c) Another employee who worked in the Glasgow branch ([Small World Employee 5]) said in an internal May 2017 interview:

'All agents are charging £5.00 fee for the Pakistan corridor. Our branch charges £3.00. [...] We charge £3.00 fee for a transfer between £0 - £170.00. and above that amount, it's £0.00 fee. But the Agents has a stable fee which is £5.00 for any transactions. After their complaints, [Small World Employee 1] came to me and [Small World Employee 4]. I remembered he mentioned about some association and then he emailed to me, [X], [Small World Employee 4] and Glasgow branch team to explained the agent's concerns. He mentioned that agents will stop our business and therefore [Small World Employee 4] wasn't happy.

...

I remembered after [Small World Employee 1]'s email [Small World Employee 4] said ok to charge the same fee as agents.

....

The fee is same as agent for only Pakistan corridor. All other country rates and the fee are same as other branches have. The only difference in Glasgow for the Pakistan fee.'¹⁹⁴

- 3.83 The FCA notes that in an email to the Glasgow branch sent on 18 April 2017, [Small World Employee 4] indicated that he authorised both the changes in the Glasgow branch's daily retail GBP/PKR rates plus the introduction of a £5 per transaction charge to *'[follow] what the market is doing in the area and we did not want to mess up with competitors and the mostly with our own agents.'*¹⁹⁵

¹⁹² See email dated 13 April (at 14:58) shown in CA98.2020.01-000483.

¹⁹³ CA98.2020.01-001154.

¹⁹⁴ CA98.2020.01-001161.

¹⁹⁵ CA98.2020.01-000483.

3.84 [Small World Employee 4]'s email of 18 April 2017 also provided a table which showed that, during March 2017, '8 agents near the branch' made 1172 transactions with an overall volume of £620,000 while the 'Glasgow branch' made 36 transactions with an overall volume of £23,500. In relation to the table, [Small World Employee 4] wrote:

'below is the performance from our agents in glasgow to you to have and idea that if we do differently than them we would lose all that volume and would have a very bad reflection in the market [...] As you can see [...] we can not put our income and business relationship in a risk because of a branch that, as I said, was open to focus in a diff range of market once the 8 agents reviewed above are doing trxn only to pakistan and those 8 agents are very near to you, no more than a mile away.'¹⁹⁶

As shown in Figure 2 at paragraph 4.50, the FCA has identified at least seven MTAs that were under a mile away from the Glasgow branch, including Dollar East's branch at 0.6 miles away. The FCA therefore considers that Dollar East was one of the MTAs being referred to by [Small World Employee 4] in his email of 18 April 2017.

3.85 Consistent with the reasoning provided in his email of 18 April 2017, during his internal Small World interview on 4 May 2017, [Small World Employee 4] stated that: 'we are charging £5.00 because all are doing the same fee in Glasgow. If we don't follow it then Hafiz brothers will mess the business.'¹⁹⁷

3.86 While the May GMTA WhatsApp chat records between 1 May 2017 and 24 May 2017 make no reference to the level of transaction fees charged to customers, the FCA considers that the evidence outlined above indicates that the transaction fee conduct could be maintained without regular contacts between the Parties, because market conditions were sufficiently stable (which did not require changes to be made to the agreement and/or concerted practice) and sufficiently transparent (to enable the Parties to monitor each other's adherence to the agreement and/or concerted practice).

3.87 In interview, while discussing the terms of Dollar East's October 2017 agreement with Small World,¹⁹⁸ [Dollar East Employee 2] explained that 'we do charge £5 on every transaction, which is our charges at that time'.¹⁹⁹ Dollar East also confirmed to the FCA that:

'An administrative charge of £5 is applied to all transactions by the company. This is the standard rate that all agencies apply to their transactions within the industry. The same rates is applied to be competitive within the market'.²⁰⁰

3.88 The FCA notes that its analysis of transaction data provided by Dollar East when Dollar East considered itself to be acting as an agent of Hafiz Bros (see above at paragraphs

¹⁹⁶ CA98.2020.01-000483.

¹⁹⁷ CA98.2020.01-001157.

¹⁹⁸ CA98.2020.01-000209. See also paragraph 3.5 and footnotes.

¹⁹⁹ FCA Transcript of interview with [Dollar East Employee 2], lines 278 to 281 and 285 (CA98.2020.01-001867).

²⁰⁰ Dollar East's response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 6 May 2022 (Question 1) (CA98.2020.01-001590).

3.11 and 3.12) indicates that, during the Relevant Period, Dollar East charged a £5 fee in 62% of transactions.²⁰¹

- 3.89 The evidence suggests that the Parties would have been aware of each other's fees during the Relevant Period.²⁰² The FCA also has no evidence to indicate that the agreement and/or concerted practice between the Parties to set the transaction fee at £5.00 was changed at any point between 18 February 2017 and 31 May 2017.

End of the transaction fee conduct: evidence

- 3.90 There is no clear evidence that Small World took steps to explicitly disassociate itself from the transaction fee conduct when it exited the GMTA WhatsApp group on 31 May 2017 (see paragraph 3.71). However, the FCA notes that [Dollar East Employee 2], in his email of 15 June 2017 (paragraph 3.74 above), complained to Small World about both the rates and '*customer charges*' in operation at the Glasgow branch while also noting that the Glasgow branch had given '*full rate and £1 charges*' to customers. The text of [Dollar East Employee 2]'s email therefore suggests that, following Small World's exit from the GMTA WhatsApp group on 31 May 2017, the Glasgow branch may have become more aggressive in its pricing of GBP/PKR remittances across both the retail exchange rate and transaction fees charged to customers.
- 3.91 It is not clear from the evidence precisely when the transaction fee conduct between the Parties came to an end. However, there is little evidence of the arrangement following statements made by Small World employees during the internal Small World interviews during May 2017.
- 3.92 Accordingly, considering the linkage between the FX conduct and the transaction fee conduct in seeking to dampen price competition between the Parties (as outlined in [Small World Employee 1]'s 18 February email (see paragraphs 3.23 to 3.27)), the FCA does not make any finding of an infringement in respect of the transaction fee conduct after 31 May 2017.

²⁰¹ FCA analysis of Dollar East transaction data CA98.2020.01-000234. Methodology: 936 transactions were identified as taking place between 18 February 2017 and 31 May 2017. Of these, the column 'transaction fee applied' shows '5' for 582 transactions (62%).

²⁰² CA98.2020.01-000501 (Indicating Small World Glasgow branch staff awareness of charges being implemented by agents and local competitors). CA98.2020.01-000527 (indicating Dollar East's awareness of charges implemented by the Glasgow branch).

4 The relevant market

Purpose of assessing the relevant market

- 4.1 Competition authorities commonly use market definition as a starting point in their investigations to understand the competitive constraints that apply to the undertakings and, in light of that context, whether their conduct or transactions may adversely affect competition.
- 4.2 When applying the Chapter I prohibition, the FCA is not required to define the relevant market, unless it is impossible without such a definition to determine whether the agreement and/or concerted practice under investigation is liable to affect trade in the UK and whether it had as its object or effect the appreciable prevention, restriction or distortion of competition.²⁰³
- 4.3 In the present case, the FCA considers that it is not necessary to reach a definitive view on market definition to determine whether there has been an infringement, since it considers that the agreements and/or concerted practices which are the subject of the Infringement had the object of preventing, restricting or distorting competition. Specifically, the conduct described in Chapter 3 of this Decision were arrangements that fixed prices (or facilitated such fixing), and eliminated or substantially reduced competition on price and strategic uncertainty between otherwise competitors. Such horizontal price fixing can be regarded by its very nature as harmful to the proper functioning of competition so that no effects analysis is necessary²⁰⁴ and accordingly there is no need to reach a definitive view on the relevant market so as to prove adverse effects.
- 4.4 In order to reach a conclusion that the conduct constitutes an infringement by object, the FCA must understand the legal and economic context of the agreement and/or concerted practices under investigation.²⁰⁵ Accordingly, the FCA outlined the money remittance industry in the UK in Chapter 2, and in this chapter the FCA assesses market definition. See further Chapter 5 paragraphs 5.98 to 5.118.
- 4.5 The FCA has considered the market(s) to be taken into account for the purposes of calculating the level of any financial penalty that may be imposed on the Parties.²⁰⁶ The relevant turnover for penalty calculation purposes is an undertaking's turnover in

²⁰³ Case T-62/98 *Volkswagen AG v Commission* EU:T:2000:180, paragraph 230 and, Case T-29/92 *SPO and Others v Commission* EU:T:1995:34, paragraph 74. This principle has also been applied by the CAT in *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, in which the CAT stated at [176] that “[i]n Chapter I cases, unlike Chapter II cases, determination of the relevant market is neither intrinsic to, nor normally necessary for, a finding of infringement”.

²⁰⁴ Case C-67/13P *Groupement des Cartes Bancaires v European Commission*, judgement 11 September 2014, paragraphs 49, 50.

²⁰⁵ Case C-67/13P *Groupement des Cartes Bancaires v European Commission*, judgement 11 September 2014, paragraph 53.

²⁰⁶ *CMA's guidance as to the appropriate amount of a penalty* (CMA73, 18 April 2018, last updated 21 December 2021), paragraphs 2.1 to 2.13.

the relevant product market and geographic market affected by the infringement in the undertaking's last business year.²⁰⁷

- 4.6 In this respect, the Competition Appeal Tribunal (**CAT**) and the Court of Appeal have stated that it is not necessary to carry out a formal analysis of the relevant market in order to assess the appropriate level of the penalty. Rather, the FCA must be '*satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement.*'²⁰⁸ As the Court of Appeal stated:

'... the market which is taken for calculation of the turnover relevant for Step 1 on a penalty assessment may properly be assessed on a broad view of the particular trade which has been affected by the proved infringement, rather than by a relatively exact application of principles that would be relevant for a formal analysis, such as substitutability or, on the other hand, by limiting the turnover in question to sales of the very products or services which were the direct subject of the price-fixing arrangement or other anti-competitive practice.'²⁰⁹

- 4.7 The market definition reached in this case should therefore be viewed in that context, and in light of its purpose as outlined above, and is not determinative for the purposes of any future cases. Similarly, the FCA is not bound by market definitions adopted in previous cases, although earlier definitions can, on occasion, be informative when considering the appropriate market definition. Equally, although previous cases can provide useful information, the relevant market must be identified according to the particular facts of the case at hand.
- 4.8 The analysis below sets out the FCA's findings on the relevant market(s) in this case: it considers (i) what products and/or services are part of the relevant market (the relevant product market) and (ii) the geographic scope of the relevant market (the relevant geographic market).

Relevant product market

Focal product

- 4.9 Defining the relevant market starts with the product or service that is the subject of the investigation, i.e. the 'focal product', and then considers whether the demand-side and supply-side constraints indicate a wider relevant market. This involves considering whether alternative products exist or could easily be produced that would, by being sufficiently interchangeable with the focal product, make a price increase (or other reduction in attractiveness) of the focal product unprofitable. This is the so called 'hypothetical monopolist test'.

²⁰⁷ CMA's guidance as to the appropriate amount of a penalty (CMA73, 18 April 2018, last updated 21 December 2021), paragraphs 2.10.

²⁰⁸ Court of Appeal judgment in *Argos Limited and Littlewoods Limited v. OFT and JJB Sports plc v. OFT* [2006] EWCA Civ 1318 ('*Argos and Littlewoods and JJB*'), paragraph 170.

²⁰⁹ Court of Appeal judgment in *Argos Limited and Littlewoods Limited v. OFT and JJB Sports plc v. OFT* [2006] EWCA Civ 1318, paragraph 173.

- 4.10 The product which is the subject of the Infringement is the provision of in-store remittance services for customers based in Glasgow, for transferring money to Pakistan from the UK,²¹⁰ and accordingly converting GBP into PKR.²¹¹
- 4.11 The focal product includes money remittance where the service is distributed through a branch of the MTO, or where it is distributed in-store via an MTA. During the Relevant Period, Small World distributed through its own branch, while Dollar East distributed as an MTA. As described at Chapter 3 (paragraphs 3.13 and 3.14), Hafiz Bros was active in the distribution of the focal product by operating as a master agent, recruiting and managing MTAs on behalf of MTOs.
- 4.12 The FCA considered whether the focal product should include online remittance services. However, the evidence as set out in Chapter 3 (see paragraphs 3.21 to 3.27 in particular) indicates that the Infringement centred on the provision of in-store remittance services only, despite Small World offering online remittance services during the Relevant Period.²¹² As such, the FCA considers that the focal product is in-branch distribution. The FCA considers whether online remittance services form part of the relevant market below.

Relevant market analysis

- 4.13 As the FCA considers that the Infringement was a 'by object' restriction of competition, it has not undertaken an extensive assessment of the relevant market. The FCA's assessment (and the implications for the relevant turnover analysis) is based on a reasoned judgement of which products would form part of the relevant market based on the analytical approach set out in paragraph 4.6. In the relevant market analysis, the FCA conducts the market definition exercise by:
- (a) providing an overview of how consumers choose money remittance services;
 - (b) considering demand side substitution to online channels provided by MTOs;
 - (c) considering demand side substitution to alternative remittance corridors to the UK to Pakistan corridor;
 - (d) considering demand side substitution to banks and alternative methods of sending money abroad; and
 - (e) considering supply side substitution from other remittance corridors.

²¹⁰ We do not consider remittance from Pakistan to the UK, as part of the investigation or relevant market analysis.

²¹¹ In Chapters 1, 2 and 3 it is highlighted that for the purposes of defining the scope of the Infringement we consider that the Parties were distributing money remittance services which included 'retailer-adjusted' rates (see Chapter 2 paragraphs 2.27 to 2.32). However, this distinction is not relevant in terms of identifying the focal product for use in defining the relevant product market.

²¹² Hafiz Bros has stated that it has also operated as an online money transfer operator from April 2020. See Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022 received by the FCA on 23 May 2022 (CA98.2020.01-001628).

4.14 The geographic scope of the relevant market is considered in the following section at paragraph 4.44 onwards.

How consumers choose money remittance services

4.15 As part of the assessment, the FCA assessed factors that consumers of money remittance services consider when choosing between providers, focussing on Glasgow and the remittance services in the GBP/PKR corridor. This analysis informs its judgement as to whether a particular substitute (product or geographic location) forms part of the relevant market.

4.16 The FCA's review of evidence gathered from Parties suggest that consumers simultaneously choose an MTO (such as Small World or Western Union), and a distribution channel (such as a particular agent, or online channels). MTOs differ on characteristics such as price, or the speed of the remittance service offered. Distribution channels differ on factors such as accessibility (such as accessing online, or a particular convenient geographic location) and the presence of additional commissions and fees that form part of the commissions of agents.

4.17 Based on submissions from the Parties, the FCA finds that consumers may consider the following factors when choosing between different MTOs:

- (a) *Pricing.* Dollar East,²¹³ Hafiz Bros²¹⁴ and Small World²¹⁵ stated that the exchange rate available at the time was part of the decision made by the customer as to which MTO was selected. The extent to which MTAs could 'flex' rates for particular MTOs in response to customer demand was discussed in Chapter 2 and appears to be an important part of the competitive process.²¹⁶ Dollar East stated that it reviewed market rates by looking at those offered by Western Union (when acting for DEX, Hafiz Bros, or Small World) and the rates advertised on social media by competitors. When acting for Western Union, these rates were set in advance.²¹⁷
- (b) *Practical needs.* Small World stated that some customers had time-sensitive needs, for example, to remit money in the case of a family emergency or medical bill.²¹⁸ Other customers may be relatively less time sensitive, for example, those remitting money for the purpose of building savings, and so may look for a more competitive price at the expense of transaction speed. In addition, the delivery method to a recipient is important (across all channels). For example, choosing a money remitter able to transfer funds to rural areas is

²¹³ Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021. Paragraphs 2 and 18. (CA98.2020.01-001273).

²¹⁴ Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 30 May 2022. (CA98.2020.01-001635).

²¹⁵ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. Question 7. (CA98.2020.01-001611).

²¹⁶ See Chapter 2 paragraphs 2.27 to 2.32.

²¹⁷ Dollar East's response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 6 May 2022. Question 1(a)(b)(c)(CA98.2020.01-001590).

²¹⁸ LCC's second response (Section B) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 20 May 2022. (Question 8) (CA98.2020.01-001611).

important to some consumers.²¹⁹ Dollar East stated that some customers' choice of MTO was determined by which banks are near to the person who is receiving the funds in Pakistan.²²⁰

- (c) *Trust.* Small World stated that it wanted agents to build customer trust over time with Small World services.²²¹ Hafiz Bros stated that trust was the most important factor when customers choose their remittance provider, although no evidence was provided in support of this claim.²²² Similarly, Hafiz Bros also stated that reliability was an important factor in customer choice.²²³
- (d) *Choice of in-store and online services.* Despite the recent growth in online money remittance offerings, Small World stated that customers generally preferred the services of 'bricks and mortar' agents and branches over online channels.²²⁴
- (e) *Geographic, convenience, and cultural factors.* Even when compared broadly to a 'more convenient' alternative such as online channels, Small World stated that agents or branches close to home or workplace locations were preferred.²²⁵ Providers with an understanding of a consumer's preferred language, as well as awareness and knowledge of the community and culture of the consumer were also preferred.²²⁶ Hafiz Bros stated that 'ease of use' of the remittance service was one of the most important factors when choosing a provider.²²⁷

4.18 The FCA considered external evidence to substantiate the analysis provided by Parties, including competitors' publicly available information. For example, Western Union's annual report noted that the most significant competitive factors relate to the overall consumer value proposition, including: brand recognition, trust, reliability, consumer experience, price, speed of delivery, distribution network, variety of send and receive payment methods, and channel options.²²⁸ This confirms evidence that the overall price is one of the competitive parameters, and other aspects of the remittance service proposition being important.

²¹⁹ LCC's third response (Section A) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 25 May 2022. Question 1. (CA98.2020.01-001606).

²²⁰ Dollar East's response to the FCA's section 26 CA98 notice of 15 July 2022 received by the FCA on 5 August 2022. (Q2) (CA98.2020.01-001660).

²²¹ Small World's second response to the Fourth section 26 Notice dated 21 April 2022 Question 7 (CA98.2020.01-001611).

²²² Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 30 May 2022 (QD5) (CA98.2020.01-001635).

²²³ Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 30 May 2022. (CA98.01-001635).

²²⁴ LCC's third response (Section A) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 25 May 2022. Question 1 (CA98.2020.01-001606).

²²⁵ LCC's third response (Section A) to the FCA's fourth section 26 CA98 notice of 21 April 2022 received by the FCA on 25 May 2022. Question 1. (CA98.2020.01-001606).

²²⁶ Small World's second response to the First section 26 Notice dated 16 September 2020 paragraphs 10.4-10.5 (CA98.2020.01-000211) and Small World's third response to the Fourth section 26 Notice dated 21 April 2022 Question 1 (CA98.2020.01-001606).

²²⁷ Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 30 May 2022. (QD5) (CA98.2020.01-001635).

²²⁸ Western Union Annual Report (2020). See page 114.

4.19 MTAs may offer the remittance services of MTOs concurrently.²²⁹ The choice of MTO may occur after the customer has chosen the MTA, with the customer potentially comparing the services of the MTOs offered by the MTA.²³⁰

Demand substitution to online remittance channels

4.20 Two of the Parties offer money remittance services direct to consumers through online channels.²³¹ The FCA assessed the extent to which customers of in-store remittance offered by the Parties would regard online channels of money remittance a suitable alternative to services offered in-store.

4.21 Based on the evidence considered in paragraphs 4.15 to 4.19, the FCA finds that, in practice, remittance service functionality is similar regardless of the channel consumers use for sending money abroad. Therefore, the FCA's analysis focusses on aspects of the distribution of money remittance services when considering whether the online channel is a suitable alternative.

4.22 'Online channels' refer to websites and mobile channels from which consumers can remit money, usually through a debit or credit card. Many MTOs (such as Small World) operate through multiple channels, but some MTOs compete only online.²³²

4.23 The FCA identified several factors that differentiate online channels from the focal product:

- (a) Consumers need access to a computer or mobile app to access the online money remittance provider.
- (b) To pay for, and use, online remittance channels consumers require access to a bank account or e-money account that would be accepted in an online payments gateway.
- (c) MTAs may offer additional products in their stores, alongside remittance services. For example, Dollar East offers travel agency and cargo services.²³³

4.24 The Parties provided evidence that suggested consumers of the focal product did not readily substitute between in-store and online channels. For example, Small World stated that:

'while variable from person to person [...] consumers often prefer to use the service of a branch close to their home or work location with people who speak their language and/or who are from the same community as them, rather than another type of money remittance service channel which does not provide for

²²⁹ See Chapter 2 paragraph 2.18.

²³⁰ Dollar East's response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 6 May 2022. Paragraph C.6. (CA98.2020.01-001590).

²³¹ Hafiz Bros started a direct-to-consumer online channel in April 2020. Small World offers money remittance services via its website (Link – last date accessed: 05/10/2023) and had an online service during the Relevant Period.

²³² See Chapter 2 paragraph 2.22.

²³³ Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February. Paragraph 7. (CA98.2020.01-001273).

those factors (but may otherwise be considered to be 'more convenient' (e.g. online)).²³⁴

- 4.25 Supporting this analysis, Dollar East considered its competitors to be local stores. Dollar East stated that it considered its competition to be '*each and every money remittance service provider within the city of Glasgow*'.²³⁵ In addition, Dollar East only accepts cash payments suggesting it catered for people with a preference to pay in cash.²³⁶
- 4.26 The FCA notes some evidence that online channels have been growing in importance for money remittance, potentially leading to greater demand side substitution. In recent years the popularity and number of corridors available for online remittance services has risen.²³⁷ Market research available online suggests the entry of MTOs who compete only online, and the response of established MTOs in producing their own digital capabilities, has been an important driver of the supply of digital remittances.²³⁸
- 4.27 However, having considered the evidence provided by Small World and Dollar East, the FCA considers that there is insufficient evidence of substitutability between online and offline channels to indicate that the relevant market includes online channels.

Demand substitution to money remittance services offered by banks and new digital services

- 4.28 There are several alternative formal services and informal methods to transfer money abroad, which do not meet the PSRs 2017 definition of 'money remittance'. The FCA summarises and assesses these alternative channels below.

Banks

- 4.29 Banks offer money remittance services to their existing personal current account (PCA) customers. Banks may use their own global presence for international money transfers or use channels such as correspondent banking. Banks tend to be more expensive for a variety of reasons, including the SWIFT international payments network, and the costs of complying with anti-money laundering and Know Your Customer obligations. Customers are required to hold a bank account which may involve paying certain fees and charges.
- 4.30 The FCA identified several factors that differentiate bank transfers from the focal product and would accordingly indicate a lack of demand side substitutability:

²³⁴ Small World's third response to the Fourth section 26 Notice dated 21 April 2022 Question 1 (CA98.2020.01-001606).

²³⁵ Dollar East (International Travel & Money Transfer) Ltd's first response to the FCA's section 26 CA98 notice of 16 September 2020 received on 14 October 2020. Section A, Paragraph 9. (CA98.2020.01.000210).

²³⁶ Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February. Paragraph 4. (CA98.2020.01-001273).

²³⁷ The rise of digital remittances: How innovation is improving global money movement (VISA Economic Empowerment Institute, 2020).

²³⁸ The rise of digital remittances: How innovation is improving global money movement (VISA Economic Empowerment Institute, 2020).

- (a) Time for the transfer to be completed tends to be slower than for MTOs. Banks utilise the SWIFT banking network, potentially involving multiple third parties (such as correspondent banks) to complete the transaction.²³⁹
- (b) Fees can be high, and often uncertain at the point of transaction. Each additional party in the transfer can introduce fees, such as processing or exchange rate fees, further pushing up the price.²⁴⁰ Hafiz Bros identified high pricing as a characteristic of bank services.²⁴¹
- (c) Recipients need a bank account. As of December 2020, 62% of adults in Pakistan held a bank account, which rose from 45% in 2017.²⁴²

4.31 The FCA notes that Hafiz Bros identified 'ease of use' as a key factor that consumers took into account when deciding on which remittance provider to use. Hafiz Bros also stated that banks were not easy to use for remittance.²⁴³

Digital finance

4.32 Recent innovations in payments, e-money providers, and mobile money providers mean that alternative forms of payments are becoming increasingly available to consumers.²⁴⁴ Digital finance allows consumers to send and receive money digitally using the internet and refers here to a range of methods used by consumers formally and informally to send money abroad. Digital channels include digital wallets, digital currencies, and social media and other predominantly communication or commerce-oriented platforms that offer remittance services. Digital channels also include e-money providers, often primarily competing with banks, such as Revolut. Firms such as PayPal offer account to account international money transfers, although transfers to non-PayPal accounts are conducted through an online MTO. In many cases customers are likely to be required to hold an account.

4.33 However, the Parties did not offer any evidence suggesting that payments, e-money providers and mobile money providers were active and competing during the Relevant Period.

Alternative channels

4.34 Alternative channels exist for sending money internationally. These include the use of telecommunications companies; informal channels; and courier/postal services (the latter not to be confused with money remittance services offered by the Post Office²⁴⁵). The use of unregulated channels appears to have diminished in recent years as a result

²³⁹ [Article] 'Bank Transfers vs Remittances' (RemitFinder) and [Article] Transferring international money: Bank transfers vs. money transfer services (Western Union).

²⁴⁰ Cross-border payments (Bank of England, 2021).

²⁴¹ Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 30 May 2022. (CA98.2020.01-001635).

²⁴² [Article] Women hold only 27% of total bank accounts in Pakistan (Samaa, 2021)

²⁴³ Hafiz Bros response to the FCA's section 26 CA98 notice of 21 April 2022, received by the FCA on 30 May 2022. (CA98.2020.01-001635).

²⁴⁴ The rise of digital remittances: how innovation is improving the global money movement (VISA Economic Empowerment Institute, 2020).

²⁴⁵ The Post Office's money remittance offering is provided in partnership with the MTO MoneyGram (<https://www.postoffice.co.uk/moneygram-cash-transfers>).

of the liberalisation of foreign exchange controls, reforms in the payments infrastructure and competition in the remittance market.

- 4.35 Postal and informal channels involve consumers transferring money outside of a formal channel. For example, this may include physically carrying money abroad.
- 4.36 Small World stated that the PRI (see Chapter 2, paragraph 2.13) was designed specifically to reduce the price of formal channels of money remittance, to encourage switching away from informal channels.²⁴⁶ This suggests that (at least for some consumers) there is a degree of substitutability between informal methods and formal methods of money remittance.

Demand substitution between remittance corridors

- 4.37 Based on the considerations outlined above in respect of customer preferences for pay-outs to be located near to the intended beneficiaries in a convenient manner, the FCA considers that an alternative remittance corridor, from the UK to another country, would not act as a close substitute to the UK to Pakistan remittance corridor. If a consumer wishes to send money from the UK to Pakistan, then sending money elsewhere might only exceptionally be a good alternative, and is very unlikely to act as an effective competitive constraint on the UK to Pakistan corridor.
- 4.38 Accordingly, the FCA does not consider that alternative remittance corridors from the UK to countries other than Pakistan, would form a sufficiently good demand-side substitute to the focal product identified in paragraph 4.10 to be included in the relevant market.

Supply side substitution

- 4.39 Supply side substitution refers to suppliers in neighbouring markets using their existing production facilities to start producing the focal product (or start supplying the geographic area in question – see relevant geographic market at paragraph 4.44 onwards). This is most relevant for considering whether suppliers of remittance services, who currently do not service the GBP/PKR corridor, are considered to be in the same relevant market due to their ease of entry. It also includes firms that currently do not supply money remittance services as MTAs.
- 4.40 The FCA considered supply side substitution by an MTO into the GBP/PKR corridor whereby an MTO active in another corridor might expand into the GBP/PKR corridor, and seek to distribute through an existing agent. The FCA considers that there is insufficient evidence to conclude on supply side substitution by MTOs competing in other remittance corridors.
- 4.41 The FCA also considered whether agents not currently providing GBP/PKR remittance services, but providing agent services for other remittance corridors, might enter into the market in the event of price rise in the focal product. Small World stated that in

²⁴⁶ Small World's second response to the Fourth section 26 Notice dated 21 April 2022 Question 7 (CA98.2020.01-001611).

practice it was relatively easy to set up a new agent to distribute Small World remittance services, with Small World bearing overall costs of [*under £4,000*].²⁴⁷ However, some of the features required to be competitive (such as appropriate language skills) identified in the market overview are unlikely to be as easily developed. Dollar East stated that it needed to make specific investments to offer money remittance services, such as licence fees, payments for security fees, marketing costs and running costs.²⁴⁸ On balance the FCA considers that the evidence it found does not appear sufficient to widen the relevant market on the basis of supply side substitution on the agent side.

- 4.42 Overall, the FCA did not receive evidence to suggest the relevant product market definition should be expanded on the basis of supply side substitution by either agents or MTOs.

Conclusion on relevant product market

- 4.43 For the purposes of this Decision, the FCA considers that the relevant product market is the provision of in-store remittance services for consumers transferring money to Pakistan and accordingly converting GBP into PKR. For the avoidance of doubt, in-store means using cash or a payment card in-person instead of remote online payment (e.g. using a mobile application or website).

Relevant geographic market

- 4.44 As well as product market, the FCA considers geographic market definition. The geographic market is the area in which the conditions of competition are sufficiently homogenous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different.²⁴⁹
- 4.45 The FCA's focus is competition in the provision of in-store money remittance services (as defined in the product market section, for consumers based in Glasgow, for transferring money to Pakistan and accordingly converting GBP into PKR).
- 4.46 The square in Figure 1 below shows the approximate location of the premises of the Parties in relation to the focal area, Glasgow. The premises the FCA considers in this review are the location of the Small World Glasgow branch, opened in February 2017,²⁵⁰ and Dollar East.

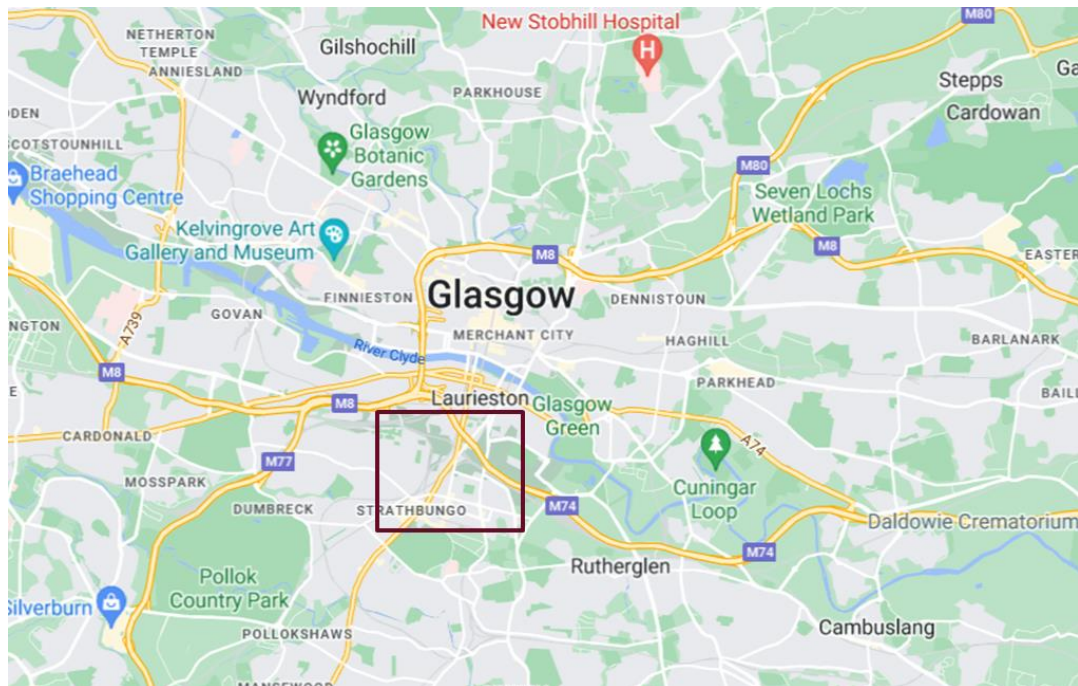
²⁴⁷ Small World's second response to the Fourth section 26 Notice dated 21 April 2022 Question 5 (CA98.2020.01-001611).

²⁴⁸ Dollar East (International Travel & Money Transfer) Ltd's response to the FCA's section 26 CA98 notice of 26 January 2021 received on 12 February 2021. Paragraph 5. (CA98.2020.01-001273).

²⁴⁹ See Judgment of 22 October 2002, Schneider Electric SA v Commission T-310/01, EU:T:2002:254, paragraph 153.

²⁵⁰ LCC's first response to the FCA's section 26 CA98 notice of 16 September received by the FCA on 7 October 2020. Paragraph 9.1 (CA98.2020.01-000200).

Figure 1: Map of Glasgow



(Google Maps)

Geographic demand side substitution

- 4.47 The FCA found evidence that competition in the provision of in-store money remittance services was local. Dollar East stated the focus of competition remains within the Glasgow proximity due to the size and capacity of the business.²⁵¹ Small World stated that the work and home locations of customers was a determining factor in their choice of money remittance provider.²⁵²
- 4.48 The FCA considered whether the geographic market could be wider, for example including areas outside Glasgow. However, Small World stated that, in its experience, consumers are not typically willing to travel any notable distance to make use of an alternate money transfer service when they have a viable option nearby.²⁵³ The FCA notes this could be a result of travel costs which could offset the benefits of lower prices.
- 4.49 The evidence provided by the Parties and the FCA's analysis therefore suggests competition is no broader than Glasgow.

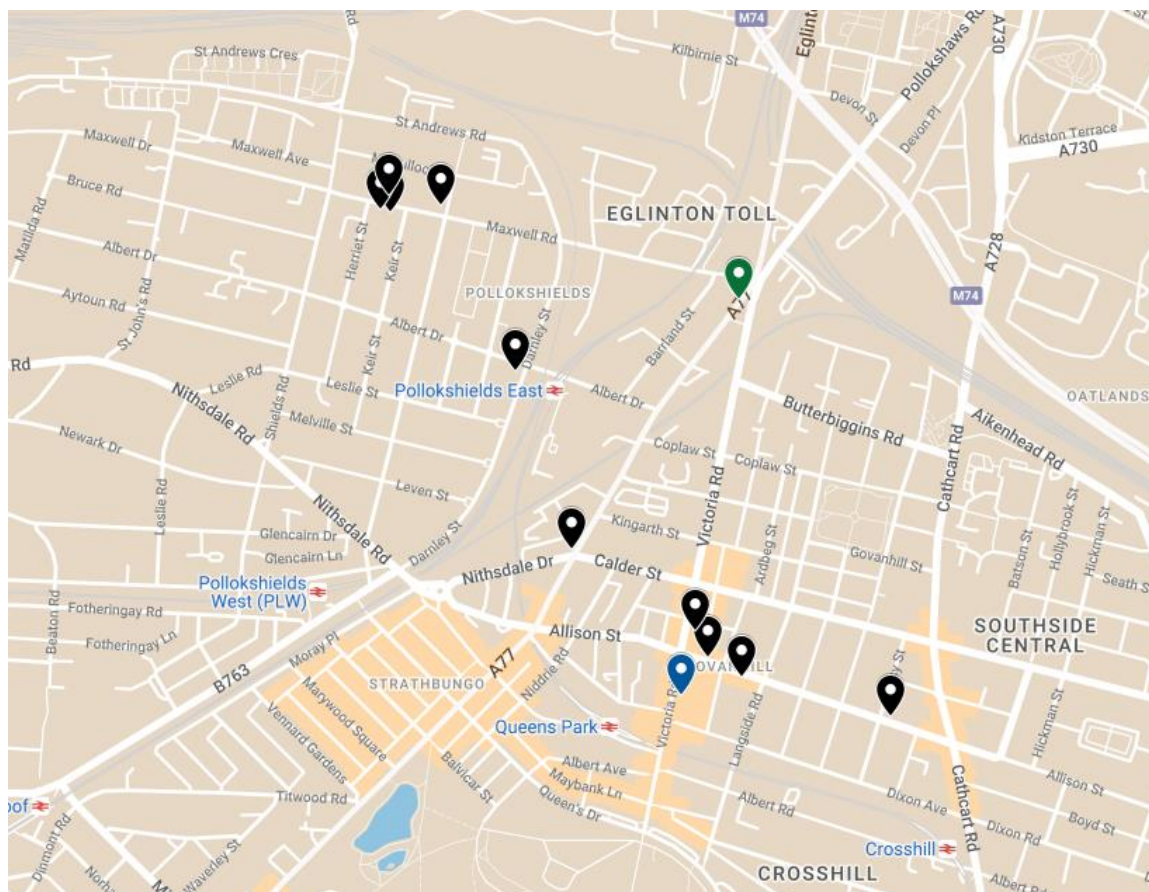
²⁵¹ Dollar East (International Travel & Money Transfer) Ltd's additional response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 28 October 2020. Question 9. (CA98.2020.01-000213).

²⁵² Small World's third response to the Fourth section 26 Notice dated 21 April 2022 Question 1 (CA98.2020.01-001606).

²⁵³ Small World's second response to the First section 26 Notice dated 16 September 2020 paragraph 10.4.4 (CA98.2020.01-000211).

4.50 The FCA looked at the locations of Dollar East and the Small World Glasgow branch, as well as several other MTAs that Dollar East identified as being its competitors.²⁵⁴ Figure 2 shows how the location of several MTAs are clustered around a relatively small area within Glasgow.

Figure 2: Locations of Dollar East, Small World Glasgow branch, and other MTAs.



(Google Maps)

- Dollar East International Travel
- Other money transfer agents
- Small World FS - Glasgow

4.51 The FCA therefore considered whether the relevant geographic market may be narrower, for example restricted to only a specific area(s) of Glasgow (potentially as indicated in Figure 2). However, to make a firm assessment on this the FCA would need more evidence on the existence of local catchment areas (as measured by the distance consumers would be willing to travel to switch between providers) and/or other localised constraints on competition operating between providers. Such evidence would likely include consumer research, for example by surveying consumers in

²⁵⁴ Dollar East (International Travel & Money Transfer) Ltd's additional response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 28 October 2020. Question 9. (CA98.2020.01-000213).

Glasgow. Given that any further narrowing of the relevant geographic market would not affect the calculation of the Parties' relevant turnover in this case, the FCA did not consider it necessary to undertake further analysis to assess whether a more local geographic market situated within Glasgow might be appropriate.

Geographic supply side substitution

- 4.52 With regard to supply side substitution, many of the factors applicable to the product market also apply. In particular, the FCA notes the limited costs needed to set up an agent (paragraphs 4.39 to 4.41). However, the FCA did not receive evidence to suggest the relevant geographic market definition should be expanded on the basis of supply side substitution by either agents or MTOs.

Conclusion on relevant geographic market

- 4.53 For the purposes of this Decision, the FCA therefore concludes that the relevant geographic market is Glasgow.

Conclusion on the relevant market

- 4.54 In light of the evidence considered above, the FCA finds that, for the purposes of this Decision, the relevant market is the provision of in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR.

5 Legal framework and assessment

Introduction

- 5.1 This Chapter sets out the FCA's legal assessment of the Parties' conduct under the Act in light of the factual background set out in Chapter 2 and the evidence of the Parties' conduct set out in Chapter 3. It:
- (a) gives an overview of the Chapter I prohibition; and then considers
 - (b) 'Undertakings',
 - (c) Agency and competition law,
 - (d) Agreements and concerted practices,
 - (e) 'Single and continuous infringement',
 - (f) Restriction of competition 'by object',
 - (g) Appreciable restriction of competition,
 - (h) Effect on trade within the UK,
 - (i) Duration of the infringement,
 - (j) Exemption and exclusion, and
 - (k) Attribution of liability.
- 5.2 The FCA assessed the evidence in this case by reference to the civil standard of proof, namely whether it is sufficient to establish, on the balance of probabilities, that an infringement occurred.²⁵⁵
- 5.3 The FCA concludes that, between 18 February 2017 and 31 May 2017 (as noted in Chapter 1, paragraph 1.3, **the Relevant Period**), the Parties infringed the Chapter I prohibition by participating in a single continuous infringement through an agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of in-store, retailer-adjusted remittance services for the UK to Pakistan remittance corridor, carried out in Glasgow (as noted in Chapter 1, paragraph 1.3, **the Infringement**).
- 5.4 The FCA finds that the Infringement took the form of the Parties' coordination of pricing practices with the object of reducing competition on price and reducing strategic uncertainty in order to maintain or increase pricing levels in the market. The Parties carried this out by:

²⁵⁵ *Tesco Stores and others v OFT* [2012] CAT 31.

- (a) coordinating on the level of the retail exchange rate charged to in-store customers for making UK to Pakistan (GBP/PKR) remittances (as noted in Chapter 1, paragraph 1.4, **the FX conduct**); and
- (b) fixing the level of the transaction fee charged to in-store customers of Small World (as the Money Transfer Operator) when making UK to Pakistan (GBP/PKR) remittances (as noted in Chapter 1, paragraph 1.4, **the transaction fee conduct**).

Overview: the Chapter I prohibition

- 5.5 The Chapter I prohibition prohibits agreements and concerted practices between undertakings, and decisions by associations of undertakings, which may affect trade within the UK and which have as their object or effect the prevention, restriction or distortion of competition within the UK. This prohibition applies unless an applicable exclusion is satisfied or the agreement, decision, or concerted practice in question is exempt in accordance with the provisions of Part I of the Act. The Chapter I prohibition applies only where the agreement, decision or concerted practice is, or is intended to be, implemented in the UK.²⁵⁶
- 5.6 Section 9 of the Act provides that agreements, decisions or concerted practices that have as their object or effect an appreciable prevention, restriction or distortion of competition are exempt from, and therefore do not infringe, the Chapter I prohibition where certain criteria are met (see paragraphs 5.130 to 5.133).
- 5.7 Section 60A of the Act provides that, when determining a question in relation to the application of Part I of the Act (which includes the Chapter I prohibition), the FCA must act with a view to securing that there is no inconsistency with: (i) the principles laid down by the Treaty on the Functioning of the European Union (**TFEU**) and the Court of Justice of the European Union (**CJEU**) before the end of the transition period,²⁵⁷ and (ii) any relevant decision made by the CJEU before the end of the transition period, so far as applicable immediately before the end of the transition period. In addition, the FCA must also have regard to any relevant decision or statement of the European Commission (**Commission**) made before the end of the transition period and not withdrawn. The FCA may depart from this case law and decisional practice where it is considered appropriate in the light of the certain specific circumstances.²⁵⁸
- 5.8 Several elements must be satisfied or present for conduct to amount to an infringement of the Chapter I prohibition. This Chapter considers each of these elements in turn in light of the factual background, the evidence of the Parties' conduct and the legal and economic context in which that conduct occurred.

²⁵⁶ Sections 2(3) and 2(7) of the Act. References to the UK are to the whole or part of the UK (Section 2(1) and (7) of the Act.

²⁵⁷ This is the period which ended at 11pm UK time on 31 December 2020.

²⁵⁸ Section 60A(7) of the Act.

Undertakings

Key legal principles

- 5.9 The Chapter I prohibition applies to agreements and concerted practices between two or more undertakings. For the purposes of the Chapter I prohibition, the term 'undertaking' covers 'every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed'.²⁵⁹ An entity is engaged in 'economic activity' where it conducts any activity 'of an industrial or commercial nature by offering goods and services on the market'.²⁶⁰
- 5.10 The term 'undertaking' also designates an economic unit, even if in law that unit consists of several natural or legal persons.²⁶¹

Legal assessment regarding economic activity

- 5.11 The FCA finds that during the Relevant Period, the Parties were each engaged in economic activity:
- (a) Dollar East and Small World were engaged in economic activity; namely the provision of, among other things, in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR and therefore each constituted an undertaking for the purposes of the Chapter I prohibition.
 - (b) Hafiz Bros was engaged in economic activity; namely the provision of master agent services on behalf of MTOs that wished to grow their network of MTAs (see Chapter 3, paragraph 3.13), and therefore constituted an undertaking for the purposes of the Chapter I prohibition.

Agency and competition law

Competition law principles regarding 'agency'

- 5.12 The CMA's guidance on the Vertical Agreements Block Exemption Order (**CMA166**)²⁶² states:

'The Chapter I prohibition does not apply to agreements between undertakings which form part of a single economic unit or entity. Agents may be classed as undertakings, but the Chapter I prohibition does not apply to agency

²⁵⁹ Case C-41/90 *Klaus Höfner and Fritz Elser v Macrotron GmbH*, EU:C:1991:161, paragraph 21.

²⁶⁰ Case C-118/85 *Commission v Italian Republic*, EU:C:1987:283, paragraph 7.

²⁶¹ Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 55.

²⁶² Vertical Agreements Block Exemption Order, CMA guidance, 12 July 2022 (CMA166). This guidance replaced the European Commission's Guidelines on Vertical Restraints, European Commission, OJ C 130, 19.5.2010 (Vertical Guidelines). Paragraph 4.8.

agreements where the agent is considered to form an integral part of its principal and they are therefore treated as a single economic entity for the purpose of competition law. Accordingly, it is the relationship between principal and agent which is relevant to the assessment of whether an agreement is an agency agreement. A person (the 'agent') with the power to negotiate or conclude contracts for the sale of goods or services on behalf of another (the 'principal') will be regarded as forming part of the same economic unit if the agent can be considered to be an auxiliary organ forming an integral part of the principal's undertaking, so that the principal and agent are not considered separate undertakings for competition law purposes.'

- 5.13 The exception of agency agreements from the Chapter I prohibition is narrow. CMA166 states:

'Since they constitute an exception to the general applicability of the Chapter I prohibition to agreements between undertakings, the conditions for categorising an agreement as an agency agreement for the purpose of applying the Chapter I prohibition, should be interpreted narrowly.'²⁶³

CMA166 sets out several factors relevant to assessing whether an agency relationship exists and that an agreement between an agent and its principal may therefore fall outside the scope of the Chapter I prohibition. In this Decision, agreements that fall outside the scope of the Chapter I prohibition on this basis are referred to as competition law agency agreements (or relationships), and the relevant agent as a competition law agent.

Agreements between the Parties

Agreement between Small World and Dollar East

- 5.14 Irrespective of whether or not a competition law agency relationship was in place between Small World and Dollar East based on the relevant factors identified in CMA166, for the reasons outlined below in paragraphs 5.15 to 5.19, the FCA considers that the commercial agreement between Small World and Dollar East did not operate to remove the conduct described in Chapter 3 from the scope of the Chapter I prohibition.
- 5.15 As a preliminary point, FCA notes that the relevant case law and guidance in this area typically arise from questions about whether the specific terms of a vertical 'agency' agreement between two undertakings are anti-competitive, and whether the actions of an agent can be imputed to its principal. However, in respect of this case, the FCA finds that the relevant agreement and/or concerted practice which operated between Small World and Dollar East during the Relevant Period took place outside of the legally binding contractual relationship which they had agreed in July 2013.
- 5.16 The FCA considers that the anti-competitive conduct described in Chapter 3 took place through and within the GMTA grouping, which Small World voluntarily joined (Chapter 3, paragraph 3.26), and this conduct was not converted into a legally binding

²⁶³ CMA166, paragraph 4.11.

amendment to any agency agreement that might have existed between Small World and Dollar East. The FCA has seen no evidence to suggest that Small World sought to amend or update its pre-existing agreements with Glasgow MTAs (including Dollar East) in order to remove their pricing flexibility and/or give the GMTA a new role in setting prices for its MTAs after 18 February 2017.

- 5.17 Therefore, based on the evidence set out in Chapter 3, the FCA considers that Small World participated in the anti-competitive conduct in its capacity as an independent economic operator (i.e. as the owner and operator of the Glasgow branch and horizontal competitor to local MTAs including Dollar East), rather than in its role as the MTO to Dollar East. Accordingly, the FCA considers that any agency agreement which might have existed between Small World and Dollar East has no bearing on whether the conduct described in Chapter 3 should be excluded from the Chapter I prohibition, because these parties entered into the anti-competitive agreement/concerted practice in their capacities as independent economic operators and competing horizontal undertakings, and not as principal and agent.²⁶⁴
- 5.18 Furthermore, even if a competition law agency agreement between Small World and Dollar East existed during the Relevant Period, the FCA considers that it does not operate to remove the relevant conduct from the scope of the Chapter I prohibition given the specific circumstances of how this conduct originated and operated between the Parties.
- 5.19 In particular, while the agency exception might allow a principal to impose selling conditions on its agents (so that it could in principle fix both their exchange rates and transaction fees), based on the evidence set out in Chapter 3 this was not what happened. Instead, the FCA considers that it was Dollar East, as a member of the GMTA alongside Hafiz Bros, that sought to impose the relevant pricing restrictions on Small World following the opening of the Glasgow branch, as indicated by Dollar East's email to Small World on 15 June 2017 (see Chapter 3 paragraph 3.74). As the FCA considers that it is only certain provisions imposed by the principal on agents that could benefit from the 'agency exception' from the scope of the Chapter I prohibition (if it applied), the FCA finds that any competition law agency relationship in this case would still not remove the conduct which is subject to this Decision from the scope of the Chapter I prohibition.

Agreement between Small World and Hafiz Bros

- 5.20 As described at Chapter 3 paragraphs 3.14 and 3.15, during the Relevant Period, Hafiz Bros acted as a master agent procuring and managing MTAs for Small World (on a non-exclusive basis). Hafiz Bros' activities were conducted on the basis of its 1 May 2014 'Collaboration Agreement' with Small World.²⁶⁵ Based on the content and operation of the agreement when assessed against the relevant factors identified in CMA166, the FCA considers that it represented a business-to-business arrangement

²⁶⁴ Dollar East identified Small World branch as being a 'main competitor' (Dollar East (International Travel & Money Transfer) Ltd's additional response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 28 October 2020. Question 9. (CA98.2020.01-000213). See also [Dollar East Employee 2]'s (Dollar East) comments in interview at Chapter 3 paragraph 3.30.

²⁶⁵ Collaboration Agreement between LCC TRANS-SENDING LTD and HAFIZ BROS TRAVEL AND MONEY TRANSFER LIMITED (dated 1 May 2014) provided within Annex E (Other Agreements) of LCC's first response to the FCA's section 26 CA98 Notice of 16 September 2020 (CA98.2020.01-000190).

and produced no agency relationship between these two parties. In particular, under the Collaboration Agreement:

- (a) The two parties did not see themselves as in an agency relationship. Recital (C) provides that the parties '*wish to enter into a strategic collaboration arrangement as separate entities*'. Clause 5.1 states that the parties '*shall collaborate with each other as independent entities, each of which shall be solely responsible for its own inaction, acts and decisions.*'
- (b) Hafiz Bros did not have the power to conclude contracts on Small World's behalf. Instead, Hafiz Bros would deliver the documents and details necessary for Small World to carry out due diligence checks and register the MTAs itself (clauses 4.6, 4.8 and 10).
- (c) Hafiz Bros invested in the collaboration and took on financial risks. For example, if MTAs did not pay their balance to Small World, Small World could deduct that balance from the commission paid to Hafiz Bros (Clause 2.3), and the two parties shared the costs of HMRC registration 50/50 (Clause 4.8). By Clause 4.10, the two parties agreed to use 'Small World – LCC – Hafiz Bros' branding materials, which indicates to the world a collaboration, rather than an agency.

5.21 While Hafiz Bros was also appointed as an MTA of Small World in July 2013, using an agency agreement containing much the same terms as that between Small World and Dollar East,²⁶⁶ both parties confirmed that Hafiz Bros did not operate as an MTA of Small World (Chapter 3, paragraph 3.18).

5.22 However, for completeness, the reasoning in paragraphs 5.15 to 5.19 would also apply to the Small World/Hafiz Bros conduct should Hafiz Bros have actually operated as an MTA, and so would not be excepted from the application of the Chapter I prohibition.

Agreement between Hafiz Bros and Dollar East

5.23 As outlined at Chapter 3 paragraph 3.12, the FCA considers that during the Relevant Period, Hafiz Bros was not active as a principal MTO in competition with Small World. Accordingly, the relationship between Hafiz Bros and Dollar East which operated under the terms of their agreement²⁶⁷ during the Relevant Period appears to have only assisted Hafiz Bros' work in identifying and procuring MTAs on behalf of Small World. That is to say, the agreement between Hafiz Bros and Dollar East was not put into effect.

5.24 However, for completeness the FCA considers that Dollar East is, on balance, unlikely to be considered a competition law agent of Hafiz Bros based on the relevant factors identified in CMA166.

²⁶⁶ Agency Agreement between LCC TRANS-SENDING LTD and HAFIZ BROS TRAVEL & MONEY TRANSFER LIMITED (dated July 2013) provided within Annex D (Underlying Agency Agreement) of LCC's first response to the FCA's section 26 notice of 16 September 2020 (CA98.2020.01-000133).

²⁶⁷ Agency Agreement between HAFIZ BROS TRAVEL & MONEY TRANSFER LIMITED and DOLLAR EAST (INTERNATIONAL TRAVEL & MONEY TRANSFER) LTD (dated 15 September 2016) provided in Dollar East's response to the FCA's section 26 notice of 16 September 2020 (000210) (received by the FCA on 14 October 2020) CA98.2020.01-000208.

- 5.25 The FCA also notes that the terms of the agreement between Hafiz Bros and Dollar East expressly state that it is a services agreement for providing services and not a commercial agency agreement.²⁶⁸

Conclusions on competition law agency

- 5.26 The FCA considers that the FX conduct and transaction fee conduct are not excluded from the scope of the Chapter I prohibition on the basis of any agency relationships operating between the Parties.
- 5.27 The evidence set out in Chapter 3 indicates that the FX conduct and the transaction fee conduct originated through the actions of Hafiz Bros and Dollar East (acting on behalf of themselves and other GMTA members). In its capacity as the operator of the Glasgow branch and a horizontal competitor to Dollar East²⁶⁹ and other GMTA members, Small World then voluntarily agreed to the pricing restrictions (and accepted the strategic information) which were (and was) the subject of the Infringement (see Chapter 3, paragraphs 3.25 to 3.28 in particular).
- 5.28 The evidence does not indicate that Small World ever sought to impose an obligation on Dollar East and/or Hafiz Bros (or any other GMTA member) to implement the relevant pricing restrictions which underpinned the FX or transaction conduct. Rather, throughout the Relevant Period, Small World maintained a commission structure whereby MTAs had flexibility to set their own retail exchange rate for GBP/PKR transactions, and transaction fees, according to their own individual commercial strategies. Small World (in its capacity as an MTO) therefore continued to provide for the possibility of price competition between MTAs and between MTAs and its own Glasgow branch.
- 5.29 However, instead of such price competition, Small World (in operating its Glasgow branch) joined the anticompetitive purposes of the GMTA and participated in the conduct which is the subject of the Infringement. Given the narrowness of the exception afforded by agency (see paragraph 5.13), the FCA considers that such 'by object' anti-competitive horizontal conduct is not excluded from the Chapter I prohibition by the commercial agreements existing between the Parties, particularly where those agreements did not explicitly incorporate or otherwise address the conduct which comprises the Infringement.
- 5.30 Accordingly, even if there were relationships of competition law agency operating between the Parties, the FCA concludes the relevant FX conduct and transaction fee conduct are nonetheless subject to the Chapter I prohibition. The following sections consider the application of that prohibition to that conduct.

²⁶⁸ CA98.2020.01-000208. See page 2, Article 3 (Duties of the Agent) which states that: '*The parties agree that this Agreement and for all purposes shall be interpreted to be a services agreement for providing services and not a commercial agency agreement*'.

²⁶⁹ Irrespective of whether or not a competition law agency relationship was in place between Small World and Dollar East.

Agreements and concerted practices

Key legal principles

- 5.31 The Chapter I prohibition applies to agreements between undertakings and/or concerted practices.²⁷⁰ The use of these different concepts is intended to apply to all coordination between undertakings, whatever form it takes.²⁷¹ This section sets out the key principles regarding:
- (a) agreement;
 - (b) concerted practice;
 - (c) the relationship between those forms of coordination; and
 - (d) the facilitation of an agreement or concerted practice.

Agreement

- 5.32 The Chapter I prohibition catches a wide range of agreements, including oral agreements and 'gentlemen's agreements'.²⁷² An agreement may be express or implied by the parties, and there is no requirement for it to be formal or legally binding, nor for it to contain any enforcement mechanisms.²⁷³ Tacit acquiescence may also be sufficient to give rise to an agreement for the purpose of the Chapter I prohibition.²⁷⁴
- 5.33 The key question in establishing an agreement for the purposes of the Chapter I prohibition is whether there has been '*a concurrence of wills between at least two parties, the form in which it is manifested being unimportant, so long as it constitutes the faithful expression of the parties' intention*'.²⁷⁵
- 5.34 In explaining the concept of a 'concurrence of wills', the European Courts have held that for there to be an agreement, it is sufficient that at least two undertakings have expressed their joint intention to conduct themselves on the market in a specific way²⁷⁶ in accordance with the terms of the agreement. It is not necessary to establish a joint intention to pursue an anti-competitive aim.²⁷⁷

²⁷⁰ Section 2(1) of the Act.

²⁷¹ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 108.

²⁷² Case C-41/69 *ACF Chemiefarma v Commission* EU:C:1970:71, paragraphs 106 to 114. See *Agreements and concerted practices* (OFT401, December 2004), adopted by the CMA, paragraph 2.7.

²⁷³ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, paragraphs 153, 516 and 658; Commission Decision of 9 December 1998, *Greek Ferries*, Case IV/34466, paragraph 141 (upheld on appeal). See also Case T-41/96, *Bayer AG v Commission* EU:T:2000:242, paragraph 71. See also *JJB Sports v Office of Fair Trading* [2004] CAT 17, paragraph 155.

²⁷⁴ See for example Case T-41/96 *Bayer AG v Commission* EU:T:2000:242, paragraph 71; OFT decision No. CA98/08/2004 of 8 November 2004, Case CE/2464-03 (*Double Glazing*), paragraphs 242 to 243.

²⁷⁵ Case T-41/96 *Bayer AG v Commission*, EU:T:2000:242, paragraph 69 (upheld on appeal in Joined Cases C-2/01 P and C-3/01 P *BAI and Commission v Bayer*, EU:C:2004:2, paragraphs 96 and 97) and Case T-7/89 *Hercules Chemicals v Commission*, EU:T:1991:75, paragraph 256.

²⁷⁶ Case T-168/01 *GlaxoSmithKline Services Unlimited v Commission*, EU:T:2006:265, paragraph 76.

²⁷⁷ Case T-168/01 *GlaxoSmithKline Services Unlimited v Commission*, EU:T:2006:265, paragraph 77 (upheld on appeal in Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P *GlaxoSmithKline Services Unlimited v Commission*, EU:C:2009:610).

Concerted practice

- 5.35 A concerted practice can take many different forms, but it does not require the working out of an actual plan.²⁷⁸ It is 'a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition'.²⁷⁹
- 5.36 The concept of a concerted practice must be understood in light of the principle whereby each undertaking must determine independently the policy it intends to adopt on the market, including the choice of persons and undertakings to which it makes offers or sells.²⁸⁰
- 5.37 Although the requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does preclude:
- 'any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market'.²⁸¹
- 5.38 It follows that a concerted practice implies: (i) undertakings concerting together, through any direct or indirect contact between them which has the object or effect of influencing the conduct on the market of a competing undertaking or disclosing a course of conduct to such an undertaking; (ii) conduct on the market pursuant to those collusive practices; and (iii) a relationship of cause and effect between the two.²⁸²

²⁷⁸ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2006] EWCA Civ 1318. See paragraph 22 where the Court of Appeal noted that, in determining whether there is a consensus between undertakings said to be parties to a concerted practice, 'concerted practices can take many different forms, and the courts have always been careful not to define or limit what may amount to a concerted practice for this purpose'

²⁷⁹ Case C-48/69 *ICI Ltd v Commission*, EU:C:1972:70, paragraph 64, where the Court added that: 'By its very nature, then, a concerted practice does not have all the elements of a contract but may inter alia arise out of coordination which becomes apparent from the behaviour of the participants': paragraph 65. See also Case C-8/08 *T-Mobile Netherlands*, EU:C:2009:343, paragraph 26; *JJB Sports plc v Office of Fair Trading* [2004] CAT 17 at paragraphs 151 to 153.

²⁸⁰ C-40/73 *Cooperative Vereniging 'Suiker Unie' UA v Commission*, EU:C:1975:174, paragraph 173 and followed in Case C-49/92 P *Commission v Anic Participazioni*, EU:C:1999:356, paragraph 116 and Case C-199/92 P *Hüls AG v Commission*, EU:C:1999:358, paragraph 159. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 198 and 206(iv) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraphs 102 and 103(iv)).

²⁸¹ Case C-49/92 P *Commission v Anic Participazioni*, EU:C:1999:356, paragraph 117 (followed in Case C-199/92 P *Hüls AG v Commission*, EU:C:1999:358, paragraphs 159 to 160 and Case T-9/99 *HFB Holding für Fernwärmetechnik Beteiligungsgesellschaft mbH & Co KG and Others v Commission* EU:T:2002:70, paragraph 212). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 198, 201 and 206(v) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraphs 102 and 103(v)).

²⁸² Case C-49/92 P *Commission v Anic Participazioni*, EU:C:1999:356, paragraph 118 and in Case C-199/92 P, *Hüls AG v Commission*, EU:C:1999:358, paragraph 161. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206(ix) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraph 103(ix)).

5.39 For present purposes, the following key points arise from the case law on the concept of concerted practice:

- (a) A concerted practice may arise if there are reciprocal contacts between the parties which have the object or effect of removing or reducing uncertainty as to future conduct on the market.²⁸³
- (b) Reciprocal contacts are established where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it.²⁸⁴
- (c) It is sufficient that, by its statement of intention, the competitor should have eliminated or, at the very least, substantially reduced uncertainty as to the conduct on the market to be expected on its part.²⁸⁵ Thus, the mere receipt of information may be sufficient to give rise to a concerted practice.²⁸⁶
- (d) A concerted practice through reciprocal contacts may arise even if the information being exchanged between competitors was already known to customers or could otherwise be gathered by competitors on the market.²⁸⁷
- (e) The fact that a party does not abide by the outcome of meetings,²⁸⁸ or the fact that a party may have played only a limited part in setting up an agreement and/or concerted practice, or may not be fully committed to its implementation, or may have participated only under pressure from other parties, does not mean that it is not a party to the agreement and/or concerted practice.²⁸⁹
- (f) The fact that a party does not act on, or subsequently implement, the agreement and/or concerted practice at all times does not preclude the finding that an agreement and/or concerted practice existed.²⁹⁰
- (g) The fact that a party does not respect the agreement and/or concerted practice at all times or comes to recognise that it can 'cheat' on the agreement and/or

²⁸³ *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraph 206 (vi) citing Case C-40/73 *Cooperative Vereniging 'Suiker Unie' UA v Commission*, EU:C:1975:174, paragraph 175.

²⁸⁴ *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraph 206 (vii) citing T-25/95 *Cimenteries CBR and Others v Commission* [2000] EU:T:2000:77, paragraph 1849 and (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11, paragraphs 103(vii) and 103(viii)).

²⁸⁵ *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, paragraph 206 (viii) citing T-25/95 *Cimenteries CBR and Others v Commission* [2000] EU:T:2000:77, paragraph 1852.

²⁸⁶ *JJB Sports plc v Office of Fair Trading* [2004] CAT 17, paragraph 658 (and 159). See Joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc and Others v Commission*, EU:T:2001:185, paragraph 58 (citing Case T-1/89 *Rhône-Poulenc v Commission*, EU:T:1991:56, paragraphs 122 to 123). See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 200; and *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2004] CAT 24, paragraph 155.

²⁸⁷ Joined Cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc and Others v Commission*, EU:T:2001:185, paragraph 60.

²⁸⁸ T-25/95 *Cimenteries CBR and Others v Commission* [2000] EU:T:2000:77, paragraph 1389.

²⁸⁹ See *Agreements and concerted practices* (OFT401, December 2004), adopted by the CMA, paragraph 2.8. See also, for example, *Cement*, paragraphs 1389 and 2557 upheld on liability in Joined Cases C-204/00 P *Aalborg Portland and Others v Commission*, EU:C:2004:6, and Case C-49/92 P *Commission v Anic Participazioni*, EU:C:1999:356, paragraphs 79 and 80.

²⁹⁰ Case C-86/82 *Hasselblad v Commission*, EU:C:1984:65, paragraph 46; and Case C-277/87 *Sandoz prodotti farmaceutici SpA v Commission*, EU:C:1990:6, paragraph 3. See also Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraphs 61-63.

concerted practice at certain times does not preclude the finding that an agreement and/or concerted practice existed.²⁹¹

- 5.40 Furthermore, the above case law does not necessarily mean that the conduct should produce the concrete effect of restricting, preventing or distorting competition.²⁹² A concerted practice which has as its object the prevention, restriction or distortion of competition will infringe competition law even where there is no effect on the market (see paragraphs 5.98 to 5.118).²⁹³

Relationship between 'agreement' and 'concerted practice'

- 5.41 The concepts of 'agreements' and 'concerted practices' are fluid and may overlap. They are distinguishable from each other only by their intensity and the forms in which they manifest themselves.²⁹⁴ Infringements may evolve over time and may start in one form and progressively assume the characteristics of another.²⁹⁵
- 5.42 It is not necessary therefore, for the purpose of finding an infringement, to distinguish between agreements and concerted practices, or to characterise conduct as exclusively an agreement or a concerted practice.²⁹⁶ Nothing turns on the precise form taken by each of the elements comprising the overall agreement and/or concerted practice. As explained by the CJEU:

'it is settled case-law that although [Article 101(1) TFEU] distinguishes between 'concerted practice', 'agreements between undertakings' and 'decisions by association of undertakings', the aim is to have the prohibitions of that article catch different forms of coordination between undertakings of their conduct on the market [...] and thus to prevent undertakings from being able to evade the rules on competition on account simply of the form in which they coordinate that conduct'.²⁹⁷

²⁹¹ Case T-588/08 *Dole v Commission*, EU:T:2013:130, paragraph 484.

²⁹² Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 124. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206(xi) (followed in *Makers UK Limited v Office of Fair Trading* [2007] CAT 11), paragraph 103(xi)).

²⁹³ Case C-199/92 P, *Hüls AG v Commission*, EU:C:1999:358, paragraphs 163 to 164 and Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 123. See also *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraphs 201 and 206(xi and xii), citing *Case C-49/92 P Commission v Anic Partecipazioni*, EU:C:1999:356, paragraphs 123 to 124.

²⁹⁴ Case C-8/08 *T-Mobile Netherlands*, EU:C:2009:343, paragraph 23; also Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 131 and *Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206(ii).

²⁹⁵ See Opinion of Advocate General Bobek, Case C-228/18, *Gazdasági Versenyhivatal v Budapest Bank and Others*, EU:C:2019:678, paragraph 86.

²⁹⁶ See, for example, *Argos Limited and Littlewoods Limited v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, paragraph 21. See also Case T-7/89 *Hercules Chemicals v Commission* EU:T:1991:75, paragraph 264; Case T-1/89 *Rhône-Poulenc v Commission* EU:T:1991:38, paragraph 127; Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraphs 131-132 and 133; *Roofing Felt*, OJ 1986 L232/15, paragraph 72, whereby the conduct of the undertakings was found to be an agreement as well as a decision of an association. See also Opinion of Advocate General Bobek in Case C-228/18 *Budapest Bank and Others*, EU:C:2019:678, paragraph 85.

²⁹⁷ Case C-382/12 P *Mastercard and Others v Commission*, EU:C:2014:2201, paragraph 63 and case law cited. See also Case T-9/99 *HFB and Others v Commission* EU:T:2002:70, paragraphs 186 to 188; Case C-238/05 *Asnef-Equifax* EU:C:2006:734, paragraph 32; Joined cases T-305/94, T-306/94 etc., *LVM v Commission*, EU:T:1999:80, paragraph 696: 'In the context of a complex infringement which involves many producers seeking over a number of years to regulate the market between them, the Commission cannot be expected to classify the infringement, precisely, for each undertaking and for any given moment, as in any event both those forms of infringement are covered by [Article 101] of the Treaty.'

Facilitation of agreements and/or concerted practice

- 5.43 The conduct of an undertaking involved in the adoption of an anticompetitive agreement can infringe the Chapter I prohibition regardless of whether the undertaking is active in the market affected by the agreement.²⁹⁸ The General Court (GC) has stated that:

'it is apparent from the Court's well established case-law that the text of Article 101(1) TFEU refers generally to all agreements and concerted practices which, in either horizontal or vertical relationships, distort competition on the common market, irrespective of the market on which the parties operate, and that only the commercial conduct of one of the parties need be affected by the terms of the arrangements in question.'²⁹⁹

- 5.44 For an undertaking to infringe the Chapter I prohibition in circumstances where it has facilitated an anticompetitive agreement and/or concerted practice, such as an agreement to fix prices, but is not itself active in supplying the product for which the price has been fixed, it is necessary to ascertain whether:

'the undertaking concerned intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk'.³⁰⁰

- 5.45 Where those criteria are met, the undertaking in question will itself be a party to the infringement in question.

Legal assessment regarding agreements and concerted practices

- 5.46 On the basis of the evidence set out in Chapter 3, the FCA finds that during the Relevant Period there was a concurrence of wills and/or a form of coordination between the Parties sufficient to amount to an agreement and/or a concerted practice for the purposes of the Chapter I prohibition.

- 5.47 During the Relevant Period, the evidence indicates that the Parties coordinated their pricing practices with the object of reducing competition on price and reducing strategic uncertainty in order to maintain or increase pricing levels in the market. The evidence indicates that the Parties shared a common understanding that such coordination was aimed at increasing the profitability of retailer-adjusted remittance services in the provision of in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR.³⁰¹

²⁹⁸ Case C-194/14 P *AC-Treuhand v Commission* EU:C:2015:717, paragraph 27

²⁹⁹ Case T-180/15 *Icap Plc v European Commission* EU:T:2017:795, paragraph 103

³⁰⁰ Case T-180/15 *Icap Plc v European Commission* EU:T:2017:795, paragraph 100. See also Case C-194/14 P *AC-Treuhand v Commission* EU:C:2015:717, paragraph 30 and the case law cited.

³⁰¹ See Chapter 3, paragraph 3.34.

- 5.48 While it is not necessary for the FCA to distinguish between agreements and a concerted practice in finding an infringement of the Chapter I prohibition (paragraphs 5.41 and 5.42), the FCA considers the evidence to indicate that the anti-competitive arrangements evolved over the course of the Relevant Period, beginning as an agreement made between the Parties before, through the actions of at least Small World, assuming more of the characteristics of a concerted practice. The FCA considers in turn the:
- (a) Participation of Small World in the agreement/concerted practice;
 - (b) Participation of Dollar East in the agreement/concerted practice; and
 - (c) Participation of Hafiz Bros in the agreement/concerted practice.

Participation of Small World in the agreement / concerted practice

- 5.49 The FCA finds that there is a significant body of witness evidence and contemporaneous documents which indicate the formation of an anti-competitive agreement between Small World and Hafiz Bros (acting on behalf of other MTAs). The wording of an internal Small World email sent on 18 February 2017 (Chapter 3 paragraphs 3.21 to 3.24, 3.26 and 3.27), plus later correspondence that shows Small World staff implementing pricing changes at the Glasgow branch (Chapter 3 paragraphs 3.38 and 3.40, 3.80 and 3.81), indicate that Small World came to an explicit agreement with Hafiz Bros regarding the coordination of pricing practices in the GBP/PKR corridor to be implemented by Small World in assuming membership of the GMTA. Other contemporaneous internal Small World documents are consistent in:
- (a) identifying Hafiz Bros as being the main instigator of the arrangements on behalf of the GMTA (Chapter 3 paragraph 3.35, the May GMTA WhatsApp records as outlined at paragraphs 3.52 to 3.55, and paragraph 3.85 regarding Hafiz Bros' ability to 'mess' Small World's business if a £5 fee not charged); and
 - (b) indicating that Small World and Hafiz Bros made a verbal agreement regarding how Small World would join the GMTA and that the Glasgow branch should charge customers according to GMTA rates and fees (Chapter 3, paragraph 3.26).³⁰²
- 5.50 The FCA considers that from around 27 February 2017 until the end of the Relevant Period, the evidence in relation to the FX conduct indicates that Small World, while ceasing to set prices at the Glasgow branch at the exact GMTA GBP/PKR exchange rate, continued its membership of the GMTA WhatsApp group and set rates at the Glasgow branch with knowledge of the retail exchange rate circulated daily within the GMTA WhatsApp group (Chapter 3 paragraphs 3.44 to 3.51). In so doing, Small World (i) accepted information regarding the current and future pricing intentions of GMTA members, which included Dollar East (see paragraphs 5.53 to 5.56 below), and (ii) in that context of substantially reduced uncertainty about the commercial strategy of its

³⁰² See also references to [Small World Employee 1]'s (Small World) verbal agreement with agents in CA98.2020.01-000507.

local competitors, used that information as a benchmark by which to set the prices of GBP/PKR remittances at the Glasgow branch.

- 5.51 As noted at Chapter 3, paragraph 3.44 and footnote 138, the FCA has not identified evidence to suggest that Small World communicated the change in its approach, from around 27 February 2017, to Dollar East, Hafiz Bros or any other GMTA member in a manner that might suggest the formation of a second, revised agreement between the Parties in respect of the FX conduct. However, from this time until the end of the Relevant Period the FCA considers that at the very least an anti-competitive concerted practice was in operation between the Parties where Small World was aware of the proposed GMTA rate when setting its own pricing at its Glasgow branch.³⁰³
- 5.52 In respect of the transaction fee conduct, the FCA considers that the evidence indicates that during the Relevant Period, Small World was aware that GMTA members had agreed to charge a standard £5 fee from at least 18 February 2017 onwards (Chapter 3 paragraphs 3.26, 3.80 to 3.85). Despite this not being the standard rate at any other Small World branch in the UK (Chapter 3 paragraph 3.82), in that context of reduced uncertainty about the commercial strategy of its competitors, Small World introduced and maintained a £5 transaction fee during the Relevant Period (except for first time customers, as agreed among the Parties (see Chapter 3, paragraph 3.26 and footnote 116)).

Participation of Dollar East in the agreement / concerted practice

- 5.53 The FCA notes that neither the 18 February email (Chapter 3 paragraphs 3.23 to 3.27) nor other internal Small World documents between February and April 2017, make specific mention of Dollar East in relation to the FX conduct or transaction fee conduct. The first direct evidence of Small World being in contact with Dollar East in respect of the FX conduct is therefore the May GMTA WhatsApp records (Chapter 3, paragraphs 3.52 to 3.55 and 3.71).
- 5.54 However, the FCA considers that the totality of evidence in its possession indicates the participation of Dollar East in the conduct. Specifically, this evidence shows that Dollar East was a member of the GMTA during the entire Relevant Period and that, accordingly, an agreement and/or concerted practice between Small World, Hafiz Bros and Dollar East was formed and maintained throughout the Relevant Period in respect of the FX conduct and transaction fee conduct.
- 5.55 In relation to Dollar East's GMTA membership throughout the Relevant Period, the FCA notes the following:
- (a) Dollar East submitted that [Dollar East Employee 2] and [Dollar East Employee 1] joined a GMTA WhatsApp group in January 2017 which had been created on 26 January 2017 by '[X<]' (Chapter 3 paragraph 3.42). Furthermore:
 - (i) The screenshot shared by [Small World Employee 2] (to provide proof that he had left the GMTA WhatsApp group on 31 May 2017) also shows

³⁰³ In accepting the information from the GMTA WhatsApp group and staying active in the market through its Glasgow branch, it may be presumed that Small World took account of the information received from its competitors in determining its conduct on the market. See Case C-199/92 P, *Hüls AG v Commission*, EU:C:1999:358, paragraphs 160-162.

that the WhatsApp group in question was created by '[X] Hafiz Br Mob' on 26 January 2017 (Chapter 3 paragraph 3.71).

- (ii) When shown the May GMTA WhatsApp group records in interview, [Dollar East Employee 2] identified the May 2017 GMTA WhatsApp records as having originated from the WhatsApp group established by [X] in January 2017 (Chapter 3 paragraph 3.42).
 - (iii) The screenshot shared by [Small World Employee 3] on 31 May 2017 shows the phone number attributed to [Dollar East Employee 2] as being active in the WhatsApp group on 31 May 2017, including adding another participant to the group (Chapter 3 paragraph 3.71).
- (b) As set out at Chapter 3 paragraphs 3.52 to 3.55, during May 2017, Dollar East was an active member of the GMTA WhatsApp group and monitored compliance with the FX conduct and addressed suspected breaches by GMTA members with regard to the pricing arrangements within the GMTA.
- (c) Following the Relevant Period, on 15 June 2017, [Dollar East Employee 2] wrote to Small World on behalf of 39 active members of the GMTA complaining about 'rate violation and customer charges' by Small World; indicating that Dollar East was aware of Small World's previous agreement to charge at GMTA rates for both exchange rates and transaction fees (Chapter 3 paragraph 3.74).
- (d) Dollar East is located under a mile from the Glasgow branch and was therefore likely to have been one of the 8 agents to whom [Small World Employee 4] referred in his email of 18 April 2017 regarding the reasons why Small World entered into the relevant arrangements with GMTA members (Chapter 3 paragraph 3.84).

5.56 Having considered the totality of evidence in its possession, on the balance of probabilities the FCA considers that Dollar East was a member of the GMTA and active within the relevant GMTA WhatsApp group by at least the time (i.e. 18 February 2017) that Small World discussed the anti-competitive arrangements with Hafiz Bros and joined the GMTA WhatsApp group in order to participate, alongside Dollar East and Hafiz Bros, in the agreement and/or concerted practice which was the subject of the Infringement.

Participation of Hafiz Bros in the agreement/concerted practice

5.57 The FCA notes that, unlike Dollar East and Small World, during the Relevant Period the evidence suggests that Hafiz Bros was not itself active in directly supplying the retailer-adjusted remittance services in the UK to Pakistan corridor, which are the subject of the Infringement. Instead, in its role as a master/referral agent, Hafiz Bros was active in a business-to-business capacity, contracting with Small World to identify and recruit MTAs on Small World's behalf (Chapter 3 paragraphs 3.14 and 3.15). Through the commission structure put in place between it and Small World (Chapter 3 paragraph 3.15), Hafiz Bros had a direct commercial interest in remittances from the UK to Pakistan which were made by members of its master network when using Small World's services. The FCA finds that Hafiz Bros therefore had incentives to ensure that the Glasgow branch did not undercut prices in the relevant market (so to reduce the potential commissions it could earn through its Small World master agent network).

- 5.58 Furthermore, based on the criteria outlined above at paragraphs 5.43 and 5.44, the FCA considers that Hafiz Bros both instigated and facilitated the agreement and/or concerted practice.
- 5.59 As set out above at paragraph 5.49, the internal Small World documents are consistent in identifying Hafiz Bros as the instigator of the anti-competitive arrangements, indicating that Hafiz Bros intended to contribute by its own conduct to the common objectives pursued by all the Parties in entering into the agreement/concerted practices (on common objectives, also see paragraph 5.86 below).
- 5.60 The internal Small World documents are also consistent with the May GMTA WhatsApp records which show how, in respect of the FX conduct, Hafiz Bros facilitated the arrangements by regularly circulating a GBP/PKR retail exchange rate to other GMTA members (Chapter 3 paragraphs 3.52 and 3.55),³⁰⁴ indicating that Hafiz Bros was aware of the actual conduct planned or put into effect by other GMTA members, including Dollar East and Small World, in pursuit of the same objectives. The May GMTA WhatsApp records show that Hafiz Bros usually received several responses confirming that the rate had been adopted (usually by an 'ok') and so had actual knowledge of the conduct of the participants (Chapter 3, paragraph 3.55). Hafiz Bros can therefore be taken to have reasonably foreseen and taken the risk that participants to the GMTA WhatsApp group would adopt the rates that Hafiz Bros had proposed. While the May GMTA WhatsApp records only provide direct evidence of contacts between the Parties for part of the Relevant Period, as discussed below (paragraphs 5.92 to 5.95), based on the totality of the evidence the FCA considers that both the FX conduct and transaction fee conduct continued throughout the Relevant Period.
- 5.61 While Hafiz Bros did not itself supply GBP/PKR remittances direct to consumers (and therefore would not have directly charged customers a retail exchange rate or transaction fee for that service), for the reasons outlined above the FCA considers that Hafiz Bros played a key role in both arranging and putting into effect the Parties' common objective to reduce competition on price and reduce strategic uncertainty in order to maintain or increase pricing levels in the market.

Conclusion on agreement/concerted practice

- 5.62 In light of the assessment above, the FCA considers that the arrangements between the Parties constituted an agreement and/or concerted practice for the purposes of the Chapter I prohibition.

³⁰⁴ As discussed in Chapter 3, the FCA considers that the alternative explanation advanced by [Hafiz Bros Employee 1] that the rates he circulated were 'cost' rates is not credible based on the totality of the evidence in the FCA's possession (Chapter 3 paragraph 3.69).

Single and continuous infringement

Key legal principles

Concept of a single and continuous infringement

- 5.63 An infringement of the Chapter I prohibition can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, individually and in themselves, constitute infringements.³⁰⁵ The effect of a finding of a single and continuous infringement is that each party is *'responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement'*.³⁰⁶
- 5.64 The concept of a 'single and continuous infringement' presupposes a complex of practices adopted by various parties in pursuit of a single anti-competitive economic aim.³⁰⁷ The practices may vary from time to time, or its mechanisms may evolve and adjust to take account of new requirements or circumstances. However, it would be artificial to split up such continuous conduct, where it is characterised by a single purpose, by treating it as consisting of a number of separate infringements *'when what was involved was a single infringement which progressively manifested itself in both agreements and concerted practices'*.³⁰⁸ In these circumstances, it is therefore not necessary to divide this continuous conduct by treating it as consisting of a number of separate infringements.³⁰⁹

Conditions for a single and continuous infringement

- 5.65 The European Courts have identified three conditions³¹⁰ which need to be satisfied in order to establish an undertaking's participation in a single and continuous infringement:
- (a) The existence of an overall plan pursuing a common objective.³¹¹ The common objective must be based on objective elements linking the various actions together.³¹²

³⁰⁵ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraphs 111 to 114. See also Case T-105/17 *HSBC Holdings v Commission*, EU:T:2019:675, paragraph 197 and Case T-799/17, *Scania and Others v Commission*, EU:T:2022:48, paragraph 191.

³⁰⁶ Case C-49/92P *Commission v Anic Partecipazioni*, paragraph 83.

³⁰⁷ T-25/95 *Cimenteries CBR and Others v Commission* [2000] EU:T:2000:77, paragraph 3699.

³⁰⁸ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 82.

³⁰⁹ Case T-1/89 *Rhône-Poulenc v Commission*, EU:T:1991:56, paragraph 126.

³¹⁰ Joined Cases T-204/08 and T-212/08, *Team Relocations and Others v Commission* EU:T:2011:286, paragraphs 33 to 37.

³¹¹ There must therefore be evidence showing the existence of a series of efforts made by the undertakings in pursuit of a 'common objective' or 'single economic aim'. Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraphs 42 and 197.

³¹² When assessing the common features of a set of anti-competitive practices in order to determine whether there is a series of efforts made by the undertakings in pursuit of a common objective, it is necessary to look at the available elements together: see Joined Cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Osterreich v Commission*, EU:T:2006:396, paragraph 121. Where it is established that a set of individual agreements or concerted practices are interlinked in terms of pursuing a single anti-competitive aim, they can be characterised as constituting a single and continuous infringement: Case C-49/92 P

- (b) The intentional contribution of the undertaking by its own conduct to the common objectives pursued by all the participants.³¹³
- (c) The undertaking's awareness of the offending conduct of the other participants in pursuit of the same objectives, or the fact that it could have reasonably foreseen it and was prepared to take the risk.³¹⁴

5.66 Based on those three conditions, the European Courts have identified numerous criteria for assessing whether a single continuous infringement exists based on the specific factual circumstances. For instance, in respect of whether an overall plan pursuing a common objective exists, the case law identifies the following as being relevant to that assessment: the identical nature of objectives of the practices at issue;³¹⁵ the identical nature of the goods and/or services and/or geographic area concerned;³¹⁶ the identical nature of undertakings participating;³¹⁷ and whether the individuals involved on behalf of the undertakings are identical.³¹⁸

Duration and continuous nature of the arrangement

5.67 The continuity of a practice over time is an essential feature of a single and continuous infringement and is linked to the requirement to establish the duration of the infringement.

5.68 If there is no evidence directly establishing the duration of an infringement, it is necessary to '*adduce at least evidence of facts sufficiently proximate in time for it to be reasonable to accept that the infringement continued uninterrupted between two specific dates*'.³¹⁹ However, it is not necessary to '*provide precise and consistent evidence of each element of the offence, provided that the bundle of indicia, assessed globally, satisfies this requirement*'.³²⁰

5.69 In examining the continuous nature of an infringement, the question of whether or not a gap between the various manifestations is long enough to constitute an interruption of the infringement cannot be examined in the abstract and should be assessed in the

Commission v Anic Partecipazioni, EU:C:1999:356, paragraph 113; Cases T-101&111/05 *BASF v Commission*, EU:T:2007:380, paragraphs 158 onwards; Case T-295/94 *Buchmann v Commission*, EU:T:1998:88, paragraph 79; Case T-21/99 *Dansk Rorindustri v Commission* EU:T:2002:74, paragraph 67.
³¹³ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 206. Joined Cases T-204/08 and T-212/08 *Team Relocations v Commission*, EU:T:2011:286, paragraph 37.

³¹⁴ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraphs 87 and 203.

³¹⁵ Case T-101/05 *BASF and UCB v Commission*, EU:T:2007:380, paragraph 180: there needs to be more than a general reference to the distortion of competition in the relevant product market. See also Case T-113/07 *Toshiba v Commission*, EU:T:2011:343, paragraph 228; see also joined Cases C-239/11 P, C-489/11 P and C-498/11 *Siemens and Others v Commission*, EU:C:2013:866, paragraph 246.

³¹⁶ *Trelleborg Industrie v Commission*, T-147/09 and T-148/09, EU:T:2013:259, paragraph 60 and case law cited.

³¹⁷ Though '*members may join or leave the cartel from time to time without its having to be treated as a new 'agreement' with each change in participation.*' Commission Decision in *Pre-insulated Pipes Cartel*, (COMP/35691), paragraph 134.

³¹⁸ *Trelleborg Industrie v Commission*, T-147/09 and T-148/09, EU:T:2013:259, paragraph 60. In Case T-105/17 *HSBC v Commission*, EU:T:2019:675, the GC referred at paragraph 233 to '*the central element which establishes that there was an 'overall plan', as referred to in recital 451 of the contested decision, is the fact that the cartel was 'controlled and maintained' by a stable group of individuals*'.

³¹⁹ Case T-43/92 *Dunlop Slazenger International Ltd v Commission*, EU:T:1994:79, paragraph 79. Affirmed in Case T-62/98 *Volkswagen v Commission*, EU:T:2000:180.

³²⁰ Case T-195/06 *Solvay Solexis v Commission*, EU:T:2011:280, paragraph 95 – translated from French.

context of the functioning of the cartel in question.³²¹ In this regard, the GC has observed that, in a price-fixing agreement, *'participants are required to meet regularly to take account of the market evaluation to be able to adapt their conduct on that market during the period of the agreement.'*³²²

- 5.70 In *ICAP*, the undertaking appealed the finding of a single and continuous infringement which characterised it as facilitating the exchange of information allowing the manipulation of the JPY LIBOR rate. The rates were set on a daily basis and required positive measures on the part of *ICAP* to share information. The GC stated that it was necessary to adduce evidence of *ICAP*'s repeated positive measures *'if not on a daily basis, at least sufficiently limited in time'* and this evidence should demonstrate that those measures were adopted. This is because *'[i]n circumstances where the pursuit of an agreement or of concerted practices requires special positive measures, the Commission cannot assume that the cartel has been pursued in the absence of evidence that those measures were adopted.'*³²³
- 5.71 As to the end of the infringement, the CJEU has held that *'in the case of agreements which have ceased to be in force, it is sufficient, in order for Article 101 TFEU to apply, that they produce their effects beyond the date on which the unlawful contacts formally come to an end. It follows that the duration of an infringement may be assessed by reference to the period during which the undertakings concerned engaged in conduct prohibited by that article.'*³²⁴

Participation in a single continuous infringement

- 5.72 The finding of the existence of a single and continuous or single repeated infringement is separate from the question of whether liability for the infringement as a whole is imputable to an undertaking.³²⁵
- 5.73 Each participating undertaking may bear personal responsibility not only for its own conduct, but also for the operation of the overall anti-competitive arrangement during the period in which it participated in it.³²⁶ Each participant in infringing conduct can be found liable for the whole infringement if it was *'aware of the offending conduct of the other participants or that it could reasonably have foreseen it and that it was prepared to take the risk.'*³²⁷

³²¹ Case T-18/05 *IMI and Others v Commission*, EU:T:2010:202, paragraph 89. See also Case T-83/08 *Denki Kagaku Kogyo and Denka Chemicals v Commission*, EU:T:2012:48, paragraphs 223 to 224 and an appeal from the Commission's *Marine Hoses decision*, the General Court in Joined Cases T-147/09 and T-148/09 *Trelleborg Industrie SAS and Trelleborg AB v Commission*, EU:T:2013:259, paragraph 68.

³²² Case T-439/07 *Coats Holdings Ltd v Commission*, EU:T:2012:320, paragraph 152.

³²³ Case T-180/15, *ICAP v Commission*, EU:T:2017:795, paragraphs 223 and 224.

³²⁴ Case C-70/12 P *Quinn Barlo v Commission*, EU:C:2013:351, paragraph 40.

³²⁵ Case C-99/17 P *Infineon Technologies v Commission*, EU:C:2018:773, paragraphs 171-177.

³²⁶ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 83. An undertaking can only be held liable for the conduct in which it participated directly and for the conduct planned or put into effect by the other participants in pursuit of the same objectives as those of the undertaking itself, where it is shown that the undertaking was aware of the conduct or was able reasonably to foresee it and it was prepared to take the risk: Case C-441/11 P *Verhuizingen Coppens*, EU:C:2012:778, paragraph 44. Establishing an undertakings' awareness of the infringement as a whole is key to establishing the extent of its liability: Joined Cases T-67/00, T-68/00, T-71/00 and T-78/00 *JFE Engineering Corp v Commission*, EU:T:2004:221, paragraph 371 and Case T-53/03 *BPB v Commission*, EU:T:2008:254, paragraph 253.

³²⁷ Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 83.

- 5.74 Undertakings may participate more or less over the period of the infringement, where there is evidence of continuity of method, practice and/or purpose.³²⁸ It is not necessary for each undertaking to be aware of the full detail of all the participants' activities, so long as each had sufficient awareness of the overall plan and intended to contribute to it.³²⁹ However, limited participation in the single and continuous infringement should be taken into account at a later stage, when assessing the gravity of the infringement in order to determine the level of the fine for the particular undertaking.³³⁰
- 5.75 An undertaking does not have to be present on the relevant market for it to participate in a single and continuous infringement.³³¹
- 5.76 The FCA may assume that the participation of an undertaking in an infringement has not been interrupted in respect of a specific period provided that that undertaking participated in the infringement prior to and after that specific period and provided there is no proof or indication that the infringement was interrupted so far as concerns that undertaking.³³²
- 5.77 In determining the duration of an undertaking's participation in the infringement, the FCA is entitled to rely on pieces of evidence that an undertaking actively participated in the agreement and/or concerted practice, lack of evidence that an undertaking publicly distanced itself from the agreement and/or concerted practice, and the perception of the other participants in the cartel.³³³ The absence of public distancing in itself does not necessarily mean that an undertaking's anti-competitive conduct has continued.³³⁴
- 5.78 The CJEU has held that passive modes of participation in the infringement, such as the presence of an undertaking in meetings at which anti-competitive agreements were concluded, without that undertaking clearly opposing them, are indicative of collusion capable of rendering the undertaking liable for the infringement.³³⁵
- 5.79 Where it is established that an undertaking participates in a meeting of a manifestly anti-competitive nature, it is for the undertaking to adduce evidence to establish that it indicated its opposition to the anti-competitive arrangement to its competitors.³³⁶ Absent evidence that the undertaking manifestly opposed the arrangement, there is a

³²⁸ Case T-385/06 *Aalberts Industries v Commission*, EU:T:2011:114, paragraph 105.

³²⁹ In joined cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Osterreich v Commission*, EU:T:2006:396, paragraph 193.

³³⁰ See Case C-49/92 P *Commission v Anic Partecipazioni*, EU:C:1999:356, paragraph 90; Case C-204/00 P *Aalborg Portland and Others v Commission*, EU:C:2004:6, paragraph 86 and Case C-441/11 P *Commission v Verhuizingen Coppens NV*, EU:C:2012:778, paragraph 45.

³³¹ Case T-29/05 *Deltafina v Commission*, EU:T:2010:355, paragraphs 45 to 51. See also Case C-626/13 P *Villeroy & Boch v Commission*, EU:C:2017:54, paragraph 69.

³³² Joined Cases T-147/09 and T-148/09 *Trelleborg Industrie SAS and Trelleborg AB v Commission*, EU:T:2013:259, paragraph 87.

³³³ Case C-634/13 P *Total Marketing Services v Commission*, EU:C:2015:614, paragraphs 26 to 31.

³³⁴ The CJEU has held that '...in a case where, over the course of a significant period of time, several collusive meetings have taken place without the participation of the representatives of the undertaking at issue, the Commission must also base its findings on other evidence.' Case C-634/13 P *Total Marketing Services v Commission*, EU:C:2015:614, paragraph 28.

³³⁵ Case T-180/15 *ICAP v Commission* EU:T:2017:795, paragraphs 100-101.

³³⁶ See for example, Case C-113/04 P *Technische Unie BV v Commission*, EU:C:2006:593, paragraph 114.

presumption that the undertaking's participation in the meeting was unlawful.³³⁷ This is because a party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, encourages the continuation of the infringement and compromises its discovery.³³⁸

- 5.80 Similarly, the same presumption applies where a party receives information regarding anti-competitive arrangements electronically such as via email, rather than in the context of a meeting.³³⁹
- 5.81 The concept of public distancing is to be interpreted narrowly.³⁴⁰ Public distancing must be understood as such by the other participants.³⁴¹ The GC has held that: '*the communication that is intended to constitute a public distancing from an anti-competitive practice must be expressed firmly and unambiguously*'.³⁴²

Legal assessment regarding single and continuous infringement

- 5.82 Based on its assessment of the evidence against the three conditions outlined at paragraph 5.65, the FCA considers that the Parties' conduct during the Relevant Period constituted a single and continuous infringement.

Overall plan pursuing a common objective

Identical nature of objectives of the practices

- 5.83 The conduct outlined in Chapter 3 involved the same objective in terms of the overall plan to coordinate pricing practices with the aim of reducing competition on price and reducing strategic uncertainty in order to maintain or increase pricing levels in the market.
- 5.84 In terms of their individual participation and practices, the Parties undertook this coordination through:
- (a) repeated anti-competitive contacts made through a WhatsApp group where a proposed retail exchange rate for GBP/PKR remittances was regularly circulated by Hafiz Bros and received by Dollar East and Small World (Chapter 3 paragraphs 3.23, 3.24, 3.35, 3.41, 3.54 and 3.55); and
 - (b) by an initial anti-competitive meeting or meetings during February 2017 where it was agreed that a £5 transaction fee should be consistently applied by GMTA members (including at Small World's Glasgow branch) for GBP/PKR remittances made through Small World's remittance services (Chapter 3 paragraphs 3.23, 3.26, 3.80 to 3.83).

³³⁷ See for example, Case C-634/13 P *Total Marketing Services v Commission*, EU:C:2015:614, paragraph 21.

³³⁸ Joined Cases C-189/02 P, C-202/02 P, C-205/02 P and C-2103/02 P, *Dansk Rørindustri and Others v Commission*, EU:C:2005:408, paragraphs 142 and 143; Case C-194/14 P, *AC-Treuhand* EU:C:2015:717, paragraph 31, Case C-70/12 P *Quinn Barlo v Commission*, EU:C:2013:351, paragraph 29.

³³⁹ Case C-74/14 *Eturas UAB and Others v Lietuvos Respublikos konkurencijos taryba*, EU:C:2016:42, paragraph 50.

³⁴⁰ Case T-303/02 *Westfalen Gassen Nederland v Commission* EU:T:2006:374, paragraph 103.

³⁴¹ Case C-373/14 P *Toshiba Corporation v Commission*, EU:C:2016:26, paragraph 71.

³⁴² Case T-377/06 *Comap SA v Commission*, EU:T:2011:108; paragraph 76.

- 5.85 As most of Small World’s Glasgow-based agents were also members of the GMTA (see Chapter 3 paragraph 3.24), the FCA considers both forms of anti-competitive conduct to have worked together as part of an overall objective to reduce price competition and strategic uncertainty in order to maintain or increase pricing levels in the market. This is consistent with statements made in [Small World Employee 1]’s 18 February 2017 email (Chapter 3 paragraphs 3.23 and 3.27) where both forms of pricing restrictions were indicated to have the aim of reducing or removing price competition between the Parties.
- 5.86 The FCA further considers that the Parties shared a common understanding that the economic aim of the anti-competitive arrangements was to increase the profitability of the sale of retailer-adjusted remittance services. In this context, the FCA notes the following as indicating a common understanding of the economic aim of the anti-competitive arrangements:
- (a) [Small World Employee 1] concluded his 18 February 2017 email by noting how, as a consequence of the pricing restrictions he had agreed to on behalf of Small World, profitability for any transaction to Pakistan would be as high as transactions made to Europe and Africa (Chapter 3 paragraph 3.27). That email concludes that the *‘the competition will be on the reliability and quality of the Service’*, implying that price competition will no longer operate.
 - (b) In describing the anti-competitive arrangements (which had already been put in place) on 18 April 2017, [Small World Employee 4] stated that *‘if we [Small World Glasgow branch] do differently than them [8 agents near the Glasgow Branch] we would lose all that volume and would have a very bad reflection in the market’* (Chapter 3, paragraph 3.84).
 - (c) That within the May GMTA WhatsApp records [Dollar East Employee 2] messaged *‘fellow GMT members’* in order to tell them to avoid giving *‘silly rates’*, which in interview [Dollar East Employee 2] explained was an appeal to other MTAs to refrain from offering their customers a wholesale rate as it was not affordable to MTAs whose main business was money remittance (Chapter 3, paragraphs 3.57 and 3.58).
 - (d) [Hafiz Bros Employee 1]’s comments in interview that Small World’s Glasgow branch was not doing *‘fair trade’* and was *‘killing small agents’* (Chapter 3, paragraph 3.31).
 - (e) During his internal Small World interview, [Small World Employee 3] said that when Small World initially discussed its rates and fees with GMTA members after opening the Glasgow branch, *‘They said that if we follow their same rates and charges then we will achieve benefit’*.³⁴³

Identical nature of the goods and/or services and/or geographic area

- 5.87 The conduct comprising the Infringement related to the same products and geographical scope throughout the Relevant Period – the provision of in-store

³⁴³ CA98.2020.01-001160.

remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR.

Identical nature of undertakings and natural persons involved

- 5.88 The conduct throughout the Relevant Period involved the same three parties (Small World, Dollar East and Hafiz Bros) and the same key individuals at each Party.³⁴⁴

Intentional contribution and awareness of others' conduct

- 5.89 As set out above at paragraphs 5.49 to 5.61, Dollar East, Hafiz Bros and Small World each participated in an agreement or concerted practice and, by doing so, contributed by their own conduct to the overall objective while also being aware of how the conduct of each other also contributed to this objective.

Duration and continuous nature of the practices at issue

- 5.90 The FCA considers that throughout the Relevant Period the conduct was continuous in nature.
- 5.91 The FCA notes that its evidence base for the Infringement does feature gaps in time where there is no direct evidence of contact between the Parties in maintaining the arrangements.

FX conduct

- 5.92 In respect of the FX conduct, following the initial implementation at Small World between 18 February 2017 to 21 February 2017 (Chapter 3, paragraphs 3.38 to 3.40), the contemporaneous documents only provide direct evidence of contacts between the Parties between 1 May 2017 and 24 May 2017, in the form of the May GMTA WhatsApp records (Chapter 3, paragraphs 3.52 to 3.55) and then on 31 May 2017 only through the screenshots shared within Small World (Chapter 3, paragraph 3.71).
- 5.93 However, outside of the dates noted above in paragraph 5.92, the FCA considers that when viewed as a whole the documentary evidence obtained from Small World indicates the continuous nature of the FX conduct, commencing from 18 February 2017 until 31 May 2017. In this context, the FCA finds the following:
- (a) On 21 February 2017, shortly after the implementation of the arrangements at Small World, [Small World Employee 1] asked [Small World Employee 2] to keep an eye on the GMTA and alert other Small World staff should the GMTA change its strategy (Chapter 3, paragraphs 3.39 and 3.40). However, based on the internal Small World documents in the FCA's possession, no such update regarding a change in the GMTA's strategy appears to have been subsequently provided by [Small World Employee 2] or any other Small World employee.
 - (b) The FCA notes that Small World employees, when interviewed as part of the internal investigation in early May 2017, did not identify any change in the GMTA's strategy since the formation of the arrangements on or around 18

³⁴⁴ As listed at the table found at paragraph 3.2.

February 2017.³⁴⁵ While these interviews did suggest a change in Small World's approach at the Glasgow branch (moving from charging customers at the GMTA exchange rate to charging at an exchange rate which was set in the knowledge of that day's GMTA rate), no Small World member of staff identified any break or stoppage in Small World's ability to access exchange rates being circulated within the GMTA WhatsApp group and the evidence shows that the GMTA rates were used to determine the Small World exchange rates. Small World employees have also pointed out that during this period, the Glasgow branch charged a different exchange rate for GBR/PKR transfers to other Small World branches (Chapter 3, paragraph 3.82).

- (c) On 10 March 2017, [Small World Employee 3] sent an email which indicated his awareness of the GMTA rate for that day (Chapter 3, paragraph 3.48).
- (d) On 18 April 2017, [Small World Employee 1] sent an email which indicated his awareness of the GMTA rate for that day (Chapter 3, paragraph 3.50).

5.94 The FCA considers that the above documentary evidence obtained from Small World indicates that: (i) Small World employees continued to be members of the GMTA WhatsApp group throughout the entire Relevant Period; and (ii) there was no apparent break in the FX conduct and GMTA retail GBP/PKR exchange rates continued to be circulated on a regular basis between 18 February 2017 to 31 May 2017 in the same manner as seen in the May GMTA WhatsApp chat records (as discussed at Chapter 3, paragraphs 3.52 to 3.55). As outlined above (paragraphs 5.53 to 5.61), the FCA further considers the evidence to indicate that Hafiz Bros and Dollar East were members of the GMTA throughout the Relevant Period.

Transaction fee conduct

5.95 In respect of the transaction fee conduct, the FCA considers that, unlike the FX conduct which involved the setting of daily prices, it was not necessary for the Parties to meet or contact each other regularly in order to maintain this aspect of the Infringement once the initial agreement to charge Small World customers a flat £5 fee had been put in place (Chapter 3, paragraphs 3.80 and 3.81). However, the FCA considers the documentary evidence to indicate that Small World continued to regularly charge a £5 transaction fee at the Glasgow branch, in contrast to its other UK branches, throughout the Relevant Period as a direct consequence of the anti-competitive arrangements between the Parties (see Chapter 3, paragraphs 3.82 to 3.85).

5.96 The FCA also notes that the transaction data shows the routine charging of a £5 fee at Dollar East (Chapter 3, paragraphs 3.87 and 3.88). While the two aspects of the Infringement, the FX conduct and transaction fee conduct, were not dependent on each other (see paragraph 5.85 above), these two aspects did reinforce the Parties' economic aims for entering into the agreement/concerted practice which is the subject of the Infringement. A failure to charge a flat £5 for Small World's remittance services would undermine the Parties' overall economic aim of increasing the profitability of the sale of retailer-adjusted remittance services in the relevant market by removing price competition (as per the 18 February email). There would be little point coordinating

³⁴⁵ CA98.2020.01-001154; CA98.2020.01-001155; CA98.2020.01-001157; CA98.2020.01-001159; CA98.2020.01-001161.

on one aspect of price (i.e. the exchange rate), if parties could freely set the other aspect of price (i.e. the transaction fee). In this respect, the FCA further notes that [Dollar East Employee 2]'s (Dollar East) email of 15 June 2017, following the end of the Relevant Period, complains to Small World about the pricing strategy of the Glasgow branch across both retail exchange rates and 'charges to customers' (Chapter 3 paragraph 3.74).

Conclusion on single continuous infringement

- 5.97 For the reasons set out above, the FCA considers that during the Relevant Period the Parties participated in a single and continuous infringement. However, the FCA also considers that the agreement and/or concerted practices detailed at paragraphs 5.49 to 5.61 would in themselves each individually infringe the Chapter I prohibition for the duration of the Relevant Period (or, in the alternative, for a shorter period of time within the Relevant Period) resulting in the same duration being applied for the purposes of determining the Parties' financial penalties (see Chapter 6, paragraphs 6.39 to 6.41).

Restriction of competition by object

Key legal principles

- 5.98 The Chapter I prohibition prohibits agreements between undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition.
- 5.99 'Object' infringements are those forms of coordination between undertakings that are regarded, by their very nature, as being harmful to the proper functioning of normal competition. The essential legal criterion for a finding of an anti-competitive object is that the coordination between undertakings 'reveals in itself a sufficient degree of harm to competition' such that there is no need to examine its effects.³⁴⁶ The term 'object' refers to the sense of 'aim', 'purpose' or 'objective' of the coordination between undertakings in question.³⁴⁷
- 5.100 To determine whether an agreement or concerted practice has the object of restricting competition, regard must be had to the content of its provisions, its objectives and the legal and economic context.³⁴⁸ When determining that context, it is also necessary to

³⁴⁶ Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraphs 49-52 and paragraph 57-58.

³⁴⁷ See, for example, respectively: judgments in *Consten and Grundig v Commission*, C-56/64, EU:C:1966:41, page 343 ('*Since the agreement thus aims at isolating the French market [...] it is therefore such as to distort competition...*'); *IAZ and others v Commission*, C-96/82, EU:C:1983:310, paragraph 25; *Competition Authority v Beef Industry Development Society Ltd* C-209/07, EU:C:2008:643, paragraphs 32-33.

³⁴⁸ Case C-286/13 P *Dole Food Co. v Commission*, EU:C:2015:184, paragraph 117; Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 53; judgment in *Allianz Hungária Biztosító Zrt and others*, C-32/11, EU:C:2013:160, paragraph 36 and case law cited. See also judgments in *Philips v Commission*, C-98/17 P, EU:C:2018:774, paragraphs 34-35; *Infineon v Commission* C-99/17 P, EU:C:2018:773, paragraphs 155-156.

take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question.³⁴⁹

- 5.101 Anti-competitive subjective intentions on the part of the parties can provide good evidence that there is an anti-competitive object, but they are not necessary for such a finding.³⁵⁰ An agreement or concerted practice can restrict competition by object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives.³⁵¹

Price fixing and exchanges of pricing information are established categories of restrictions of competition by object

- 5.102 Section 2(2)(a) of the Act expressly prohibits '*agreements, decisions or practices which directly or indirectly fix purchase or selling prices...*'.
- 5.103 Agreements or concerted practices which fix prices are considered to have as their object the prevention, restriction or distortion of competition.³⁵² It is firmly established by the European Courts that horizontal price-fixing by cartels may be considered so likely to have negative effects, in particular on the price, quantity or quality of the goods or services, that it may be considered redundant to prove that they have actual effects on the market.³⁵³
- 5.104 Price-fixing covers agreements between competitors to agree to fix prices for products or services that they sell or buy, but:

³⁴⁹ Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 53; Allianz Hungária Biztosító Zrt and others, C-32/11, EU:C:2013:160, paragraph 36; followed in the judgment in *Lundbeck A/S v Commission*, T-472/13, EU:T:2016:449, paragraph 343.

³⁵⁰ Allianz Hungária Biztosító Zrt and others, C-32/11, EU:C:2013:160, paragraph 37; Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 54.

³⁵¹ Case C-551/03 *General Motors BV v Commission*, EU:C:2006:229, paragraph 64; Case C-209/07 *Competition Authority v Beef Industry Development Society and Barry Brothers*, EU:C:2008:643, paragraphs 20 to 21; and Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 70. Where the obvious consequence of an agreement or concerted practice is to prevent, restrict or distort competition, that will be its object for the purpose of the Chapter I prohibition, even if the agreement or concerted practice had other objectives: Joined Cases 96-102, 104, 105, 108 and 110/82 *NV IAZ International Belgium and Others v Commission*, EU:C:1983:310, paragraphs 22 to 25.

³⁵² Case C-123/83 *Bureau national interprofessionnel du cognac v Guy Clair*, EU:C:1985:33, paragraph 22; and Case 27/87, *SPRL Louis Erauw-Jacquery v La Hesbignonne SC*, EU:C:1988:183, paragraph 15. See also: Case T-14/89, *Montedipe SpA v Commission*, EU:T:1992:36, paragraphs 246 and 265; and Case T-148/89 *Tréfilunion v Commission*, EU:T:1995:68, paragraphs 101 and 109. See also: The Commission Staff Working Document: Guidance on restrictions of competition "by object" for the purpose of defining which agreements may benefit from the De Minimis Notice, SWD (2014) 198 final, paragraph 2.1.1.

³⁵³ Case C-67/13 P, *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 51; see also Case C-123/83, *BNIC v Clair*, EU:C:1985:33, paragraph 22; Case T-14/89, *Montedipe v Commission*, EU:T:1992:36, paragraph 265; Case C-286/13 P *Dole Food Co. v Commission*, EU:C:2015:184, paragraph 115; and Commission Decision of 15 October 2008, COMP/39188, *Bananas*, paragraph 284 and the case law cited.

'[i]t is not necessary that the agreement expressly or directly fixes the selling or purchasing price: it is sufficient if the parties agree on certain parameters of the price composition, such as the amount of rebates given to customers'.³⁵⁴

5.105 The prohibition of price-fixing includes the implementation of 'target prices' between competitors as:

'[i]f a system of imposed selling prices is clearly in conflict with [Article 101], the system of target prices is equally so [...] In fact the fixing of a price, even one which merely constitutes a target, affects competition because it enables all the participants to predict with a reasonable degree of certainty what the pricing policy pursued by their competitors will be.'³⁵⁵

5.106 In relation to the exchange of pricing information, the CMA's guidance on horizontal agreements³⁵⁶ notes that:

'Exchanges between competitors that in individual cases have been qualified as a by object restriction in previous authority infringement decisions and judgments – in light of the content of the information shared, the objectives pursued and the legal and economic context – include [...] [t]he exchange with competitors of an undertaking's current pricing and future pricing intentions.'³⁵⁷

5.107 The relevant European case-law also demonstrates that price fixing can manifest through an exchange of pricing information between competitors, and that such conduct may also amount to an object restriction of competition.³⁵⁸

Legal assessment regarding restriction of competition by object

5.108 The FCA considers that the Infringement took the form of an agreement or concerted practice between the Parties which had as its object the prevention, restriction or distortion of competition. Having considered the content and objectives of the provisions, and the legal and economic context in which those provisions formed part, the FCA's assessment of how the Parties' conduct constitutes a restriction of competition by object is set out below.

The content and objectives of the provisions

5.109 The content of the communications and contacts between the Parties as described in Chapter 3 reveals that the object of the agreement and/or concerted practice was to fix the retail price for in-store retailer-adjusted remittance services for the UK to

³⁵⁴ The Commission Staff Working Document: Guidance on restrictions of competition "by object" for the purpose of defining which agreements may benefit from the De Minimis Notice, SWD (2014) 198 final, paragraph 2.1.1.

³⁵⁵ Case C-8/72 *Vereeniging van Cementhandelaren v Commission* EU:C:1972:84, paragraphs 19 and 21.

³⁵⁶ Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to horizontal agreements, CMA guidance, August 2023 (CMA184). This guidance replaced the Commission's Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements. (2011/C 11/01) (for which, see paragraphs 73 and 74).

³⁵⁷ CMA184, paragraph 8.84.

³⁵⁸ Case T-588/08 *P Dole Food and Dole Germany v Commission* (paragraphs- 51 to 85 and cases cited).

Pakistan remittance corridor in Glasgow. To this end, the Parties shared an understanding to (i) charge customers an exchange rate that was proposed on a daily basis within a GMTA WhatsApp group (Chapter 3, paragraphs 3.23, 3.26, 3.27, 3.35 3.38 to 3.41) and (ii) charge customers a flat £5 for any transactions made through Small World's money remittance services (Chapter 3, paragraphs 3.23, 3.26, 3.27, 3.81 to 3.85).

- 5.110 As described at Chapter 3 (paragraphs 3.44 to 3.51) and paragraph 5.50 above, during the Relevant Period Small World ceased to offer the exact daily GMTA GBP/PKR exchange rate at the Glasgow branch and instead began to offer a rate that was informed by Small World's knowledge of the current and future pricing intentions of GMTA members obtained through Small World's membership of the GMTA WhatsApp group.
- 5.111 As described above at paragraphs 5.83 to 5.85, the objective of the agreements and/or concerted practice was to coordinate pricing practices with the aim of reducing competition on price and reducing strategic uncertainty in order to maintain or increase pricing levels in the market. In turn, the coordination aimed to ensure increased profitability in the sale of retailer-adjusted remittance services in the relevant market (and in so doing reduced the threat of a GMTA boycott of Small World's remittance services).
- 5.112 Although the Parties' subjective intention is not a necessary factor in determining whether a concerted practice has an anticompetitive object, the FCA may nevertheless take this aspect into account in its analysis of the objectives of the conduct.³⁵⁹ The FCA considers that both contemporaneous documents and witnesses evidence, as set out at paragraph 5.86 above, indicates how key individuals that participated in the conduct wished to restrict price competition between the Glasgow branch and Glasgow MTAs.

Legal and economic context

- 5.113 The legal and economic context of which the agreements and/or concerted practices form a part is described in Chapter 2 (paragraphs 2.4 to 2.32) and Chapter 4 above. In relation to the information and analysis outlined in those parts of this Decision, the FCA considers that certain contextual factors in this case may have facilitated the effectiveness of the price fixing and anti-competitive exchange conduct. This includes (i) the close proximity of Dollar East's premises to Small World's Glasgow branch plus a number of other MTAs (facilitating an awareness of prices being offered to customers at competing premises) (Chapter 3, paragraph 3.84 and Chapter 4, paragraph 4.50), and (ii) evidence indicating a narrow relevant market where higher prices for the focal product could be sustained (e.g. the local nature of the geographic market (being no wider than Glasgow) and evidence suggesting a lack of substitutability between in-store and online provision of the services (Chapter 4, paragraphs 4.23 to 4.27 and paragraphs 4.47 to 4.49).
- 5.114 As set out above (Chapter 3, paragraphs 3.3 to 3.19), a number of commercial agreements were signed between the Parties themselves, and between the Parties and other MTAs in Glasgow. As part of these arrangements, the FCA recognises that

³⁵⁹ Case C-67/13 P *Groupement des Cartes Bancaires v Commission*, EU:C:2014:2204, paragraph 54, affirmed in Case C-286/13 P *Dole v Commission*, EU:C:2015:184, paragraph 118.

information on wholesale exchange rate prices, correspondent bank exchange rates, and certain operating costs for doing business (e.g. licences, credit limits) may have been exchanged on a routine basis between the Parties and with other MTAs based on the relevant commercial arrangements in place.

- 5.115 The FCA also notes that certain internal Small World documents indicate that the Glasgow branch was opened to focus on remittance corridors outside of the GBP/PKR corridor, and as a consequence certain Small World staff may not have understood the Glasgow branch to have been in direct competition with GMTA MTAs, particularly where those MTAs were providing remittance services on behalf of Small World.³⁶⁰
- 5.116 However, the FCA considers the evidence overall clearly indicates that Dollar East and Small World were direct competitors in the provision of in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR throughout the Relevant Period, irrespective of whether or not a competition law agency relationship was in place. For instance, the FCA notes that Dollar East specifically identified the Small World Glasgow branch as one of its competitors in response to the FCA;³⁶¹ Dollar East's email of 15 June 2017 (paragraph 3.74) indicates how Dollar East saw itself in direct competition with the Glasgow branch in terms of actual and potential customers; and Small World staff at the Glasgow branch saw themselves as being in competition with Small World MTAs.³⁶²

Conclusion on the object of preventing, restricting or distorting competition

- 5.117 For the reasons set out above the FCA has concluded that, having regard to its content, objectives and legal and economic context, the agreement or concerted practice that is the subject of the Infringement had as its object the prevention, restriction or distortion of competition in relation to the supply of in-store retailer-adjusted remittance services for the UK to Pakistan remittance corridor carried out in Glasgow.
- 5.118 Accordingly, for the purposes of establishing an infringement under the Chapter I prohibition the FCA is under no obligation to show that the agreement or concerted practice had an anti-competitive effect on the provision of in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR.

³⁶⁰ See CA98.2020.01-000483 and [Small World Employee 4]'s comments about the branch being opened to focus in 'diff range of market'. The FCA also notes comments made by [Small World Employee 1], in response to a complaint about price fixing on the part of Small World, which suggested that Small World staff only saw other MTOs as 'real competitors' to Small World (CA98.2020.01-000514).

³⁶¹ Dollar East (International Travel & Money Transfer) Ltd's additional response to the FCA's section 26 CA98 notice of 16 September 2020 received by the FCA on 28 October 2020 (Question 9) CA98.2020.01-000213.

³⁶² CA98.2020.01-000483.

Appreciable restriction of competition

Key legal principles

- 5.119 An agreement and/or concerted practice will only infringe the Chapter I prohibition if it has as its object or effect the appreciable prevention, restriction or distortion of competition within the UK or a part of it.³⁶³
- 5.120 The CJEU has clarified that an agreement that may affect trade between Member States and that has the object of preventing, restricting or distorting competition constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction of competition.³⁶⁴ In accordance with section 60A of the Act,³⁶⁵ this principle also applies mutatis mutandis in respect of the Chapter I prohibition: accordingly, an agreement that may affect trade within the UK or a part of it and that has an anti-competitive object constitutes, by its nature and independently of any concrete effect that it may have, an appreciable restriction on competition.

Legal assessment regarding appreciable restriction of competition

- 5.121 As set out in paragraphs 5.108 to 5.117 above, the FCA considers that the agreement or concerted practice which was the subject of the Infringement had the object of preventing, restricting or distorting competition in relation to the supply of in-store retailer-adjusted remittance services for the UK to Pakistan remittance corridor carried out in Glasgow.
- 5.122 The FCA therefore finds that the Infringement constitutes, by its very nature, an appreciable restriction of competition in the supply of in-store retailer-adjusted remittance services for the UK to Pakistan remittance corridor in the UK for the purposes of the Chapter I prohibition.

³⁶³ Case C-5/69 *Völk v Vervaecke*, EU:C:1969:35, paragraph 7. See also *North Midland Construction plc v. Office of Fair Trading* [2011] CAT 14 [45], [52]. It is settled case law that an agreement between undertakings falls outside the prohibition in Article 101 TFEU if it has only an insignificant effect on the market: see Case C-226/11 *Expedia Inc v Autorité de la concurrence and Others* EU:C:2012: 795, paragraph 16.

³⁶⁴ Case C-226/11 *Expedia Inc v Autorité de la concurrence and Others* EU:C:2012:795, paragraph 37; and *Communication from the Commission: Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice)*, OJ C 291/01, 30 August 2014, paragraphs 2 and 13.

³⁶⁵ Section 60A of the Act provides that, when determining a question in relation to the application of Part 1 of the Act (which includes the Chapter I prohibition), the court (and the CMA) must act with a view to securing that there is no inconsistency with any relevant decision of the European Court made before the end of the transition period, so far as applicable immediately before the end of the transition period, in respect of any corresponding question arising in EU law. See also *Carewatch and Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraphs 148.

Effect on trade within the UK

Key legal principles

- 5.123 By virtue of section 2 of the Act, the Chapter I prohibition applies to agreements and/or concerted practices which ‘... may affect trade within the United Kingdom’.
- 5.124 For the purposes of the Chapter I prohibition, the UK includes any part of the UK where an agreement and/or concerted practice operates or is intended to operate.³⁶⁶
- 5.125 As to whether the effect on trade within the UK should be appreciable, the CAT has held that there is no need to import into the Act the rule of ‘appreciability’ under EU law, the essential purpose of which is to demarcate the fields of EU law and UK domestic law respectively.³⁶⁷ In a subsequent case, the CAT held that it was not necessary to reach a conclusion on that question.³⁶⁸
- 5.126 The FCA notes that the relevant EU guidance states that price-fixing agreements are, by their very nature, capable of affecting trade.³⁶⁹ Furthermore, the relevant CMA guidance states that, in practice, it is very unlikely that an agreement and/or concerted practice which appreciably restricts competition within the UK does not also affect trade within the UK.³⁷⁰

Legal assessment regarding effect on trade within the UK

- 5.127 The FCA considers that the agreement and/or concerted practice which was the subject of the Infringement is, by its very nature, capable of affecting trade within the UK. Accordingly, the FCA considers that the requirement that the agreement or concerted practice may have had an effect on trade within the UK is satisfied.

Duration of the infringement

- 5.128 The duration of the infringement is a relevant factor for determining any financial penalties that the FCA may decide to impose in the event of a finding of infringement.
- 5.129 The FCA finds that the Relevant Period lasted from 18 February 2017 to 31 May 2017 inclusive, a total of 3 months and 14 days (including the end date).

³⁶⁶ The UK includes any part of the UK in which an agreement and/or concerted practice operates or is intended to operate: the Act, section 2(7).

³⁶⁷ *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, at paragraphs 459 and 460. The CAT considered this point also in *North Midland Construction plc v. Office of Fair Trading* [2011] CAT 14, at paragraphs 48 to 51 and 62, but considered that it was ‘not necessary [...] to reach a conclusion’.

³⁶⁸ *North Midland Construction plc v Office of Fair Trading* [2011] CAT 14 at paragraphs 48 to 51 and 62.

³⁶⁹ Commission Notice: Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (now Articles 101 and 102 of the TFEU), OJ C101/81, 24 April 2004, paragraph 64.

³⁷⁰ See *Agreements and concerted practices* (OFT401, December 2004), adopted by the CMA, paragraph 2.25.

Exemption and exclusion

Individual exemption / Block or Retained exemption

- 5.130 Agreements and/or concerted practices which are found to restrict competition under section 2 of the Act but satisfy the criteria set out in section 9 of the Act are exempt from the Chapter I prohibition. There are four cumulative criteria to be satisfied:
- (a) the agreement contributes to improving production or distribution, or promoting technical or economic progress;
 - (b) while allowing consumers a fair share of the resulting benefit;
 - (c) the agreement does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and
 - (d) the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.
- 5.131 The FCA notes that agreements and/or concerted practices which have as their object the prevention, restriction or distortion of competition, are unlikely to benefit from individual exemption as such restrictions generally fail (at least) the first two conditions for exemption: they neither create objective economic benefits, nor do they benefit consumers.³⁷¹ Moreover, such agreements and/or concerted practices generally also fail the third condition (indispensability).³⁷² However, each case ultimately falls to be assessed on its merits.
- 5.132 Any undertaking claiming the benefit of an exemption bears the burden of proving that the conditions in section 9(1) of the Act are satisfied.³⁷³ It is therefore for the party claiming the benefit of exemption to adduce evidence that substantiates its claim.³⁷⁴ No such evidence was adduced by any of the Parties.
- 5.133 Additionally, pursuant to sections 6 and 10 of the Act, an agreement is exempt from the Chapter I prohibition if it falls within a category of agreements specified as exempt in a block or retained exemption. It is for the parties wishing to rely on these provisions to adduce evidence that the exemption criteria are satisfied.³⁷⁵ No such evidence was adduced by any of the Parties.

³⁷¹ See Article 101(3) Guidelines, paragraph 46. The FCA concludes in this Decision that the Infringement had an anti-competitive object.

³⁷² See Article 101(3) Guidelines, paragraph 46.

³⁷³ The Act, section 9(2); *GlaxoSmithKline and others v CMA (Paroxetine)* [2018] CAT 4, paragraph 79.

³⁷⁴ Article 101(3) Guidelines, see paragraphs 51 to 58; Vertical Guidelines, paragraph 47. See also section 9(2) of the Act.

³⁷⁵ See by analogy section 9(2) of the Act.

Exclusion

- 5.134 The Chapter I prohibition does not apply in any of the cases in which it is excluded by or as a result of Schedules 1 to 3 of the Act, as set out in section 3 of the Act.³⁷⁶
- 5.135 The FCA finds that none of the exclusions from the Chapter I prohibition provided by section 3 of the Act apply to the Infringement.

Attribution of liability

Key legal principles: identification of the appropriate legal entity

- 5.136 Competition law refers to the activities of undertakings. If an undertaking infringes the competition rules, it falls, under the principle of personal responsibility, to that undertaking to answer for and therefore be liable for that infringement.³⁷⁷ An undertaking may consist of several persons, legal or natural. In determining who is liable for an infringement and subject to any financial penalty which may be imposed and to whom an infringement decision is to be addressed, it is necessary to identify the legal or natural persons that form part of the undertaking involved in the infringement.³⁷⁸
- 5.137 For each Party which the FCA finds has infringed the Act, the FCA has first identified the legal entity directly involved in the Infringement as appropriate.³⁷⁹ It has then determined whether liability for the proposed infringement should be shared with another legal entity forming part of the same undertaking, in which case each legal entity's liability will be joint and several.³⁸⁰
- 5.138 The conduct of a subsidiary undertaking may be imputed to its parent company where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular

³⁷⁶ Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations, Schedule 2 covers competition scrutiny under other enactments; and Schedule 3 covers general exclusions.

³⁷⁷ Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraphs 54-56.

³⁷⁸ As above, paragraph 57.

³⁷⁹ Direct involvement is typically assessed by identifying the employees who participated in the infringement(s) and the undertaking which employed those individuals: see Case C-68/12 *Protimonopolný úrad Slovenskej republiky v Slovenská sporiteľňa a.s.*, EU:C:2013:71, paragraphs 25 to 28; Case C-542/14 *VM Remonts v Pärtikas kompānija*, EU:C:2016:578, paragraphs 23 to 25 and *Tesco Stores Ltd, Tesco Holdings Ltd and Tesco plc v Office of Fair Trading* [2012] CAT 31, paragraph 62.

³⁸⁰ See above. In respect of legal succession see Case C-279/98 P *Cascades SA v Commission*, EU:C:2000:626, paragraph 9 and CE/9531-11 *Paroxetine investigation: anti-competitive agreements and conduct*, paragraph 9.12. Additionally, the conduct of a service provider can be attributed to an undertaking where it is in fact acting under the direction or control of an undertaking that is using its services. Such direction or control might be inferred from the existence of particular organisational, economic and legal links between the service provider in question and the user of the services, just as with the relationship between parent companies and their subsidiaries: see, for example, Case C-542/14 *VM Remonts v Pärtikas kompānija*, EU:C:2016:578, paragraph 27 and Case C-293/13 P and C-294/13 P *Fresh Del Monte Produce v Commission and Commission v Fresh Del Monte Produce*, EU:C:2015:416, paragraphs 75 and 76.

to the economic, organisational and legal links between those two entities.³⁸¹ This is because, in such a situation, the parent company and its subsidiary form a single economic unit, and therefore a single undertaking for the purposes of the relevant prohibitions.³⁸²

- 5.139 Where a parent company owns 100% of a subsidiary which has infringed the competition rules,³⁸³ there is a rebuttable presumption that:
- (a) the parent company is able to exercise 'decisive influence' over the conduct of its subsidiary; and
 - (b) the parent company does in fact exercise such decisive influence over the conduct of its subsidiary,
 - (c) then the two entities can be regarded as a single economic unit and thus jointly and severally liable.³⁸⁴
- 5.140 It is for the parent company in question to rebut the presumption by adducing sufficient evidence to show that its subsidiary acted independently on the market.³⁸⁵ The presumption also applies to situations where the parent company indirectly owns 100% of a subsidiary, for example, via one or more intermediary companies.³⁸⁶
- 5.141 The FCA took the following approach:
- (a) Where a party which was directly involved in an infringement was 100% directly or indirectly owned by a parent company, the presumption above applies, and liability for the infringement will extend to that parent company.

³⁸¹ Case C-48/69 *ICI v Commission*, EU:C:1972:70, paragraphs 132 and 133; Case C-97/08 P, *Akzo Nobel NV and Others v Commission* EU:C:2009:536, paragraphs 58 to 59. See also Case C-155/14 P *Evonik Degussa GmbH v Commission*, EU:C:2016:446, paragraph 27.

³⁸² Case C-155/14 P *Evonik Degussa GmbH v Commission*, EU:C:2016:446, paragraph 27; Case T-517/09 *Alstom v Commission*, EU:T:2014:999, paragraph 55; Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 59: the CJEU endorsed the principle that the ultimate parent company of the Akzo Nobel group, Akzo Nobel NV, could be held liable for the infringement.

³⁸³ This presumption also applies if the ownership of the subsidiary is just below 100 per cent: see for example, C-97/08 P, *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraphs 60 and 61, Case T-174/05, *Elf Aquitaine v Commission*, EU:T:2009:368, paragraphs 153 to 157 (where the presumption was held to apply in relation to a shareholding of approximately 98 per cent); Case T-24/05, *Alliance One International & Others v Commission*, EU:T:2010:453, paragraphs 126-130. The GC has indicated, among other things, that neither the fact that the subsidiary operates independently in specific aspects of its policy on the marketing of the products concerned by the infringement, nor the lack of any direct involvement in, or knowledge of the facts alleged to constitute the infringement by directors of the parent company, are sufficient, of themselves, to rebut the presumption. Case T-190/06, *Total and Elf Equitaine v Commission*, EU:T:2011:378, paragraph 64; Case T-189/06, *Arkema France v Commission*, EU:T:2011:377, paragraph 65.

³⁸⁴ Case C-155/14 P *Evonik Degussa GmbH v Commission*, EU:C:2016:446, paragraph 28 and the case law cited; Cases C-628/10 P and C-14/11 P *Alliance One & Others v Commission*, EU:C:2012:479, paragraphs 46-48; Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraphs 59-61; Case C-107/82 *Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken AG v Commission*, EU:C:1983:293, paragraph 50; Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 59.

³⁸⁵ Cases C-628/10 P and C-14/11 P *Alliance One & Others v Commission*, EU:C:2012:479, paragraph 47, citing Case C-97/08 P *Akzo Nobel NV and Others v Commission*, EU:C:2009:536, paragraph 61. Case T-517/09 *Alstom v Commission*, EU:T:2014:999, paragraph 55.

³⁸⁶ Case C-90/09 P *General Química SA and Others v Commission*, EU:C:2011:21, paragraphs 86 to 87.

- (b) Where a party which was directly involved in an infringement was owned by natural persons during the Relevant Period, liability for the infringement will not extend to those individuals.

Application to the Parties

Dollar East

- 5.142 The FCA finds that Dollar East (Dollar East (International Travel & Money Transfer) Ltd), a company incorporated in Scotland,³⁸⁷ was directly involved in and is therefore liable for the Infringement during the Relevant Period.
- 5.143 This Decision is therefore addressed to Dollar East.

Hafiz Bros

- 5.144 The FCA finds that Hafiz Bros (Hafiz Bros Travel & Money Transfer Limited), a company incorporated in Scotland,³⁸⁸ was directly involved in and is therefore liable for the Infringement during the Relevant Period.
- 5.145 This Decision is therefore addressed to Hafiz Bros.

Small World

- 5.146 The FCA finds that Small World (LCC Trans-Sending Limited), a company incorporated in England and Wales,³⁸⁹ was directly involved in and is therefore liable for the Infringement during the Relevant Period.
- 5.147 During the Relevant Period, Small World was 100% owned by Small World Financial Services Group Limited.³⁹⁰
- 5.148 It can therefore be presumed that Small World Financial Services Group Limited exercised decisive influence over the conduct of Small World throughout the Relevant Period and that the two entities formed a single economic unit for the purposes of the Chapter I prohibition.³⁹¹
- 5.149 The FCA finds that Small World Financial Services Group Limited and Small World are jointly and severally liable for the Infringement during the Relevant Period.

³⁸⁷ Companies House registration number SC304291.

³⁸⁸ Companies House registration number SC300349.

³⁸⁹ Companies House registration number 04363859.

³⁹⁰ LCC's first response to the FCA's section 26 CA98 notice of 16 September received by the FCA on 7 October 2020. Paragraph 5.1 (CA98.2020.01-000200); Annex A (Small World Corporate Group Structure) of LCC's first response to the FCA's section 26 CA98 Notice of 16 September 2020 (000200) (received by FCA on 7 October 2020) (CA98.2020.01-000192).

³⁹¹ The FCA notes that during the Relevant Period FPE Capital held a minority shareholding in Small World Financial Services Group Limited. FPE Capital's response to the FCA's section 26 CA98 notice dated 22 August 2022 received by the FCA on 5 September 2022 (CA98.2020.01-001876). However, the FCA considers that the size (34.2%) and nature of this shareholding did not give rise to decisive influence over the conduct of Small World Financial Services Group Limited or Small World itself. Therefore, the FCA considers that FPE Capital did not constitute part of the single economic unit during the Relevant Period meaning that this Decision is not being addressed to FPE Capital.

5.150 This Decision is therefore addressed to Small World Financial Services Group Limited and Small World.

6 The FCA's action

Decision regarding infringement of the Chapter I prohibition

- 6.1 On the basis of the facts and evidence set out above and in particular Chapters 3, 4 and 5 of this Decision, the FCA has decided that the following undertakings entered into an agreement and/or concerted practice which had as its object the prevention, restriction or distortion of competition in relation to the supply of in-store retailer-adjusted remittance services for the UK to Pakistan remittance corridor carried out in Glasgow and thereby infringed the Chapter I prohibition by participating in a single continuous infringement from 18 February 2017 to 31 May 2017 inclusive:
- (a) Dollar East
 - (a) Hafiz Bros
 - (b) Small World (together with its parent company, Small World Financial Services Group Limited)
- 6.2 The FCA considers that it is appropriate to impose a financial penalty on Dollar East, Hafiz Bros and Small World (and its parent company Small World Financial Services Group Limited) in respect of the Infringement.

Directions

- 6.3 Section 32(1) of the Act provides that if the FCA has made a decision that an agreement infringes the Chapter I prohibition, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.
- 6.4 The FCA has decided not to impose any directions on the Parties as the Infringement is not continuing.

Financial penalties: legal framework

- 6.5 Section 36(1) of the Act provides that, on making a decision that an agreement³⁹² has infringed the Chapter I prohibition, the FCA may require an undertaking which is party to it to pay a penalty in respect of the infringement.

³⁹² Section 36(1) of the Act expressly refers to 'agreements' and should be read in conjunction with section 2(5) of the Act which provides that a provision of Part 1 of the Act which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a concerted practice (but with necessary modifications).

The FCA's margin of appreciation in determining the appropriate penalty

- 6.6 When setting the amount of a penalty under the Act, the FCA must: (i) impose a penalty that is within the range of penalties permitted by section 36(8) of the Act and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000³⁹³ and (ii) have regard to the CMA's published guidance in force at the time as to the appropriate amount of any penalty (**CMA Penalties Guidance**)³⁹⁴ in accordance with section 38(8) of the Act.
- 6.7 The FCA makes its assessment on a case-by-case basis,³⁹⁵ having regard to all relevant circumstances and the objectives of its policy on financial penalties. The CMA Penalties Guidance provides the FCA with sufficient flexibility to apply and interpret its provisions in many different situations.³⁹⁶

Intention/negligence

- 6.8 The FCA may impose a penalty on an undertaking which has infringed the Chapter I prohibition only if it is satisfied that the infringement has been committed intentionally or negligently.³⁹⁷ The FCA is not obliged to specify whether it considers the infringement to be intentional or merely negligent.³⁹⁸
- 6.9 The CAT has defined the terms 'intentionally' and 'negligently':
- '...an infringement is committed intentionally for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition. An infringement is committed negligently for the purposes of section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition'.³⁹⁹
- 6.10 This is consistent with the approach taken by the CJEU which has stated:
- 'the question whether the infringements were committed intentionally or negligently...is satisfied where the undertaking concerned cannot be unaware of the anti-competitive nature of its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty'.⁴⁰⁰
- 6.11 In respect of the Parties' involvement in the Infringement, the FCA considers that each Party must have been aware (or could not have been unaware) and at the very least

³⁹³ SI 2000/309, as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259.

³⁹⁴ The Act, section 38(8). The guidance currently in force is the CMA's Guidance as to the appropriate amount of a penalty (CMA73, 16 December 2021).

³⁹⁵ See, for example, *Kier Group and others v Office of Fair Trading* [2011] CAT 3, paragraph 116, where the CAT noted that 'other than in matters of legal principle there is limited precedent value in other decisions relating to penalties, where the maxim that each case stands on its own facts is particularly pertinent'. See also *Eden Brown and others v Office of Fair Trading* [2011] CAT 8, paragraph 97, where the CAT observed that '[d]ecisions by this Tribunal on penalty appeals are very closely related to the particular facts of the case'.

³⁹⁶ See *Kier Group and others v Office of Fair Trading* [2011] CAT 3, paragraph 76.

³⁹⁷ The Act, section 36(3).

³⁹⁸ *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading* [2002] CAT 1, paragraphs 453 to 457; see also *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at 221.

³⁹⁹ *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at 221.

⁴⁰⁰ Case C-280/08 P *Deutsche Telekom v Commission* [2010] ECR I-9555, paragraph 124.

ought to have known that their conduct pertaining to the Infringement was capable of restricting competition. This is supported by the evidence (as set out in Chapter 3) and its assessment (as set out in Chapter 5), of which the FCA specifically notes the following:

- (a) In respect of Dollar East, during May 2017 Dollar East was an active member of the GMTA WhatsApp group and monitored compliance with the FX conduct and addressed suspected breaches by GMTA members with regard to the pricing arrangements within the GMTA (Chapter 3, paragraphs 3.57 and 3.58). Additionally, on 15 June 2017, [Dollar East Employee 2] wrote to Small World on behalf of 39 active members of the GMTA complaining about 'rate violation and customer charges' by Small World; indicating that Dollar East was aware of Small World's previous agreement to charge at GMTA rates for both exchange rates and transaction fees (Chapter 3, paragraph 3.74).
- (b) In respect of Hafiz Bros, the FCA considers it to have been the main instigator of the arrangements on behalf of the GMTA (Chapter 5, paragraph 5.58). Additionally, Hafiz Bros facilitated the arrangements by regularly circulating a GBP/PKR retail exchange rate for other GMTA members (Chapter 3, paragraph 3.54 to 3.56), indicating that Hafiz Bros was aware of the actual conduct planned or put into effect by other GMTA members, including Dollar East and Small World, in pursuit of the same objectives.
- (c) In respect of Small World, the evidence indicates that Small World was aware of the exchange rates being shared in the GMTA WhatsApp group, continued its membership of the GMTA WhatsApp group and regularly set rates at the Glasgow Branch in knowledge of the retail exchange rate that had been circulated within the GMTA WhatsApp group (Chapter 3, paragraphs 3.44 to 3.51). In so doing, Small World accepted information regarding the current and future pricing intentions of GMTA members such as Dollar East. Additionally, the evidence indicates that Small World was aware that GMTA members had agreed to charge a standard £5 fee from at least 18 February 2017 onwards (Chapter 3, paragraphs 3.23 and 3.26).

6.12 The FCA therefore concludes that each Party committed the Infringement intentionally or, at the very least, negligently.

Calculation of financial penalties

The six-step approach to calculating penalties

6.13 When setting the amount of the penalty, the FCA must have regard to the CMA Penalties Guidance. The CMA Penalties Guidance sets out a six-step approach for calculating the penalty; which the FCA has followed in calculating a financial penalty for Dollar East, Hafiz Bros and Small World.

Step 1 Calculation of the starting point having regard to the seriousness of the Infringement and the relevant turnover.

Step 2 Adjustment for duration.

- Step 3 Adjustment for aggravating and mitigating factors.
- Step 4 Adjustment for specific deterrence.
- Step 5 Adjustment to check that the penalty is proportionate and the maximum penalty of 10% of the worldwide turnover is not exceeded.
- Step 6 Adjustment for leniency, settlement discounts and/or approval of a voluntary redress scheme.

Step 1 – Starting point

Relevant turnover

- 6.14 The starting point for determining the level of financial penalty which will be imposed on an undertaking is calculated having regard to the 'relevant turnover' of the undertaking, the seriousness of the infringement, and the need for general deterrence. The 'relevant turnover' is the turnover of an undertaking in the relevant product market and geographic market affected by the infringement in the undertaking's 'last business year', that is the undertaking's financial year preceding the date when the infringement ended.⁴⁰¹
- 6.15 When assessing relevant markets for these purposes, the CAT and the Court of Appeal have stated that it is not necessary for the authority to carry out a formal analysis: it is sufficient for the authority to be satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement.⁴⁰²
- 6.16 For the purposes of this Decision and as noted at Chapter 4 (paragraph 4.54), the FCA considers that the Relevant Market is the provision of in-store remittance services for consumers in Glasgow for transferring money to Pakistan and accordingly converting GBP into PKR.
- 6.17 The FCA has found that the Infringement came to an end on 31 May 2017 (Chapter 5, paragraph 5.129).
- 6.18 The FCA considers that relevant turnover includes the following:
 - (a) any turnover that each Party earned acting as an MTO remitting money in the Relevant Market, including any turnover based on the difference between the exchange rate charged by each Party and the acquisition cost of currency for the periods and transactions for which each Party acted as an MTO;
 - (b) any turnover that each Party earned when acting as an MTA in the Relevant Market, including commission, fees and other amounts received for arranging and effecting money transfer services (such as any sums charged directly to the customer, and any sums earned from MTO); and

⁴⁰¹ Paragraph 2.10 of the CMA Penalties Guidance. Generally, relevant turnover will be based on figures from an undertaking's audited accounts, but in certain circumstances it may be appropriate to use a different figure as reflecting the true scale of an undertaking's activities in the relevant market. CMA Penalties Guidance, paragraphs 2.11-2.12.

⁴⁰² See Chapter 4, paragraph 4.6.

- (c) any ancillary turnover (e.g., any turnover derived from the PRI, interest, counterparty risk etc.) earned in the normal course of business as a result of each Parties' activities in the Relevant Market.

Dollar East's relevant turnover

- 6.19 Dollar East is active in the Relevant Market and was able to provide its in-store remittance turnover for consumers based in Glasgow (**Remittance Turnover**). For the financial year ending 30 June 2016, the financial year preceding the date when the Infringement ended, Dollar East's Remittance Turnover was £[~~xxx~~].⁴⁰³ However, Dollar East was unable for reasons of data availability to determine how much of this overall amount should be apportioned to the GBP/PKR corridor.
- 6.20 In order to calculate Dollar East's relevant turnover for step 1, the FCA used a proxy methodology to determine how much of this Remittance Turnover of £[~~xxx~~] should be allocated to the GBP/PKR route. The FCA took this approach to ensure that it did not overestimate the relevant turnover of Dollar East, as it was active on other corridors in addition to the GBP/PKR corridor.⁴⁰⁴ The proxy was determined as follows:
- (a) The FCA calculated the proportion that GBP/PKR transactions represented in Dollar East's Remittance Turnover during the financial year ending 30 June 2017.⁴⁰⁵ In assessing this commission and transaction data, the FCA calculated that approximately [~~xxx~~] % of Dollar East's Remittance Turnover for the financial year ending 30 June 2017 related to the GBP/PKR corridor.⁴⁰⁶
- (b) Accordingly, the FCA then applied a proxy of [~~xxx~~] % to Dollar East's Remittance Turnover of £[~~xxx~~] for the financial year of 30 June 2016. This produced a figure of £35,851 which is used as the proxy for Dollar East's relevant turnover.

Hafiz Bros' relevant turnover

- 6.21 During the Relevant Period, Hafiz Bros did not provide money remittance services direct to consumers in-store.⁴⁰⁷ While Hafiz Bros did not operate within the Relevant Market, the FCA found that Hafiz Bros acted as a facilitator of the Infringement (Chapter 5, paragraphs 5.57 to 5.61).
- 6.22 The FCA noted that during the Relevant Period Hafiz Bros had a commercial interest in activity on the Relevant Market as it acted as a master agent for two MTOs operating within the UK to Pakistan corridor, namely Small World (from May 2014 to September 2018) and Sigue (from October 2014 to March 2018) (Chapter 3, paragraph 3.14).

⁴⁰³ CA98.2020.01-001660.

⁴⁰⁴ When asked during interview whether Dollar East undertook any remittances to countries other than Pakistan, [Dollar East Employee 2] responded: 'We do, very rare, yes we do.' Transcript of FCA interview with [Dollar East Employee 2], line 306 (CA98.2020.01-001867).

⁴⁰⁵ Dollar East stated that it acted on behalf of four parties: See Hafiz Bros Transaction Data (CA98.2020.01-000234), Small World (CA98.2020.01-000239 LCC1 (1) and CA98.2020.01-000240 LCC1 (2)), Dex International (CA98.2020.01-000238) and Western Union (CA98.2020.01-000235, CA98.2020.01-000236 and CA98.2020.01-000237). Only the Hafiz Bros transaction data covers financial year ending 30 June 2017.

⁴⁰⁶ The total transaction fee data relating to the activities where Dollar East considered itself to be acting on behalf of Hafiz Bros amounted to £[~~xxx~~] (i.e., £[~~xxx~~] commission and £[~~xxx~~] transaction fee). In that financial year, Dollar East generated in-store money transfer commissions in Glasgow of £[~~xxx~~]. Therefore, the commission and transaction fee data represented approximately [~~xxx~~] % of Dollar East's overall in-store money transfer commissions for that year.

⁴⁰⁷ CA98.2020.01-001647.

- 6.23 In order to calculate Hafiz Bros' relevant turnover for step 1, the FCA used a proxy as follows:
- (a) In the year preceding the end of the Infringement (i.e., financial year ending 5 April 2016), Hafiz Bros generated remittance turnover from its master agent activities in the form of commission that it received from Sigue and Small World.
 - (b) This commission amounted to £[><] from Small World⁴⁰⁸ and £[><] from Sigue.⁴⁰⁹ These sums were added together to use as a proxy for Hafiz Bros' relevant turnover as it reflected the turnover Hafiz Bros generated from its remittance activities in the year preceding the date when the Infringement ended. This produces a figure of £68,045 as Hafiz Bros' relevant turnover.

Small World's relevant turnover

- 6.24 Small World's turnover in the Relevant Market for the financial year ending 30 June 2016, the financial year preceding the date when the Infringement ended, was £[><].⁴¹⁰ This comprises revenue generated by way of GBP/PKR transactions carried out in its Glasgow branch and via Small World agents based in Glasgow.
- 6.25 However, Small World did not deduct any commissions payable by Small World to its agents based in Glasgow who carried out transactions on behalf of Small World (i.e. any difference in the GBP/PKR exchange rate provided by Small World to its agent and the rate subsequently applied by the agent to the end-customer, as well as any fee charged by the agent to the end-customer). This raised an issue of possible double-counting where commissions paid to Dollar East could be counted twice (in both Small World's and Dollar East's relevant turnover).
- 6.26 In order to calculate Small World's relevant turnover for step 1, the FCA therefore used a proxy methodology to determine how much commission was paid by Small World to Dollar East. This proxy was determined as follows:
- (a) The transaction data submitted by Small World (dating from 2 July 2016 until 16 September 2020) was incomplete for financial years ending 30 June 2017 and 30 June 2018 as it lacked the customer rates for the full financial year needed to calculate commissions paid to Dollar East for those years.
 - (b) However, the FCA received full transaction data from Small World to allow the FCA to calculate the commissions generated by Dollar East in Small World's financial years ending 30 June 2019 (commissions of £[><]) and 30 June 2020 (commissions of £[><]). The FCA then calculated how much these commissions

⁴⁰⁸ Based on Hafiz Bros' share of the 'net commission' received from transactions made by MTAs that Hafiz Bros recruited when those MTAs used Small World's remittance services. [Hafiz Bros Employee 1] interview transcript, lines 197 to 205, 297 and 306 to 310; CA98.2020.01-001868. See also: Small World/Hafiz Bros collaboration agreements of 1 May 2014 (CA98.2020.01-000190), 1 April 2015 (CA98.2020.01-000191) and October 2017 (CA98.2020.01-000001) which expired in September 2018 (see Hafiz Bros first response to the FCA's section 26 CA98 notice of 21 April 2022 (CA98.2020.01-001628) Question 5

⁴⁰⁹ See Clause 7.3 of Sigue Global Services / Hafiz Bros agency agreement of 7 October 2014 (CA98.2020.01-001632) and Schedule 2 (CA98.2020.01-001649). The Sigue Global Services / Hafiz Bros agency agreement of 7 October 2014 expired March 2018 (CA98.2020.01-001628). Hafiz Bros further confirmed that its agreement with Sigue operated in respect of the UK to Pakistan corridor (CA98.2020.01-001647).

⁴¹⁰ Small World Financial Services Group did not generate any turnover in the Relevant Market; CA98.2020.01-001859.

represented in Small World's relevant turnover for each of these two years (this was [%<]%) and [%<]%) respectively), and then averaged this figure (resulting in [%<]%).

- 6.27 The FCA used this [%<]%) proxy figure to estimate how much of Small World's turnover in the Relevant Market for the financial year ending 30 June 2016 (£[%<]) could be apportioned to commissions Small World paid to Dollar East. This calculation results in Small World paying £[%<] in commissions to Dollar East, leaving a relevant turnover of £108,484.

Summary of the Parties' relevant turnover

- 6.28 The FCA has found that the Infringement came to an end on 31 May 2017. Therefore, in the present case:
- (a) the last business year of Dollar East is the financial year ending 30 June 2016, which (applying the proxy methodology outlined above) results in a relevant turnover of **£35,851**;
 - (b) the last business year of Hafiz Bros is the financial year ending 5 April 2017, which (applying the proxy methodology outlined above) results in a relevant turnover of **£68,045**;
 - (c) the last business year of Small World is the financial year ending 30 June 2016, which (applying the proxy methodology outlined above) results in a relevant turnover of **£108,484**.

Seriousness of the Infringement

- 6.29 To adequately reflect the seriousness of an infringement and the need for general deterrence, the FCA may apply a percentage rate of up to 30% to the undertaking's relevant turnover.⁴¹¹ The starting point will depend in particular upon the nature of the infringement. The more serious and widespread the infringement, the higher the starting point is likely to be.
- 6.30 This involves a case-specific assessment of:⁴¹²
- (a) how likely it is for the type of infringement at issue to, by its nature, harm competition;
 - (b) the extent and/or likelihood of harm to competition in the specific relevant circumstances of the individual case;⁴¹³ and
 - (c) whether the starting point is sufficient for the purpose of general deterrence.

⁴¹¹ CMA Penalties Guidance, paragraph 2.3.

⁴¹² CMA Penalties Guidance, paragraph 2.4.

⁴¹³ The FCA will consider the relevant circumstances of the case, such as the nature of the product, the structure of the market including the market share(s) of the undertaking(s) involved in the infringement, market concentration and barriers to entry, the market coverage of the infringement, the actual or potential effect of the infringement on competitors and third parties, and the actual or potential harm caused to consumers whether directly or indirectly; CMA Penalties Guidance, paragraph 2.7.

- 6.31 At the first stage, the FCA will consider the likelihood that the type of infringement at issue will, by its nature, cause harm to competition.⁴¹⁴ Under the CMA Penalties Guidance, a starting point between 21 and 30% of relevant turnover will generally be used for the most serious types of infringement, that is, those which are considered most likely by their very nature to harm competition.⁴¹⁵ A starting point between 10 and 20% is more likely to be appropriate for certain, less serious object infringements, and for infringements by effect.
- 6.32 The FCA considers that the Infringement constitutes a restriction 'by object' (Chapter 5, paragraphs 5.117 and 5.118). The agreement or concerted practice was therefore, by its very nature, harmful to the proper functioning of normal competition. The FCA generally considers 'by object' restrictions of competition to be among the most serious competition law infringements.
- 6.33 The FCA considers that the conduct took the form of the coordination of pricing practices which was aimed at reducing competition on price and reducing strategic uncertainty in order to maintain or increase pricing levels in the market. The Parties carried this out by:
- (a) coordinating on the level of the retail exchange rate charged to in-store customers for making UK to Pakistan (GBP/PKR) remittances (as noted in Chapter 1, paragraph 1.4, **the FX conduct**); and
 - (b) fixing the level of the transaction fee charged to in-store customers of Small World (as the Money Transfer Operator) when making UK to Pakistan (GBP/PKR) remittances (as noted in Chapter 1, paragraph 1.4, **the transaction fee conduct**).
- 6.34 In assessing the seriousness of the Infringement, the FCA also takes into account its view that the Parties removed the strategic uncertainty between otherwise rival in-store remittance service providers in the Relevant Market. The FCA considers that the FX conduct and transaction fee conduct amounts to price fixing which constitutes the most serious category of competition law infringements.
- 6.35 At the second stage, the FCA considered whether it is appropriate to adjust the starting point upwards or downwards to take account of specific circumstances of the case that might be relevant to the extent and likelihood of harm to competition and ultimately to consumers.⁴¹⁶ The nature of the FX conduct and transaction fee conduct means that the conduct could remove the strategic uncertainty between otherwise rival in-store remittance service providers, with a potential adverse impact on the services provided to customers in the Relevant Market, in particular with regard to price.
- 6.36 Third, the FCA considered whether the starting point for a particular infringement is sufficient for the purpose of general deterrence.⁴¹⁷ The FCA took into account the need to remedy a lack of awareness of competition law of the Parties and their employees

⁴¹⁴ CMA Penalties Guidance, paragraph 2.5.

⁴¹⁵ CMA Penalties Guidance, paragraph 2.5. Generally, the authority will use a starting point towards the upper end of the range for the most serious infringements of competition law; CMA Penalties Guidance, paragraph 2.5.

⁴¹⁶ CMA Penalties Guidance, paragraph 2.7.

⁴¹⁷ CMA Penalties Guidance, paragraph 2.8. This is distinct from the need to deter the specific infringing undertaking from further breaches of the Chapter I or Chapter II prohibitions ('specific deterrence'), which is assessed at Step 4.

and more broadly of other firms in-store remittance services sector, and to indicate clearly that the FCA considers that the Infringement is serious, so that firms refrain from such conduct.

- 6.37 Taking all of these considerations into account, the FCA decided that a starting point of **25%** was appropriate in all the circumstances.

Application of Step 1 to the Parties

- 6.38 Applying 25% to the Parties' relevant turnover (as identified at paragraph 6.28) results in the following:
- (a) For Dollar East, a penalty at Step 1 of **£8,963**.
 - (b) For Hafiz Bros, a penalty at Step 1 of **£17,011**.
 - (c) For Small World, a penalty at Step 1 of **£27,121**.

Step 2 – Adjustment for duration

- 6.39 The starting point under step 1 may be increased or decreased to take into account the duration of an infringement. In accordance with the CMA Penalties Guidance, where the total duration of an infringement is less than one year, the FCA will treat that duration as a full year for the purpose of calculating the number of years of the infringement. In exceptional circumstances, the starting point may be decreased where the duration of the infringement is less than one year.⁴¹⁸
- 6.40 The FCA finds that each Party was involved in the Infringement between 18 February 2017 and 31 May 2017 which amounts to less than one year (Chapter 5, paragraph 5.129). The FCA does not consider that the circumstances of the Infringement require a departure from the standard approach such as to warrant a multiplier of less than 1. The practice of rounding up for infringements lasting less than a year aims at ensuring sufficient deterrence for shorter infringements, recognising that even infringements of a very short duration may have a longer lasting impact.⁴¹⁹

Application of Step 2 to the Parties

- 6.41 The FCA has therefore applied a multiplier of 1 to the penalty figures reached at the end of step 1 (meaning that, at the end of step 2 the Parties' penalty remains as set out above at paragraph 6.38).

⁴¹⁸ CMA Penalties Guidance, paragraph 2.14.

⁴¹⁹ As recognised by the CAT in *Apex Asphalt and Paving Co Ltd v OFT* [2005] CAT 4: '*...the effect of the infringement is not restricted to the short period referred to above but has a potential continuing impact on future tendering processes by the same tenderers. Moreover, in relation to tenders we bear in mind the specific nature of a tender process: once a contract has been awarded following an anti-competitive tender, the anti-competitive effect is irreversible in relation to that tender. The contract has been awarded; the contract works will in all likelihood have commenced. It is readily apparent that this is not a case where ongoing conduct may simply be rectified. We consider, therefore, that the OFT's decision not to make any adjustment for duration in the circumstances of this case was appropriate and reasonable.*' (at paragraph 278). See also the decision of the CMA of 19 December 2016 in Case CE/9691/12 *Galvanised steel tanks for water storage information storage infringement*, paragraph 534, which was confirmed by the CAT in Case 1277/1/12/17 *Balmoral Tanks Limited and Balmoral Group Holdings Limited v CMA* [2017] CAT 23 paragraphs 147-149.

Step 3 – Adjustment for aggravating and mitigating factors

- 6.42 The amount of the financial penalty, adjusted as appropriate at step 2, may be increased where there are aggravating factors, or decreased where there are mitigating factors.⁴²⁰ A non-exhaustive list of aggravating and mitigating factors is set out in the CMA Penalties Guidance.⁴²¹
- 6.43 The involvement of directors or senior management in an infringement can be an aggravating factor.⁴²²
- 6.44 The FCA considers that directors or senior management of each Party were actively involved in the Infringement:
- (a) In respect of Dollar East, [Dollar East Employee 2], [X], liaised with the other members of the GMTA to implement the Infringement. In particular, the evidence suggests that [Dollar East Employee 2] monitored compliance with the FX conduct and addressed suspected breaches by GMTA members (Chapter 3, paragraphs 3.55 to 3.58).
 - (b) In respect of Hafiz Bros, [Hafiz Bros Employee 1], [X], made the decision to enter into the agreement or concerted practice and liaised with the other members of the GMTA to implement the FX conduct and transaction fee conduct. Moreover, between 1 May 2017 and 24 May 2017 (and on 31 May 2017), [Hafiz Bros Employee 1] is shown to have circulated proposed currency conversation rates on each day except Sundays (Chapter 3, paragraphs 3.54 and 3.71).
 - (c) In respect of Small World, [Small World Employee 1], [X], made the decision to enter into the agreement or concerted practice and liaised with the other members of the GMTA to implement the FX conduct and transaction fee conduct (Chapter 3, paragraphs 3.23 to 3.27). Shortly after this time, [Small World Employee 1] wrote an email addressed to [Small World Employee 4], which described both [Small World Employee 1]’s decision and his prior interactions with members of the GMTA.⁴²³ The evidence suggests that [Small World Employee 4] was aware and approved or accepted [Small World Employee 1]’s decision to enter into the agreement or concerted practice.⁴²⁴ The FCA considers [Small World Employee 4], in his role as [X], to have been a Small World senior manager who was actively involved in and aware of the Infringement.⁴²⁵
- 6.45 Taking into account the active involvement [X] ([Dollar East Employee 2] at Dollar East and [Hafiz Bros Employee 1] at Hafiz Bros) and a senior manager ([Small World Employee 4]) in the Infringement, an uplift of 15% to the penalties of each Party is appropriate and proportionate in the circumstances of this case.

⁴²⁰ See CMA Penalties Guidance, paragraphs 2.16–2.17, for a non-exhaustive list of aggravating and mitigating factors.

⁴²¹ CMA Penalties Guidance, paragraphs 2.16 and 2.17.

⁴²² CMA Penalties Guidance, paragraph 2.16.

⁴²³ CA98.2020.01-000462.

⁴²⁴ CA98.2020.01-001157.

⁴²⁵ The FCA does not consider [Small World Employee 1] to have been a senior manager at Small World.

Application of Step 3 to the Parties

- 6.46 At the end of step 3, the Parties' penalties are as follows:
- (a) For Dollar East, a penalty at Step 3 of **£10,307**.
 - (b) For Hafiz Bros, a penalty at Step 3 of **£19,563**.
 - (c) For Small World, a penalty at Step 3 of **£31,189**.

Step 4 – Adjustment for specific deterrence

- 6.47 The penalty may be adjusted at step 4 to achieve the objective of specific deterrence (namely, ensuring that the penalty imposed on the undertaking in question will deter it from engaging in anti-competitive practices in the future). The FCA may also consider indicators of size and financial position at the time the penalty is being imposed and may consider three-year averages for turnover.⁴²⁶ In that regard, when assessing an undertaking's financial position for the purposes of deterrence, the CMA will generally take into account the undertaking's total worldwide turnover as the primary indicator of the size of the undertaking and its economic power, unless the circumstances of the case indicate that other metrics are more appropriate.⁴²⁷
- 6.48 Increases to the penalty at step 4 will be appropriate where the undertaking in question has a significant proportion of its turnover outside the relevant market, or where the potential fine is otherwise too low to achieve the objective of deterrence given the undertaking's size and financial position.⁴²⁸
- 6.49 An increase at this step will also be appropriate where there is evidence that the undertaking has made or is likely to derive an economic or financial benefit even after having paid any penalty levied in respect of an infringement.⁴²⁹ To constitute an effective deterrent in this context, any penalty imposed should also exceed an undertaking's likely gains from an infringement by a material amount.⁴³⁰
- 6.50 In addition, the penalty may also be increased where the undertaking's relevant turnover is very low or zero with the result that the figure at the end of step 3 would be very low or zero. In such cases, adjustments will be made both for general and specific deterrence.⁴³¹
- 6.51 The assessment of the need to adjust the penalty will be made on a case-by-case basis for each individual infringing undertaking.⁴³²

⁴²⁶ CMA Penalties Guidance, paragraph 2.20.

⁴²⁷ CMA Penalties Guidance, paragraph 2.20.

⁴²⁸ CMA Penalties Guidance, paragraph 2.21.

⁴²⁹ CMA Penalties Guidance, paragraph 2.22.

⁴³⁰ CMA Penalties Guidance, paragraph 2.22. If the penalty imposed on an undertaking which infringes competition law only neutralises the gains made (i.e. puts the undertaking in the same position as it would have been absent the infringement) there is little economic incentive for the undertaking not to infringe competition law as it has the potential to gain without the risk of any material losses, even if the undertaking is caught and sanctioned.

⁴³¹ CMA Penalties Guidance, paragraph 2.23.

⁴³² CMA Penalties Guidance, paragraph 2.21.

Application of Step 4 to Dollar East

- 6.52 The FCA considers that the penalty for Dollar East at the end of Step 3 of £10,307 is sufficient to deter Dollar East from infringing competition law in the future and adequately reflects its size and financial position, even while taking into account the nature of the Infringement and Dollar East's role in it. The FCA concludes that an uplift for specific deterrence is therefore not required.

Application of Step 4 to Hafiz Bros

- 6.53 The FCA considers that the penalty for Hafiz Bros at the end of Step 3 of £19,563 is sufficient to deter Hafiz Bros from infringing competition law in the future and adequately reflects its size and financial position, even while taking into account the nature of the Infringement and Hafiz Bros' role in it. The FCA concludes that an uplift for specific deterrence is therefore not required.

Application of Step 4 to Small World

- 6.54 The FCA has considered whether the penalty after step 3 is appropriate to deter Small World from breaching competition law in the future. Assessing the penalty in the round in light of the circumstances of this case, the FCA has applied an uplift to the penalty at the end of step 3 for specific deterrence.
- 6.55 Small World Financial Services Group Limited is a global company which had a worldwide turnover of £226,647,775 for the financial year ending 31 December 2021.⁴³³ It has an origination network in 28 countries and a pay-out network of over 250,000 cash pick-up locations as well as digital payment capabilities in local currency in 92 countries.⁴³⁴ Small World (including its parent company) is significantly larger than Dollar East and Hafiz Bros both in terms of its network and revenue generated.
- 6.56 The FCA considers that the penalty for Small World at the end of Step 3 of £31,189 accounts for an insignificant proportion of Small World Financial Services Group's turnover. The total fine at the end of step 3 represents 0.01% of Small World Financial Services Group's total worldwide turnover in the financial year ending 31 December 2021. As such, without the application of an uplift, the fine would not, in the FCA's view, have sufficient deterrent effect.
- 6.57 On this basis, the FCA concludes that Small World's penalty should be increased to **£155,000** to ensure that the penalty has a sufficient deterrent effect on Small World while also taking into account the nature of the Infringement and Small World's role in it (in particular the fact that it participated in all aspects of the Infringement).
- 6.58 The FCA's view is that this increase is appropriate having regard to:
- (a) the fact that Small World Financial Services Group generates a significant proportion of its turnover outside the Relevant Market; and

⁴³³ The FCA notes that Small World Financial Services Group's financial year ending 31 December 2021 comprised an 18-month period running from 1 July 2020 to 31 December 2021. For the financial year ending 31 December 2022 (a 12-month period), Small World Financial Services Group reported worldwide turnover of £137,192,876. Available at Companies House.

⁴³⁴ Page 8 of Small World Financial Services Group's annual report for financial year ending 31 December 2022.

(b) indicators of Small World Financial Services Group's size and financial position.

6.59 At the end of step 4, therefore, Small World's penalty in relation to the Infringement is **£155,000**.

Step 5 – Adjustment to check that the penalty is proportionate and the maximum penalty of 10% of the worldwide turnover is not exceeded

6.60 At step 5, the FCA needs to: (i) assess whether the overall penalty proposed is appropriate in the round; and (ii) adjust the penalty, if necessary, to ensure that it does not exceed the maximum penalty allowed by statute.

Proportionality

6.61 In terms of proportionality, the FCA will assess whether, in its view, the overall penalty is appropriate in the round and an adjustment may result in a decrease to the penalty.⁴³⁵ This is not a mechanistic assessment but one of evaluation and judgement.⁴³⁶

6.62 In carrying out the overall assessment of whether a penalty is proportionate, the FCA will have regard to all relevant circumstances including the nature of the infringement, the role of the undertaking in the infringement, the impact of the undertaking's infringing activity on competition, and the undertaking's size and financial position.⁴³⁷

6.63 The overall assessment should appropriately reflect the seriousness of the infringement and the need sufficiently to deter both the infringing undertaking and other undertakings from engaging in anticompetitive activity.⁴³⁸ In relation to all Parties, the FCA has taken into account in its assessment of whether the penalty is proportionate, the fact that the Infringement amounts to a serious infringement of competition, which is likely, by its very nature, to be harmful to competition.

6.64 In line with the CMA's guidance, it is possible for a fine which exceeds the statutory maximum to be considered proportionate, but nevertheless it will need to be rounded down in light of the 10% cap (set out in paragraph 6.74 to 6.75 below).

Proportionality assessment for Dollar East

6.65 The FCA has taken into account the role of Dollar East in both the FX conduct and transaction fee conduct of the Infringement.

6.66 The FCA has also considered the size and financial position of Dollar East and, in particular, the fact that Dollar East generated a loss of £172 in the last year for which

⁴³⁵ CMA Penalties Guidance, paragraph 2.25.

⁴³⁶ CMA Penalties Guidance, paragraph 2.25.

⁴³⁷ CMA Penalties Guidance, paragraph 2.26.

⁴³⁸ CMA Penalties Guidance, paragraph 2.26.

accounts are available and had £1,756 in its Profit and Loss Account after issuing a dividend of £6,000.⁴³⁹

- 6.67 The FCA considers that when taking into account Dollar East's size and financial position in the round with all the relevant circumstances of the case, the penalty of £10,307 at the end of step 4 is disproportionate in the round. Therefore, the FCA has rounded down the penalty to **£5,000**.

Proportionality assessment for Hafiz Bros

- 6.68 The FCA has taken into account the role of Hafiz Bros in instigating and facilitating both the FX conduct and transaction fee conduct in the Infringement.
- 6.69 The FCA has also considered the size and financial position of Hafiz Bros and, in particular, the FCA has considered that in financial year ending 5 April 2022,⁴⁴⁰ Hafiz Bros generated a profit after tax of £12,812 and has on average been making similar levels of low profits over the last few years. In fact, the penalty of £19,563 at the end of step 4 exceeds the aforementioned profits that Hafiz Bros generated in financial year ending 5 April 2022.
- 6.70 The FCA considers that when taking into account Hafiz Bros' size and financial position in the round with all the relevant circumstances of the case, the provisional penalty of £19,563 at the end of step 4 is disproportionate in the round. Therefore, the FCA has rounded down the penalty to **£15,000**.

Proportionality assessment for Small World

- 6.71 The FCA has taken into account the role of Small World in both the FX conduct and transaction fee conduct in the Infringement and its position as a money transfer operator with around 30 MTAs based in Glasgow during the course of 2017.⁴⁴¹ These factors suggest that its conduct is likely to have had a significant impact on competition in the Relevant Market.
- 6.72 The FCA has also considered the size and financial position of Small World and, in particular, has assessed that the penalty of £155,000 at the end of step 4 would represent a small proportion of Small World Financial Services Group's turnover.⁴⁴² Similarly, the penalty would represent a small proportion of Small World Financial Services Group's assets. Overall, Small World Financial Services Group generated healthy gross profits over the last three years, but by comparison, it has relatively low profits after tax in the last three years. The FCA understands Small World Financial Services Group has put the profits back into its business as its annual report explains that it '[...] *retains profits in the business to finance growth*.'⁴⁴³ This suggests that the

⁴³⁹ The latest accounts available to the FCA for Dollar East are for financial year ending 30 June 2022; See CA98.2020.01-002059.

⁴⁴⁰ The latest accounts available are for Hafiz Bros' financial year ending 5 April 2022, see CA98.2020.01.002011.

⁴⁴¹ CA98.2020.01-000198; the FCA also notes [Dollar East Employee 2]'s (Dollar East) email of 15 June 2017 (Chapter 3, paragraph 3.74) regarding the GMTA having 39 members (see CA98.2020.01-000527) and [Small World Employee 1]'s email of 18 February 2017 (Chapter 3, paragraph 3.24) noting that most of the GMTA members were 'active and transacting agents of Small World' (CA98.2020.01-000462).

⁴⁴² Based on Small World Financial Services Group's full accounts for the financial years ended 31 December 2021 and 31 December 2022.

⁴⁴³ Annual Report of SW Topco for financial year ending 31 December 2021; page 40.

relatively low profits after tax in comparison to its gross profits are due to Small World Financial Services Group's growth strategy rather than it being a loss-making business.

- 6.73 Taking all of these factors in the round, the FCA considers that a penalty of £155,000 for the Infringement is appropriate having regard to the nature of the infringement, Small World's role in it, the impact of Small World's infringing activity on competition and its size and financial position.

Adjustment to ensure that the maximum penalty is not exceeded

- 6.74 The final amount of the penalty calculated according to the method set out above may not in any event exceed 10% of the worldwide turnover of the undertaking in its last business year.⁴⁴⁴ In applying this to the Parties, the following adjustments are required:

(a) For Dollar East, based on worldwide turnover in Dollar East's accounts for financial year ending 30 June 2022,⁴⁴⁵ an adjustment is required at this step as a penalty of £5,000 exceeds 10% of Dollar East's turnover in the previous business year. In financial year ended 30 June 2022, Dollar East had turnover of £40,065. An adjustment to **£4,000** (rounded down to the nearest £100) is therefore required to ensure that the penalty does not exceed 10% of Dollar East's turnover in the previous business year.

(b) For Hafiz Bros, based on worldwide turnover in Hafiz Bros' accounts for financial year ending 5 April 2022, an adjustment is required at this step as a penalty of £15,000 exceeds 10% of Hafiz Bros' turnover in the previous business year. In financial year ended 5 April 2022, Hafiz Bros had turnover of £125,702. An adjustment to **£12,500** (rounded down to the nearest £100) is therefore required to ensure that the penalty does not exceed 10% of Hafiz Bros' turnover in the previous business year.⁴⁴⁶

- 6.75 In respect of Small World, no adjustment is required as the penalty at this step of £155,000 does not exceed 10% of Small World's applicable turnover.⁴⁴⁷

⁴⁴⁴ The Act, section 36(8); Calculated in accordance with The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309) (as amended by The Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259)) and the Competition (Amendment etc.) (EU Exit) Regulations 2019 (as amended by the Competition (Amendment etc.) (EU Exit) Regulations 2020); CMA Penalties Guidance, paragraph 2.28 and footnote 10. The applicable turnover of an undertaking is limited to the amounts derived by the undertaking from the sale of products and the provision of services falling within the undertaking's ordinary activities after deduction of sales rebates, value added tax and other taxes directly related to turnover (the Amended 2000 Turnover Order, Schedule, paragraph 3). The business year based on which worldwide turnover is determined will be the one preceding the date on which the decision of the FCA is taken or, if figures are not available for that business year, the one immediately preceding it. The penalty will be adjusted if necessary to ensure that it does not exceed this maximum.

⁴⁴⁵ CA98.2020.01-002059.

⁴⁴⁶ The latest accounts containing turnover data which are available to the FCA for Hafiz Bros are for the financial year ended 5 April 2022, CA98.2020.01.002011.

⁴⁴⁷ Based on worldwide turnover in Small World Financial Services Group's accounts dated 31 December 2021 and 31 December 2022. In the financial year ending 31 December 2021, Small World Financial Services Group had turnover of £226,647,775. 10% of that figure is £22,664,778. In the financial year ending 31 December 2022, Small World Financial Services Group had turnover of £137,192,876. 10% of that figure is £13,719,288.

6.76 No other penalties or fines applicable to the Infringement have been imposed by other bodies, so no adjustments are needed to account for the risk of double jeopardy.

Application of Step 5 to the Parties

6.77 At the end of step 5, the Parties' penalties are as follows:

- (a) For Dollar East, a penalty at Step 5 of £4,000 (rounded down to the nearest £100).
- (b) For Hafiz Bros, a penalty at Step 5 of £12,500 (rounded down to the nearest £100).
- (c) For Small World, a penalty at Step 5 of £155,000.

Step 6 – Application of reductions under the CMA's leniency programme, settlement and approval of voluntary redress scheme

6.78 The FCA will reduce an undertaking's penalty where the undertaking has a leniency agreement with the FCA, settles with the FCA, which will involve, among other things, the undertaking admitting his participation in the infringement, and/or obtains approval for a voluntary redress scheme.⁴⁴⁸

6.79 None of the Parties have entered into a leniency agreement with the FCA, nor has any Party obtained an approval for a voluntary redress scheme.

6.80 As noted in paragraph 1.6, the FCA has decided to settle the case with each of the Parties. As part of settlement, each of the Parties have:

- (a) made a clear and unequivocal admission that it had infringed the Chapter I prohibition in the terms set out in the Statement;⁴⁴⁹
- (b) confirmed that it had ceased the infringing behaviour and committed that it would refrain from engaging again in the same or similar behaviour;
- (c) accepted that a maximum penalty would be imposed by the FCA;
- (d) agreed to a streamlined administrative process for the remainder of the FCA's investigation;
- (e) agreed not to challenge or appeal the Decision to the Competition Appeal Tribunal.

In light of these admissions and confirmations, the FCA has reduced each of the Parties' penalties by 10%.

⁴⁴⁸ CMA Penalties Guidance, paragraphs 2.29–2.32.

⁴⁴⁹ Subject to any amendments made to the Statement of Objections by the FCA (and reflected in this Decision) to address any limited representations made by the Parties as part of the settlement process (see paragraph 6.13 of FG15/8: The FCA's concurrent competition enforcement powers for the provision of financial services).

Application of Step 6 to the Parties

6.81 At the end of step 6, the Parties' penalties are as follows:

- (a) For Dollar East, a penalty at Step 6 of £3,600.
- (b) For Hafiz Bros, a penalty at Step 6 of £11,200 (rounded down to the nearest £100).
- (c) For Small World, a penalty at Step 6 of £139,500.

Summary of penalties

6.82 The following table sets out a summary of the penalty calculations and the penalties that the FCA requires each of the Parties to pay:

Step	Description	Dollar East	Hafiz Bros	Small World	
1	Relevant turnover	£35,851	£68,045	£108,484	
	Starting point	25%	25%	25%	
	<i>Penalty after step 1</i>	<i>£8,963</i>	<i>£17,011</i>	<i>£27,121</i>	
2	Duration multiplier	1	1	1	
	<i>Penalty after step 2</i>	<i>£8,963</i>	<i>£17,011</i>	<i>£27,121</i>	
3	Adjustment for aggravating and mitigating factors	Director or senior management involvement	+15%	+15%	+15%
	<i>Penalty after step 3</i>	<i>£10,307</i>	<i>£19,563</i>	<i>£31,189</i>	
4	Adjustment for specific deterrence	N/A	N/A	Increase applied	
	<i>Penalty after step 4</i>	<i>£10,307</i>	<i>£19,563</i>	<i>£155,000</i>	
5	Adjustment so that the penalty is proportionate	Reduction applied	Reduction applied	N/A	
	Adjustment to check that the penalty is proportionate and the maximum penalty of 10% of the worldwide turnover is not exceeded	Reduction applied	Reduction applied	N/A	
	<i>Penalty after step 5 (Rounded down to the nearest £100)</i>	<i>£4,000</i>	<i>£12,500</i>	<i>£155,000</i>	
6	Application of settlement discount	-10%	-10%	-10%	
	Final Penalty (Rounded down to the nearest £100)	£3,600	£11,200	£139,500	

Payment of penalties

6.83 The total penalty for Dollar East is £3,600.

6.84 The total penalty for Hafiz Bros is £11,200.

6.85 The total penalty for Small World is £139,500.

6.86 The penalties will become due to the FCA on 1 February 2024 and must be paid to the FCA by 17:00 on that date.

This Decision made by:

Sheldon Mills, Executive Director

Mark Francis, Director – Enforcement & Market Oversight

Both of whom are authorised by the FCA to act as Settlement Decision Makers in respect of Case CA98.2020.01.

30 November 2023

Annex A: Abbreviations and defined terms

Term	Meaning
18 February email	internal Small World email entitled ' <i>Glasgow Branch (Pak Rates & Charges)</i> ' sent on 18 February 2017
Act	the Competition Act 1998
APIs	Authorised Payment Institutions
CAT	the Competition Appeal Tribunal
Chapter I prohibition	the prohibition imposed by section 2(1) Competition Act 1998
CJEU	the Court of Justice of the European Union
CMA166	the CMA's guidance on the Vertical Agreements Block Exemption Order (12 July 2022)
CMA Penalties Guidance	the CMA's Guidance as to the appropriate amount of a penalty (CMA73, 16 December 2021)
Commission	European Commission
Decision	This decision, including Annex
Dex	Dex International Ltd
Dollar East	Dollar East (International Travel & Money Transfer) Ltd
FCA	Financial Conduct Authority
FX conduct	the conduct summarised in paragraph 1.4
GC	the General Court of the European Union
Glasgow branch	Small World's Glasgow branch
GMTA	Glasgow Money Transfer Association
Hafiz Bros	Hafiz Bros Travel & Money Transfer Limited
HMRC	His Majesty's Revenue and Customs
the Infringement	the infringement summarised in paragraph 1.3
May GMTA WhatsApp records	WhatsApp chat records from the GMTA WhatsApp group dating from 1 May 2017 to 24 May 2017
MLRs 2017	the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
MTAs	Money transfer agents
MTOs	Money transfer operators
Party / Parties	the persons listed in paragraph 1.2 (each a 'Party', together the 'Parties')
PIs	Payment Institutions

PRI	the Pakistan Remittance Initiative
PSRs 2017	the Payment Services Regulations 2017
Relevant Period	the period between 18 February 2017 and 31 May 2017
Remittance Turnover	Dollar East's in-store remittance turnover for consumers based in Glasgow
Retailer-adjusted remittance services	the sale of any in-store GBP/PKR remittance service where the retailer had the ability to determine the retail exchange rate given to customers
Sigue	Sigue Global Services
Small World	LCC Trans-Sending Limited
SPIs	Small Payment Institutions
Statement	the Statement of Objections issued to the Parties on 25 January 2023 in accordance with section 31 of the Act and Rules 5 and 6 of The Competition Act 1998 (Competition and Market Authority's Rules) Order 2014, SI 2014/458
TFEU	Treaty on the Functioning of the European
Transaction fee conduct	the conduct summarised in paragraph 1.4