CAS 2020/A/6785 Manchester City FC v. UEFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Rui **Botica Santos**, Attorney-at-Law, Lisbon, Portugal

Arbitrators: Mr Andrew de Lotbinière **McDougall** QC, Attorney-at-Law, Paris, France

Mr Ulrich **Haas**, Professor of Law, Zurich, Switzerland

Ad hoc Clerk: Mr Dennis **Koolaard**, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Manchester City Football Club Limited, Manchester, United Kingdom

Represented by Paul Harris QC, Barrister, Monckton Chambers, London, United Kingdom; Mr David Casement QC, Barrister, Kings Chambers, United Kingdom; Mr Jean-Cédric Michel, Mr Massimiliano Maestretti, Mr Andrea Fioravanti and Ms Emily Villard, Attorneys-at-Law, Kellerhals Carrard Lugano SA, Lugano, Switzerland; Mr Geoff Nicholas, Mr Rhodri Thomas, Solicitors, Freshfields Bruckhaus Deringer LLP, London, United Kingdom; Mr Lucas Ferrer, Attorney-at-Law, Pintó Ruiz & Del Valle, Barcelona, Spain

as Appellant

and

Union des Associations Européennes de Football (UEFA), Nyon, Switzerland

Represented by Dr Jan Kleiner, Attorney-at-Law, Bär & Karrer AG, Zurich, Switzerland; Mr Mark Phillips QC and Mr Andrew Shaw, Barristers, South Square, London, United Kingdom

as Respondent

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I. PARTIES

1. Manchester City Football Club Limited (the "Appellant", "MCFC" or the "Club") is a professional football club with its registered office in Manchester, United Kingdom. MCFC is registered with The Football Association ("The FA"), which in turn is affiliated to the *Union des Associations Européennes de Football.*

2. The *Union des Associations Européennes de Football* (the "Respondent" or "UEFA") is an association under Swiss law and has its registered office in Nyon, Switzerland. UEFA is the governing body of football at the European level. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Europe.

3. MCFC and UEFA are hereinafter jointly referred to as the "Parties".

II. INTRODUCTION

4. The present appeal arbitration proceedings concern a dispute between the Parties related to UEFA's Club Licensing and Financial Fair Play Regulations (the "CLFFPR"). Following the publication by various news outlets of documents allegedly hacked from MCFC's computer systems, an investigation was conducted by the Investigatory Chamber of the UEFA Club Financial Control Body (the "Investigatory Chamber" of the "CFCB"), following which the matter was referred (the "Referral Decision") to the Adjudicatory Chamber of the CFCB (the "Adjudicatory Chamber").

5. On 14 February 2020, the Adjudicatory Chamber issued its decision (the "Appealed Decision"), determining that equity contributions in an amount of at least GBP 204,000,000 provided to MCFC by its ultimate owner were disguised as sponsorship income so that they would be falsely reflected in the financial statements and counted with the break-even calculation as relevant income for monitoring purposes. It held that MCFC had thereby contravened Articles 13 ("*general responsibilities of the license applicant*"), 43 ("*declaration in respect of participation in UEFA club competitions*"), 47 ("*annual financial statements*"), 51 ("*written representations prior to the licensing decision*"), 56 ("*responsibilities of the licensee*"), 58 ("*notion or relevant income and expenses*") and 62 ("*break-even information*") CLFFPR. The Adjudicatory Chamber decided to exclude MCFC from participation in UEFA club competitions for the next two seasons (i.e. 2020/21 and 2021/22) and imposed a fine on it of EUR 30,000,000. MCFC is challenging the Appealed Decision.

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the

present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

7. At the start of the 2008/09 football season, Manchester City Limited ("MCL"), the parent company of MCFC, was acquired by His Highness Sheikh Mansour bin Zayed bin Sultan bin Zayed Al Nahyan ("HHSM") in his personal capacity. HHSM is the owner of Abu Dhabi United Group Investment & Development ("ADUG AD"). ADUG AG owns Abu Dhabi United Group Investment & Development Limited ("ADUG JAFZA"), a private investment company that is registered in the Jebel Ali Free Zone of the United Arab Emirates. ADUG AD and ADUG JAFZA are jointly referred to as "ADUG". HHSM used his private investment vehicle ADUG to acquire MCL. In January 2013, ADUG restructured its investment by creating a new, intermediate parent company for MCL, City Football Group Limited ("CFG"). The principal activity of CFG is the operation of football clubs around the world.

8. In December 2015, a consortium led by private equity groups China Media Capital and CITIC Capital acquired a 10.71% stake in CFG through a holding company, CMC Football Holdings Limited ("CMC"). CMC subsequently increased its shareholding in CFG to 13.79% in June 2016. Currently, ADUG owns 86.21% of CFG, with the remaining 13.79% held by CMC. CFG owns 100% of MCL, which in turn owns 100% of MCFC.

9. This case involves two of MCFC's sponsorship partners: Emirates Telecommunications Corporation P.J.S.C. ("Etisalat") and Etihad Airways P.J.S.C. ("Etihad"). Etisalat is a major international telecommunications group headquartered in Abu Dhabi, listed on the Abu Dhabi Securities Exchange and having bonds listed on Euronext Dublin. Etisalat has a market capitalisation of USD 37 billion. Etihad is the national flag carrier based in Abu Dhabi and is one of the world's leading airlines. Etihad is part of the Etihad Aviation Group, which is owned by the government of Abu Dhabi.

10. Both Etisalat and Etihad entered into sponsorship partnerships with MCFC in the 2009/10 football season, and those partnerships have evolved and have been renegotiated over the years. Both sponsorship arrangements were entered into for fair value. In any event, the CFCB has not put fair value in issue in these proceedings.

11. The first sponsorship agreement between Etisalat and MCFC is dated 28 January 2010 and was signed by MCFC on 24 February 2010. It was effective from 24 February 2010 until 31 December 2012 ("Etisalat 1"). Under Etisalat 1, Etisalat was to pay GBP [xxx] per year, for a package of sponsorship rights including advertising, marketing, branding and hospitality rights. By letter dated 1 June 2012, Etisalat informed MCFC – with reference to discussions that took place in the last week of April 2012 – of its "*initial acceptance for the increase in the sponsorship fee payable to MCFC to GBP [xxx] per year*" and attaching the "*original binding heads of terms*". According to these "Heads of Terms" dated 31 May 2012, they were "*legally binding on the parties unless and until replaced by the* [long form agreement]" and made reference to an annual sponsorship fee of GBP [xxx] for a period of five years "*starting and including the season ending in 2012*". The Heads of Terms are signed by Etisalat and MCFC. UEFA refers to a sponsorship agreement dated 1 May 2012 that was signed by MCFC on an unknown date, but that was not signed by Etisalat, and to which UEFA refers as "Etisalat 1A" and MCFC refers to as the "May 2012 Etisalat Agreement". Etisalat 1A

refers to an annual sponsorship fee of GBP [xxx] to be paid to the account of "*MCFC [...]*" for a period of five years and starting in the season ending in 2012. Not all of the terms of Etisalat 1A were acceptable to Etisalat, so the Heads of Terms were entered into instead while the parties negotiated further details. The long form agreement referred to in the Heads of Terms was executed only in January 2015, with an effective date of 1 February 2012 ("Etisalat 2"). Etisalat 2 differs from Etisalat 1A in a number of paragraphs (for example, regarding the definition of the applicable territory, exclusivity, termination, intellectual property rights, and sponsorship rights). One of the material differences is that Etisalat's sponsorship fees were not to be paid to the account of "*MCFC [...]*", but rather to the account of "its parent company" "[ADUG AD]". These agreements are jointly referred to as the "Etisalat Sponsorship Agreements". Under the terms of the Etisalat Sponsorship Agreements, MCFC was contractually entitled to sponsorship fees of GBP [xxx] from Etisalat in relation to the seasons 2011/12, 2012/13, 2013/14, 2014/15 and 2015/16.

12. Etihad first became a sponsor of MCFC through an arrangement agreed on 20 May 2009. Between 2009 and 2016, Etihad and MCFC renegotiated the terms of their partnership at various times: "Etihad 1", dated July 2013, effective from 1 June 2012; "Etihad 2", dated 21 August 2014; "Etihad 3", dated 23 November 2016, effective from 1 June 2015; "Etihad 4", dated 23 November 2016; together the "Etihad Sponsorship Agreements". Under the terms of the Etihad Sponsorship Agreements, MCFC was contractually entitled to sponsorship fees and bonuses of GBP 220,575,000 and USD 1,750,000 from Etihad in relation to the seasons 2012/13, 2013/14 and 2015/16 (the "Etihad Relevant Period").

13. Throughout these proceedings, incidentally reference is made to the Abu Dhabi Tourism and Culture Authority ("ADTA") and Aabar Investments P.J.S.C. ("Aabar"), which are Abu Dhabi-based entities that also sponsored MCFC. While these sponsorships had been investigated by the Investigatory Chamber and mentioned in the Referral Decision, they were not directly considered by the Adjudicatory Chamber in the Appealed Decision.

IV. PROCEDURAL BACKGROUND

A. Proceedings before the Investigatory Chamber Resulting in the Settlement Agreement

14. On 16 May 2014, following an investigation opened on 11 February 2014 into perceived breaches by MCFC of the CLFFPR, the Parties entered into a settlement agreement (the "Settlement Agreement"), which, *inter alia*, specifies that "*the CFCB has come to the conclusion that* [MCFC] *has a Break-even deficit result of EUR [xxx] for the Monitoring Period T (2013) and of EUR [xxx] for the Monitoring Period T-1 (2012), i.e. an adjusted aggregate Break-even result – in excess of the allowable deviation – of EUR [xxx]*", whereas it also records that "[MCFC] *considers that it is not in breach of the* [CLFFPR]". With the Settlement Agreement, MCFC and UEFA agreed to enter into a specific regime for determining compliance with the break-even requirements for the reporting periods ending in 2014, 2015 and 2016 (the "Settlement Regime").

15. On 20 April 2017, the Investigatory Chamber confirmed that MCFC had complied with the final objective stated in the Settlement Agreement and could therefore "*now exit*" the Settlement Regime.

B. Factual Circumstances Leading to the Opening of an Investigation

16. Between 2 and 16 November 2018, a number of articles were published about MCFC by various media outlets, first by the German magazine *Der Spiegel*, based on internal documents acquired from MCFC's computer systems by an illegal hack, alleging that MCFC had contravened the CLFFPR. These documents comprise six emails and an attachment to one of those emails and are referred to by MCFC as the "Criminally Obtained Documents" and by UEFA as the "Leaked Documents", the "Leaked Emails" or the "Football Leaks Documents". The Panel refers to these documents as the "Leaked Emails".

17. On 10 December 2018, the Chief Investigator of the Investigatory Chamber wrote to MCFC about the publications, attaching extracts of the publications and inviting MCFC to comment on the accuracy thereof.

C. Proceedings before the Investigatory Chamber

18. On 7 March 2019, following the exchange of various correspondence between the Investigatory Chamber and MCFC, the Investigatory Chamber notified MCFC that "*further to our letters for your attention dated 14 and 19 February 2019, your club's response dated 1st March 2019 and subsequent information and documents recently made public in various media outlets, an investigation is hereby formally opened in accordance with Article 12 (2) of the Procedural rules governing the UEFA Club Financial Control Body – Edition 2015* [the "CFCB Procedural Rules"]."

19. On 28 March and 11 April 2019 respectively, hearings took place before the Investigatory Chamber.

20. Following publications of *The New York Times* and the *Associated Press* on 13 and 14 May 2019, allegedly containing confidential information related to the investigation that could only have come from members of the Investigatory Chamber or those assisting them in the investigation, MCFC requested the Investigatory Chamber to stay the proceedings and investigate the alleged leaking of information by the Investigatory Chamber. This request was implicitly denied (the "Leaks Decision") when the Investigatory Chamber issued the Referral Decision.

21. On 15 May 2019, the Investigatory Chamber formally referred the matter to the Adjudicatory Chamber by means of the Referral Decision.

22. On 16 May and 5 June 2019, *The New York Times,* the *Associated Press* and *The Sun* published about the proceedings between MCFC and UEFA, allegedly containing confidential information related to the proceedings that could only have come from members of the Investigatory Chamber or those assisting them in the investigation or referring to anonymous sources from within the UEFA administration.

D. First Proceedings before the Court of Arbitration for Sport

23. On 24 May 2019, while proceedings had already been initiated before the Adjudicatory Chamber, MCFC filed an appeal with the Court of Arbitration for Sport ("CAS") against the Referral Decision and the Leaks Decision.

24. On 15 November 2019, CAS issued an award in *CAS 2019/A/6298 Manchester City FC v. UEFA*, declaring MCFC's appeal inadmissible.

E. Proceedings before the Adjudicatory Chamber

25. On 6 December 2019, following an application for a stay of the proceedings because of the alleged leaking of information by the Investigatory Chamber, the Adjudicatory Chamber issued a "*Procedural Decision*" (the "Procedural Decision"), indicating that the Procedural Decision would "*be annexed to any final decision which* [MCFC] *has the right to appeal to* [CAS]" which would "*enable* [MCFC] *to challenge the reasoning in this decision, if relevant for the purpose of any such appeal*". The Procedural Decision, *inter alia*, contains the following operative part:

> "*1. The application made by MCFC for a stay of the judgment stage pending an investigation into the circumstances in which confidential information relating to the deliberations of the Investigatory Chamber was published is rejected.*"

26. On 21 January 2020, MCFC filed a complaint with UEFA's Control, Ethics and Disciplinary Body (the "CEDB") concerning the alleged leaking of information by the Investigatory Chamber. These proceedings are currently pending.

27. On 22 January 2020, a hearing was held before the Adjudicatory Chamber.

28. On 14 February 2020, the Adjudicatory Chamber issued its decision (the "Appealed Decision"), with, *inter alia*, the following operative part (with the Procedural Decision annexed thereto):

> "*1. MCFC has contravened Article 13, 43, 47, 51, 56, 58, and 62 of the CLFFPR as set out at paragraphs 152, 160, 177 and 181 of the grounds set out above.*
>
> *2. MCFC shall be excluded from participation in UEFA club competitions in the next two seasons (ie. The 2020/21 and 2021/22 seasons).*
>
> *3. MCFC shall pay a fine of € 30 million by 13 March 2020.*
>
> *4. MCFC shall pay € 100,000 to UEFA on account of the legal costs incurred by the CFCB, by 13 March 2020.*"

29. The grounds of the Appealed Decision may be summarised[1] as follows:

[1] MCFC raised a number of procedural/threshold issues that are addressed in the Appealed Decision, related for example to i) the jurisdiction of the Adjudicatory Chamber related to the Settlement Agreement and the scope of the investigation; ii) fundamental procedural errors made by the Investigatory Chamber; iii) the admissibility of the Leaked Emails; and iv) whether the alleged breaches fell with the prescription period. These arguments were largely dismissed by the Adjudicatory Chamber and are raised again by MCFC in the present proceedings before CAS. For the sake of brevity, the findings of the Adjudicatory Chamber in this respect are omitted from this summary.

"*The core of the case made in the Referral Decision is that* [MCFC] *did not truthfully declare its sponsorship income, as payments purportedly made by sponsors were in reality payments from ADUG or* [HHSM] [...].

That case is founded on the leaked emails from which the allegations summarised below are derived. Arrangements were made between [MCFC] *and ADUG as to how the liabilities of Etisalat and Etihad under their sponsorship agreements were actually to be paid. Under the arrangements ADUG agreed to assume liability for over 85% of the fees due under those sponsorship agreements and to discharge those liabilities by payment or procuring payment to* [MCFC]. *The payments were attributed in* [MCFC's] *accounts to sponsorship liabilities but in reality provided disguised equity funding. In the case of Etihad all payments were made directly from its account to* [MCFC]. *However, in the case of Etisalat payments were made directly to* [MCFC] *from the account of ADUG or procured by ADUG to be made to* [MCFC] *by another person, whose identity and role remain unclear. In disguising as sponsorship revenue payments made or caused to be made by ADUG* [MCFC] *did not provide correct financial statements to the FA nor truthfully declare its relevant income to UEFA. Those payments ought to have been accounted for in the accounts of* [MCFC] *as cash inflows from shareholders or related parties. The effect of these arrangements was that the sponsorship revenue of* [MCFC] *as disclosed in its accounts and as declared to UEFA considerably overstated the true revenue and income of* [MCFC] *between 2012 and 2016.*

[...]

Conclusion on the funding of Etisalat sponsorship payments

On the evidence the Adjudicatory Chamber is comfortably satisfied:

(1) The leaked emails dated 5 September 2012 and 17 December 2012, [...], *provide compelling evidence that arrangements were made under which payments were made or caused to be made by ADUG but attributed to the sponsorship obligations of Etisalat so as to disguise the true purpose of providing equity funding, and those arrangements were carried into effect by the payments made by [X] totalling* [...].

(2) The management of [MCFC] *was well aware that the payments totalling [...] made by [X] were made as equity funding, not as payments for the sponsor on account of genuine sponsorship liabilities.*

(3) On that basis the management could not properly have caused [MCFC] *to account for the liabilities purportedly due under Etisalat 1A and Etisalat 2 as sponsorship revenue due from Etisalat for services rendered by* [MCFC].

(4) The audited financial statements submitted to the FA overstated [MCFC's] *true sponsorship revenue by including on an accrual basis the full liabilities purportedly due under Etisalat 1A and Etisalat 2 for the years ended 31 May 2012 and 2013 under "other commercial activities".*

[...]

Conclusion on the funding of Etihad sponsorship payments

On the evidence the Adjudicatory Chamber is comfortably satisfied:

(1) The leaked emails referred to [...] *above, in the context of the payments received from Etihad* [...], *provide compelling evidence that arrangements were made under which the sponsorship obligations of Etihad in excess of £8 million per year were to be funded or procured to be funded by or on*

behalf of ADUG, but paid through Etihad and attributed to its sponsorship obligations so as to disguise the true purpose of providing equity funding.

(2) Those arrangements were carried into effect by ADUG funding or procuring the funding of the payments made through Etihad [...].

(3) The management of [MCFC] *was well aware that payments made in respect of the seasons 2012/12, 2013/14 and 2015/16 in excess of £8 million per year were made by way of equity funding, not as payments on account of genuine sponsorship liabilities owed by the sponsor.*

(4) On that basis the management of [MCFC] *could not properly cause* [MCFC] *to account for the full amount of liabilities purportedly due under the* [Etihad Sponsorship Agreements] *as sponsorship revenue due from Etihad for services rendered by* [MCFC] *in the years ended 31 May 2013, 31 May 2014 and 31 May 2016.*

(5) The audited annual financial statements submitted to the FA overstated [MCFC's] *true sponsorship revenue by including on an accrual basis all the liabilities purportedly due under the* [Etihad Sponsorship Agreements] *for the years ended 31 May 2013, 31 May 2014 and 31 May 2016 under "other commercial activities".*

[...]

Audited financial statements submitted under Article 47

[...]

On the findings above the incorrect treatment of sponsorship revenue is reflected in the financial statements for the years ended 31 May 2012, 2013, 2014 and 2016. However, as required by Article 47 (4) and Annex VI (2) (c), the 2015 accounts included the comparative information for turnover in the preceding year ended 31 May 2014, including at note 4 the turnover derived from other commercial activities, including sponsorship income. It follows that all the financial statements for the years between 2012 and 2016 contained statements as to turnover which were not complete and correct.

On the findings made in respect of the funding of the Etisalat and Etihad sponsorship liabilities [...] *above the Adjudicatory Chamber is comfortably satisfied:*

(1) In overstating its sponsorship revenue in the annual financial statements of MCFC for each of the years ended 31 May 2012, 2013, 2014, 2015 and 2016 [MCFC] *submitted to the FA financial statements which were not complete and correct and did not comply with the requirements of Article 47 and Annex VI and Annex VII.*

(2) The declarations, representations and confirmations made by [MCFC] *under Articles 43 (1) (i) and 51 (2) (a) that all submitted documents and information relating to the financial statements referred to above were complete and correct, were false.*

(3) On those grounds [MCFC] *contravened Articles 13, 43, 47 and 51 of the CLFFPR.*

Break-even information submitted under Article 62

[...]

On the findings made in respect of the funding of the Etisalat and Etihad sponsorship liabilities [...] *above the information for reporting periods ended 31 May 2012, 2013, 2014 and 2016 was not correct and accurate, in substantially overstating*

sponsorship revenue. That incorrect and inaccurate break-even information was submitted, in respect of at least two reporting periods, in each of the monitoring periods between 2013 and 2016.

For those reasons the Adjudicatory Chamber is comfortably satisfied:

(1) [MCFC] *did submit to the CFCB break-even information for all monitoring periods from 2013 to 2016.*

(2) The break-even information submitted under Article 62 for the monitoring periods 2013, 2014, 2015 and 2016 was not complete and correct and did not meet the requirements of Article 58 and Annex X.

(3) The representations and confirmations made by [MCFC] *under Article 62 (2) (b) that the break-even information submitted in respect of each monitoring period between 2013 and 2016 was complete and accurate, were false.*

(4) [MCFC] *on those grounds contravened Articles 13, 58 and 62 of the CLFFPR.*

[...]

Duty of cooperation with the CFCB

Under Article 56 of the Regulations a club has a duty to cooperate with the Investigatory Chamber in respect of its requests and enquiries, and to provide all information and documents requested and deemed to be relevant by the Investigatory Chamber to its decisions.

[...]

At paragraph [...] *above it has been recognised that a Club facing serious allegations may properly decided not to make formal admissions which might jeopardise its interests in the event of further investigations or proceedings outside the scope of regulation by UEFA or the FA. However, that does not excuse the Club from refusing or failing to disclose information and documents which the Investigatory Chamber considers relevant. The Club argued at the hearing that it was entitled to make its own assessment as to whether evidence was inadmissible, but that cannot be accepted. Article 56 is clear in requiring a club to respond properly and cooperatively to any reasonable requests for documents and information which the Investigatory Chamber considers relevant to its decision-making. Relevance and admissibility is for the CFCB to decide. The mantra that the Club "will not be validating whether to admit or deny the accuracy or completeness of criminally obtained documents" was impermissibly used as cover for failing to disclose documents and information reasonably requested.*

It is recognised that the investigation raised very serious issues for the Club and it was entitled to instruct its solicitors to defend its position vigorously. The two particular respects in which the Adjudicatory Chamber considers that [MCFC] *clearly failed to comply with its duty of cooperation were:*

(1) Advancing a case in [...] *the written submissions dated 25 April 2019 which ADUG, which indirectly controlled* [MCFC] *through its 86% interest in CFG, must have known to be false* [...]. *The management of ADUG knew that the payments totalling [...] which it caused to be paid in 2012 and 2013 had not been funded by Etisalat. The receipt by ADUG of [...] from Etisalat in 2015 cannot have gone unnoticed and the purpose of causing such payment to be made via ADUG rather than directly to* [MCFC] *must have been the subject of some careful consideration by ADUG and Etisalat at the time of that receipt.*

(2) *By letter dated 8 April 2019* [MCFC's] *solicitors stated that* [MCFC] *had decided not to answer any questions on the authenticity of the criminally obtained documents or to produce any of the documents requested, suggesting that the request had not been made in good faith by the Chief Investigator. As stated above, declining to make admissions as to the authenticity of the leaked emails could be supported but the Adjudicatory Chamber considers that the refusal to provide any other emails and information requested was designed to obstruct the investigation.*

For those reasons the Adjudicatory Chamber is comfortably satisfied that [MCFC] *breached its duties under Article 56.*

[...]

Other issues

A number of other issues are raised in the Referral Decision but in the light of the conclusions reached above it is not necessary to deal with them. It is sufficient for a fair disposal of this case to deal only with the most important issues discussed above.

The Adjudicatory Chamber considers that it does not have jurisdiction to determine the allegations that the Club was in breach of the Settlement Agreement, which are raised at paragraphs [...] *of the Referral Decision. The case was referred under Article 14(1) of the* [CFCB Procedural Rules], *not under Article 15 (5) which permits the Chief Investigator to refer a case where a club has failed to comply with the terms of a settlement agreement. Nor does the Referral Decision explain how the alleged breaches of clauses 3.1, 3.2 and 7 of the Settlement Agreement constitute contraventions of the applicable Regulations. To the extent that the case advanced is that the Club breached the Settlement Agreement by failing to provide break-even information which was complete and correct, then those allegations are to be judged by reference to the Regulations, not be reference to the terms of the Settlement Agreement.*

Disciplinary measures

[...]

The evidence in this case establishes a series of very serious breaches, over the period from 2012 to 2016, which were committed intentionally and concealed from the CFCB. The seriousness of these breaches is compounded by the failure to cooperate with the Investigatory Chamber and by putting forward a case that ADUG knew to be misleading. By committing these breaches [MCFC] *attempted to circumvent the objectives of the Regulations. Under Article 72 the Adjudicatory Chamber should particularly bear in mind the necessity to defeat any such attempt. The aim of the arrangements made by* [MCFC], *as evidenced by the leaked emails, was to overstate its sponsorship revenue and disguise the amount of its equity funding, thus manipulating the calculation of the breakeven result over a number of years. On the findings of the Adjudicatory Chamber the amount of overstatement of sponsorship revenue which has been proved over the relevant period is in excess of £200 million.*

Under the Settlement Agreement made on 16 May 2014 the Settlement Regime covered the reporting periods ending in 2014, 2015 and 2016. [MCFC] *agreed to achieve a maximum break-even deficit of €20 million in 2014 and €10 million in 2015. If* [MCFC] *had properly declared its sponsorship revenue then it would have failed to meet the first target and would not have been able to show an aggregate break-even result which met the requirements of Article 61 in any of the monitoring periods covered by the Settlement Regime. Under the agreement* [MCFC] *agreed to*

€60 million being withheld from UEFA competition prize money, but it was only required to forfeit €20 million, because the break-even deficit for 2014 was incorrectly assumed to have been based on complete and accurate disclosure of sponsorship revenue. Only by concealing its overstatement of sponsorship revenue was [MCFC] *able to negotiate the agreed terms of the Settlement Agreement and to avoid forfeiting €40 million of prize money under those terms. The Adjudicatory Chamber recognises that it does not have jurisdiction under the Referral Decision to impose disciplinary measures for any breaches of the Settlement Agreement but the scale of the unfair advantage gained by concealment of the overstatement of sponsorship revenue must be taken into account in assessing the disciplinary measures to be imposed under Article 28 of the Procedural Rules.*

The Adjudicatory Chamber does not accept the submissions of [MCFC] *to the effect that there are mitigating circumstances in this case. This is a well resourced Club which had access to the best legal and accounting advice and fully understood the Regulations which it was attempting to circumvent. It is not correct that* [MCFC] *has complied with the rules since 2015 and has restored the breach. On the findings above the arrangements in relation to Etihad continued in 2016 and the unfair advantage gained between 2012 and 2016 has not been remedied.*

Sanctions on clubs which have been found to contravene the break-even requirements have generally resulted in exclusion from one season of UEFA club competition. This case is by far the most serious breach of the Regulations to have been referred to the Adjudicatory Chamber taking into account, in particular, the seriousness, repetition and intentional nature of the conduct. The fair and proportionate sanction in this case must result in disciplinary measures, by exclusion and a fine, substantially in excess of those previously imposed, in order to protect the integrity of UEFA club competition. The exclusion will apply to the UEFA Champions League, the UEFA Europa League, the UEFA Super Cup and the UEFA Europa Conference League.

Having considered all the circumstances of this case the Adjudicatory Chamber decides that it is necessary to impose on [MCFC] *an exclusion from UEFA club competition for two seasons and a fine of €30 million. In previous cases an exclusion from competition for one season has usually been ordered to apply to the next UEFA competition over the following two seasons for which the club would otherwise qualify on sporting merit. The aim of that form of exclusion is to ensure that the disciplinary measure of exclusion is not rendered nugatory if the club fails in the next season to qualify for participation in the competitions from which it has been excluded. That form of order is necessary to ensure that the exclusion is effective, has a deterrent effect and is perceived by other clubs as fair. However, the circumstances of this case are different from the normal run of break-even cases.* [MCFC] *has qualified for the Champions League every year since 2011/12 and is likely on its standing in the Premier League to qualify for UEFA club competition in the 2020/21 season. An exclusion for two seasons will thus be an effective sanction, have a substantial deterrent effect, and be fair to other competing clubs which have complied with the financial fair play regime.*"

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 24 February 2020, in accordance with Article R47 of the Code of Sports-related Arbitration ("CAS Code"), MCFC filed its Statement of Appeal with CAS, challenging the Appealed Decision. In its Statement of Appeal, MCFC nominated Mr Andrew de Lotbinière McDougall QC, Attorney-at-law in Paris, France, as arbitrator.

31. On 6 March 2020, UEFA nominated Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, as arbitrator.

32. On 9 March 2020, 9 Premier League clubs filed an application for intervention (the "Application for Intervention"), pursuant to Article R41.3 and R54 CAS Code for the limited purpose of opposing any possible application by MCFC to request for a stay of execution of the Appealed Decision. The clubs that jointly filed the application for intervention were the following: i) Arsenal Football Club PLC; ii) Burnley Football & Athletic Company Limited; iii) Chelsea Football Club Limited; iv) Leicester City Football Club Limited; v) Liverpool Football Club Limited; vi) Manchester United Football Company Limited; vii) Newcastle United Football Company Limited; viii) Tottenham Hotspur Football & Athletic Co Ltd; and ix) Wolverhampton Wanderers Football Club (1986) Limited.

33. On 23 March 2020, in accordance with Article R51 CAS Code, MCFC filed its Appeal Brief with the CAS Court Office.

34. On 30 March 2020, in relation to the constitution of the Panel in this matter, the Appellant indicated, *inter alia*, that "*after having considered the list of CAS members, we would like to suggest that Mr Rui Botica Santos (Portugal) be nominated as Chairman of the Panel for the present case*". On the same date, the Respondent replied that "*UEFA has no objection to the proposal made by Appellant in its letter of today (i.e. to appoint Mr. Rui Botica Santos as Chairman), and in order to avoid any delay in the constitution of the Panel, UEFA would welcome if CAS appoints the Chairman for this Appeal Procedure soon*".

35. On the same date, 30 March 2020, the Appellant informed the CAS Court Office that it had not filed a request for a stay of execution of the Appealed Decision and that the Application for Intervention was therefore moot.

36. On 3 April 2020, the CAS Court Office informed the 9 Premier League clubs that no application for a stay of execution of the Appealed Decision had been filed and that their Application for Intervention was therefore moot.

37. On the same date, 3 April 2020, the CAS Court Office informed the Parties that pursuant to Article R54 CAS Code, following consultation with the Parties and the co-arbitrators, the Deputy President of the CAS Appeals Arbitration Division appointed Mr Rui Botica Santos as President of the Panel, as a consequence of which the Panel was constituted as follows:

President:	Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal
Arbitrators:	Mr Andrew de Lotbinière McDougall QC, Attorney-at-Law, Paris, France
	Mr Ulrich Haas, Professor of Law, Zurich, Switzerland
Ad hoc Clerk:	Mr Dennis Koolaard, Attorney-at-Law, Arnhem, the Netherlands

38. On 16 April 2020, the Respondent, *inter alia*, informed the CAS Court Office that "*to safeguard a proper running of the competitions, a reasoned Award in this procedure would need to be issued no later than 10 July 2020*".

39. On 23 April 2020, following consultation of the Parties as to their availabilities and their agreement as to the need for a 3-day hearing, the CAS Court Office confirmed that the hearing would be held on 8, 9 and 10 June 2020.

40. On 8 May 2020, in accordance with Article R55 CAS Code, the Respondent filed its Answer. In its Answer, the Respondent filed four evidentiary requests and submitted, *inter alia*, the following in this respect:

> "[…] *MCFC has never explained why suddenly, it is able to produce Mr Pearce and Mr Widdowson as witnesses. The CFCB IC had asked for the presence of these persons, among others, already for the 11 April 2019 Hearing. They did not attend and no reason was given for their absence.*
>
> *Today, MCFC seeks to rely upon long witness statements of these very persons, which are however implausible, misleading and lack credibility. Today, an entirely new case theory is presented, which had never previously been advanced.*
>
> *Be this as it may: Neither the new evidence, the new witnesses nor the new case theory have any credibility. The findings of the Appealed Decision remain unimpeachable.*
>
> *UEFA therefore sees no reason to object to the admissibility of this new evidence now presented by MCFC as it simply does not help its case.*
>
> *Nevertheless, in light of the entirely new explanations now advanced, UEFA also makes very limited, specific evidentiary requests. The only reason for these requests is that they will provide additional clarity to CAS and demonstrate once more that also the new case advanced by MCFC is entirely implausible.*
>
> […] ***1 Football Leaks Documents***
>
> *First, MCFC should be ordered to produce complete, accurate and unredacted copies of all the Football Leaks Documents, i.e. of all the emails and documents mentioned […] above:*
>
> - *The email of 14 April 2010*
> - *The email of 6 September 2012 and the attached Table*
> - *The email of 7 December 2012*
> - *The email of 29 August 2013*
> - *The email of 11 December 2013*
> - *The undated email*
> - *The table "Total Cash Investment in MCFC"*
>
> *It is beyond question that these documents exist and that they are relevant to this case. Indeed, they are at the core of this case.*
>
> *MCFC continues its refusal to make any real comment on these emails also in its Appeal Brief. UEFA, however, is convinced that these Football Leaks Documents are true and genuine and that they reflect exactly what happened in this case.*
>
> *Although UEFA is convinced that this CAS Panel will not have any doubt about the authenticity of these emails and documents, as a precautionary measure and in order to dissipate any possible remaining questions and to provide full clarity, UEFA requests the production of these documents based on art. R44.3 of the CAS-Code.*
>
> *Should MCFC continue its refusal to produce these documents, this will only confirm that these documents are direct evidence of the funding of MCFC sponsorship payments by ADUG and* [HHSM], *in addition to all the other evidence already on record.*

2 Runs of emails

Second, MCFC should be ordered to produce the complete and unredacted runs of emails of which these emails are a part. The emails might have been responsive to other emails and there will have been other emails sent in response to these emails. Those runs of emails surely exist and should be produced so that the CAS can see the extent to which other individuals confirmed the content of the emails, or corrected them.

The CFCB IC had already asked for these documents and MCFC refused to produce them. These documents are, however, undoubtedly relevant to the core matters of this case.

All requirements pursuant to art. R44.3 of the CAS-Code to make this evidentiary request are thus met.

3 Payment Ledger related to the [...] payment of 13 June 2012

Third, MCFC should be ordered to produce an unredacted copy of the payment ledger related to the payment of [...] of 13 June 2012. The reasons for this request are as follows:

- *This document will provide further confirmation that the scheme described in the Football Leaks Documents was put into practice, [...].*
- *Mr Dudney confirmed that he saw an unredacted copy but that he was instructed not to disclose the information he knew.*
- *There is no reason not to produce this document in confidential arbitral proceedings. Commercial sensitivity is no excuse.*

It is again beyond question that this document exists and that it is relevant for this case. All requirements pursuant to art. R44.3 of the CAS-Code to make this evidentiary request are met.

Should MCFC refuse to produce this document, this will confirm that it also constitutes direct evidence of the funding of MCFC sponsorship payments by ADUG and [HHSM], *in addition to all the other evidence already on record, in particular that the table concerning "Q2 Cash Funding" with the Football Leaks Documents was exactly put into practice.*

4 [X]

Fourth, MCFC shall disclose the full name and identity of [X] and all the positions he has held since 2010.

The reasons for this request are as follows:

- *The identity of [X] is relevant for the simple fact that he plays a key role. He made payments to MCFC which are at the heart of this case.*
- *The fact that MCFC tried to hide [X] as payor and that MCFC still refuses to disclose more detailed information about [X] only confirms his importance.*

Should MCFC refuse to comply with this request, this will confirm that [X] played a crucial role in this case and that MCFC, for some reason, continues to hide relevant information. The CAS Panel will then certainly draw the appropriate conclusions from such a behaviour.

Depending on the information disclosed by MCFC, UEFA reserves the right to request that CAS should order MCFC to produce [X] as a witness to give oral testimony before CAS."

41. On 13 May 2020, the CAS Secretary General informed the Parties about the COVID-19 measures applied in Switzerland and travel restrictions in place, more specifically that CAS would be in a position to issue summons to appear at the hearing scheduled for 8-10 June 2020. The Parties were also informed that, due to the high number of participants and the social distancing requirements still in force, the hearing could not be held at the CAS Court Office, but that an alternative hearing location had been found, be it with additional costs.

42. On 15 May 2020, the Appellant responded to UEFA's evidentiary requests, indicating, *inter alia*, as follows:

"By way of context, each of the Evidentiary Requests relates to matters that were before and considered by the Adjudicatory Chamber of the CFCB. The Adjudicatory Chamber did not require production of the documents that now constitute Requests 1 and 2, nor did it require the removal of the redactions to the payment ledger referred to in Request 3. As regards Request 4, certain information was requested by the Adjudicatory Chamber and provided by MCFC.

In the context of the Criminally Obtained Documents, the Adjudicatory Chamber recognised why MCFC had declined to make any formal admissions that such documents were authentic. As noted in the Appeal Brief, MCFC accepted that, for the purposes of the proceedings before the CFCB, it was prepared to address the contents of the Criminally Obtained Documents as if they were genuine, without prejudice to its position as to their authenticity and/or admissibility. MCFC is willing to proceed on the same basis for the purposes of this appeal.

The Adjudicatory Chamber did not state at any point in the proceedings before it that it was unable to proceed or make findings in the absence of any of the documents or information that are the subject of the Evidentiary Requests.

Further, MCFC notes that in Section E of its Answer, UEFA takes the position that the decision of the Adjudicatory Chamber is (in its words) "unimpeachable" based on the evidence already on the record.

MCFC has a number of in principle objections to the Evidentiary Requests. These include objections arising out of the fact that such requests previously have been considered by the Adjudicatory Chamber. Further, it is MCFC's position that the CAS Panel cannot consider these Evidentiary Requests without first addressing MCFC's arguments as to the admissibility of the Criminally Obtained Documents.

Given the importance and complexity of the issues the Evidentiary Requests raise, it is MCFC's position that a proper determination of the Evidentiary Requests would require detailed written submissions from both parties, followed by an oral hearing by telephone or video conference.

In correspondence with CAS, UEFA has noted the importance of there being a final decision in this appeal by no later than 10 July 2020, in order to avoid any uncertainty in relation to the UEFA club competitions for the 2020/21 season. MCFC agrees with the desirability of this. However, MCFC believes that the determination of the Evidentiary Requests and matters consequential on any order that might be made for the production of any further documents in this appeal raise a very real risk that the hearing may need to be delayed.

In an effort to avoid this and for the sole purpose of seeking to ensure a timely resolution of this appeal, MCFC is willing to proceed as follows in relation to the Evidentiary Requests:

Request 1 – on Monday, 18 May 2020 MCFC would provide to UEFA and the CAS Panel copies of the published emails referred to in paragraph 626 of UEFA's Answer, together with copies of the original versions of the corresponding emails.

Request 2 – the requested documents are not to be produced for the reasons mentioned above.

Request 3 – on Monday, 18 May 2020 MCFC would provide to UEFA and the CAS Panel an unredacted copy of the payment ledger extract, without prejudice to MCFC's position that the parts of the ledger that were previously redacted do not fall within the scope of the matters referred to the Adjudicatory Chamber, as set out in the Terms of Reference dated 4 July 2019, and cannot therefore form any part of this appeal.

Request 4 – on Monday, 18 May 2020 MCFC would provide to UEFA and the CAS Panel further details regarding the identity of [X].

The above would be provided on the basis that:

1. *the provision of the emails in response to Request 1 will be solely for the purpose of this appeal and the emails that MCFC will submit to CAS will be kept confidential and not disclosed by UEFA to any other party (other than counsel and/or any expert instructed on UEFA's behalf for the purposes of this appeal) or used by UEFA (or those to whom it may disclose the emails) for any other purpose;*
2. *the provision of the emails in response to Request 1 is without prejudice to MCFC's position as to the authenticity and/or admissibility of the Criminally Obtained Documents and/or such emails, as to which all MCFC's rights are fully reserved; and*
3. *neither party will make any further requests to the CAS Panel for the provision of documents or information in this appeal pursuant to CAS Code 44.3 or otherwise."*

43. On the same day, 15 May 2020, UEFA informed the CAS Court Office as follows:

"*UEFA has taken note and appreciates Appellant's comments regarding UEFA's Evidentiary Requests No. 1, 3 and 4. The deadline indicated, i.e. 18 May 2020, is acceptable to UEFA.*

UEFA has taken note of the objection of Appellant to comply with UEFA's Evidentiary Request no. 2, based among other things on timing reasons.

In this regard, UEFA respectfully makes the following comments: Under the applicable law, each party bears the burden to prove the facts that it alleges to its advantage (Art. 8 Swiss Civil Code). As indicated in its Answer dated 8 May 2020, UEFA is satisfied that already the evidence currently on record shows that the Appealed Decision is correct and that it shall be confirmed by CAS.

MCFC has made in its Appeal Brief several new arguments and has filed some documents. UEFA notes that MCFC has decided which documents or other evidence it wishes to produce in support of these arguments, and which others it does not want to produce, which is the right of any party. As in every case, the evidentiary situation will then need to be appreciated by the CAS Panel.

UEFA does not wish to make the current procedure more complicated than necessary. It is also to be reminded that there is a general, undisputed interest that the present appeal procedure shall be concluded by a reasoned CAS Award no later than by 10 July 2020. In its last letter, Appellant has agreed to this.

For these reasons, UEFA does not see any need to insist on its Evidentiary Request no. 2, and is satisfied to proceed with the case (in order to ensure that the hearing can take place as scheduled) on the basis of Appellant's comments in relation to the other Evidentiary Requests, reserving its right to comment on any documents or information provided and not provided.

To avoid any possible doubt, by not maintaining its Evidentiary Request No. 2, UEFA does not recognize the existence or non-existence or any of the documents that were the object of Request no. 2 and that have not been disclosed by Appellant. Likewise, by not maintaining its Evidentiary Request No. 2, UEFA does not recognize any possible content of any of the concerned documents. All rights of UEFA remain, therefore, reserved.

As to the assumptions and conditions indicated by Appellant in the last part of its last letter, UEFA hereby (i) confirms that in lack of any exceptional circumstances as per Art. R44.1 CAS Code, neither party shall make any further requests to the CAS Panel for the provision of documents or information in these appeal proceedings pursuant to Art. R44.3 of the CAS Code or otherwise and (ii) confirms once again to respect in full the confidentiality requirements set out by the CAS Code. As to Appellant's second condition, this would be for the CAS Panel to determine."

44. On 15 May 2020, both Parties informed the CAS Court Office that they were in principle willing to proceed with an in-person hearing at the alternative hearing centre proposed by the CAS Court Office, but that it would be prudent to continue to plan for a virtual hearing in parallel. The Appellant indicated that it agreed to share the costs of the alternative hearing centre with the Respondent.

45. On 18 May 2020, the CAS Court Office indicated that the Panel noted the Parties' agreement that the production of the Leaked Emails was without prejudice to MCFC's position as to the authenticity and/or admissibility of the Leaked Emails. The Panel also noted that, for the sake of good order, the authenticity and/or admissibility of the Leaked Emails are issues that are solely within the Panel's authority to decide.

46. On the same date, 18 May 2020, MCFC complied with UEFA's Evidentiary Requests No. 1, 3 and 4 by providing the CAS Court Office with a copy of these documents and information about the "*the full name and identity of [X] and all the positions he has held since 2010*".

47. On 3 June 2020, the Respondent indicated that it proposed to cross-examine Mr Hogan, Mr Pearce and Mr Dudney on certain publicly available information, more specifically on Etihad's audited accounts as per 31 December 2014 and requested that such documents be added to the file.

48. On 4 June 2020, following an objection raised by the Appellant, the Respondent withdrew its request to put such documents on record.

49. On 5 June 2020, in accordance with the Panel's instructions, both Parties provided the CAS Court Office with the slides that each of them intended to use during the hearing. No objections were raised as to the content of either Party's slides.

50. On the same date, 5 June 2020, the CAS Court Office issued an Order of Procedure, which was duly signed and returned by the Appellant and the Respondent on 7 and 19 June 2020 respectively.

51. On 8, 9 and 10 June 2020, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.

52. In addition to the Panel, Mr Matthieu Reeb, CAS Secretary General, Mr Antonio De Quesada, CAS Head of Arbitration, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

1) Mr Marty Edelman, CFG Director;
2) Mr Simon Cliff, CFG General Counsel;
3) Mr Paul Harris QC, Counsel;
4) Mr David Casement QC, Counsel;
5) Mr Jean-Cédric Michel, Counsel;
6) Mr Massimiliano Maestretti, Counsel;
7) Mr Andrea Fioravanti, Counsel;
8) Ms Emily Villard, Counsel;
9) Mr Geoff Nicholas, Counsel
10) Mr Rhodri Thomas, Counsel;
11) Mr Lucas Ferrer, Counsel;
12) Mr Gavin Williamson, Managing Director, AlixPartners.

For the Respondent:

1) Mr Pablo Rodriguez, UEFA Head of Financial Monitoring & Compliance;
2) Mr William McAuliffe, UEFA Senior Legal Counsel;
3) Ms Anzhela Gharazyan, UEFA Financial Analyst;
4) Dr Jan Kleiner, Counsel;
5) Mr Mark Phillips QC, Counsel (by video-conference);
6) Mr Andrew Shaw, Counsel (by video-conference).

53. The following witnesses and expert witnesses were heard, in order of appearance:

1) Mr James Hogan, former President and CEO of Etihad, witness called by MCFC (by video-conference);
2) Mr Andrew Widdowson, Former Head of Finance of MCFC, witness called by MCFC (by video-conference);
3) Mr Samer Abdelhaq, Legal Advisor to the Abu Dhabi Department of Finance, witness called by MCFC (by video-conference);
4) Mr Simon Pearce, Non-Executive Director of MCFC, witness called by MCFC (by video-conference);

5) Mr Mohammad Harib, Senior Vice President in the Contracts and Administration Department of Etisalat, witness called by MCFC (by video-conference);
6) Mr Louis G. Dudney, CPA, CFF, Managing Director of the Investigations, Disputes and Risk practice of AlixPartners, expert witness called by MCFC;
7) Mr Noel Lindsay, BSc, CFE, FCA, MAE, Financial Investigations Limited, expert witness called by UEFA (by video-conference).

54. With the permission of both Parties, Mr Dudney and Mr Lindsay attended the entire hearing.

55. All witnesses and expert witnesses were invited by the President of the Panel to tell the truth subject to the sanction of perjury under Swiss law. The Parties and the members of the Panel had full opportunity to examine and cross-examine, as the case may be, the witnesses and expert witnesses.

56. The Parties were given full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.

57. Before the hearing was concluded, both Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

58. On 19 June 2020, in accordance with the Panel's instructions as communicated at the end of the hearing following a request from the Appellant in this regard, both Parties filed short submissions on costs. UEFA submitted an overview of its costs related to the proceedings, while MCFC indicated that it no longer sought to be awarded any contribution towards the costs incurred. MCFC did request that it should not be held liable to pay EUR 100,000 to UEFA on account of the CFCB's costs, as established in the Appealed Decision and that, if it were successful in its appeal, UEFA should bear the costs of the arbitration.

59. On 23 June 2020, UEFA indicated to have noted that MCFC had modified its original prayers for relief to the effect that it now waived its request that UEFA was to pay MCFC's legal costs and other costs incurred, stating that it had no objection thereto, but that it maintained its own prayers for relief.

60. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

VI. SUBMISSIONS OF THE PARTIES

A. The Appellant

61. MCFC provided the following summary of its written submissions, supplemented with a summary of arguments deemed relevant by the Panel:

"*A. The core allegation in the* **[Appealed Decision]** *is false*

6. *The Adjudicatory Chamber found that ADUG entered into "arrangements" and/or a "scheme" to make payments through Etisalat (for the 2011/12 and 2012/13 seasons) and Etihad (for the 2012/13, 2013/14 and 2015/16 seasons) that were, in fact, "disguised equity payments". The true nature of these payments is said to have been deliberately concealed and improperly reported by MCFC under the CLFFPR.*

7. *These very serious allegations necessarily involve a conspiracy on the part of MCFC, its shareholder and these two sponsors. They are denied in the strongest terms, including by very senior witnesses from both Etisalat and Etihad. The allegations are irreconcilable with the factual evidence of what actually happened, as verified by respected international accounting firms.*

***B. The Criminally Obtained Documents provide no proper factual basis for the* [Appealed Decision]**

8. *The Adjudicatory Chamber's findings are based on inferences drawn from documents that were unquestionably obtained by illegal means. These documents are understood to emanate from a criminal computer hack led by an individual named Rui Pinto, who is currently in jail facing criminal prosecution in Portugal. The Portuguese court has stated that Mr Pinto is not a whistleblower, but is an extortionist, and that the stolen documents should not be used against the victims of his hacks.*

9. *The Adjudicatory Chamber erred as a matter of Swiss law in concluding that the Criminally Obtained Documents were admissible in the CFCB proceedings, though it correctly found that* [MCFC] *is entitled not to authenticate them.*" (emphasis added)

9(a) Article 152.2 of Swiss Civil Procedure Code (the "CPC") provides that "[i]*llegally obtained evidence shall be considered only if there is an overriding interest in finding the truth*", which requires a balance of interests. Under Article 28 of the Swiss Civil Code (the "SCC") the balance of interest should give higher protection to MCFC's personality right than to the wider public interest of the Criminally Obtained Documents. The content of the Criminally Obtained Documents is confidential and should remain confidential and its admissibility will encourage further illegal hacking. The fact that UEFA / the CFCB may not have been actively party to the hacking (i.e. the illegal action) has no relevance under Swiss Law for the purpose, and in the context, of carrying out the balance of interests. The CFCB's findings are done in "bad faith", because a party may not introduce evidence that has been stolen from the "victim" with a view to using it against the "victim".

"*10. Even if admissible, the Criminally Obtained Documents do not provide "clear and direct" evidence of the supposed improper "arrangements". They are not between, and do not establish an agreement between, the supposed parties; they do not contain relevant admissions; and their meaning is, at best, unclear, particularly when their context is understood.*

11. The Adjudicatory Chamber's findings about a serious conspiracy are based simply on inferences and innuendo drawn from seven of these Criminally Obtained Documents and the false conclusions reached are addressed principally in the witness statement of Mr Pearce, a director of [MCFC], *whose name appears therein.*"

11(a) The CFCB relies on the email allegedly sent by Mr Pearce to [Y] on 14 April 2010 to infer that i) Mr Pearce was "[…] *authorized to make arrangements* […]" for HHSM "[…] *and thus for ADUG* […]", and ii) HHSM was "[…]

prepared to allow [...]" Mr Pearce to conclude sponsorship agreements with Abu Dhabi entities on the basis that most of the sponsorships fees would be paid from "*alternative sources*". The Adjudicatory Chamber places great weight on this particular email as it is said to provide the basis for a further inference that the emails relating to the Etisalat and Etihad sponsorship obligations "[...] *follow the same pattern* [...]". There is no reasonable basis for this inference, because: i) on 14 April 2010, the CLFFPR had yet to be ratified and the introduction of the break-even requirement was over a year away. Such alleged arrangements would have been perfectly lawful at the time; ii) the email discusses the proposed sponsorship agreement between MCFC and Aabar (an entity unrelated to Etisalat and Etihad); iii) it is wrong to infer that the reference to "His Highness" is to HHSM. Mr Pearce clarified that the reference is to His Highness Sheikh Sultan Bin Tahnoon Al Nahyan (the Chairman of the ADTA at the time); iv) the "alternative sources" to be provided by Sheikh Tahnoon were intended as ADTA grants and promotional funds for organisations based in Abu Dhabi, such as Aabar, seeking to promote their international profile; and v) the planned governmental policy for ADTA to act as a central provider of these promotional funds and grants did not transpire and the funding proposal for Aabar did not materialise.

11(b) The CFCB also relies on the email sent by Mr Wallace to Mr Pearce on 6 September 2012 to infer that MCFC was "[...] *seeking to disguise the fact* [...]" that the sponsorship payments made by Etisalat and Etihad were, in fact, "*equity funding*". There is no reasonable basis for this inference, because: i) MCFC urgently required an additional amount of GBP 66,100,000 in order to meet its cash needs in Q2 of the 2012/13 season (i.e. September to November 2012); ii) Mr Wallace originally proposed to source the additional GBP 66,100,000 for Q2 through an increased equity contribution from ADUG; iii) there were time constrains in raising such funds at short notice, Mr Wallace subsequently proposed that some of the additional cash (GBP [xxx]), might be provided through early collection of the sponsorship fees payable by the Abu Dhabi based sponsors; and iv) the GBP [xxx] included a proposed payment of GBP [xxx] by Etisalat and GBP 5,000,000 by Etihad in September 2012. The Adjudicatory Chamber acknowledged that Etisalat did not pay GBP [xxx] in September 2012 or at any time in Q2, but even so, it inferred on the basis of this email that the GBP [xxx] of the GBP [xxx] received by the Club on 13 June 2012 (in Q1) and the GBP [xxx] paid on 10 January 2013 (in Q3) were "disguised" equity contributions from ADUG. The Adjudicatory Chamber ignored that the Club sourced the additional GBP 66,100,000 cash required for Q2 entirely through contributions (GBP 53,300,000) and the sale of intellectual property rights (GBP 12,800,000). This cash was not provided from any of the sponsors.

11(c) The Adjudicatory Chamber wrongly assumed that: a) the Criminally Obtained Documents are genuine – when it is obvious that at least some of the documents have been edited to achieve a particular presentation; b) the meaning of the documents is clear – even though the authors are clearly confused; and c) the "arrangements" that are allegedly evidenced in the documents were put into practice – when that is not what happened.

"***C. The Panel cannot be comfortably satisfied of the inference-based case***

12. The Adjudicatory Chamber erred by declaring itself "comfortably satisfied" that the Criminally Obtained Documents evidenced the alleged "arrangements". The Adjudicatory Chamber should have considered all the evidence available to it, including the evidence that: (i) both Etisalat and

Etihad paid in full their respective sponsorship obligations, under commercially negotiated and legally binding sponsorship agreements; and (ii) ADUG did not fund the sponsorship payments.

13. *In short, the decision for this Panel is whether it is more comfortably satisfied with:*

    (a) *Case A, for* [MCFC]*: that what in fact happened is what is set out in the evidence below and not the inferences wrongly drawn from the seven Criminally Obtained Documents which are confusing snapshots, taken out context, of matters that simply did not happen in the way that has been portrayed.* [...]

    (b) *Case B, for the CFCB: that, based solely on inferences from seven Criminally Obtained Documents, there have been improper "arrangements" involving MCFC, ADUG and Etisalat and Etihad such that the evidence set out above is wrong, false or faked, in a continued attempt to perpetuate the alleged breaches."* (emphasis in original)

13(a) It is not in dispute that the applicable standard of proof is one of comfortable satisfaction. However, the Adjudicatory Chamber failed to apply that standard correctly. The allegations made by the CFCB in these proceedings are serious and based on fraud and conspiracy involving MCFC, ADUG and the sponsors Etisalat and Etihad. The findings of the Appealed Decision are based on adverse inferences and, in these circumstances, the weight of the evidence to discharge the standard of proof should be higher, i.e. beyond reasonable doubt. This approach has been confirmed by CAS in the proceedings referenced *CAS 2011/A/2625* (a case that was also based on "circumstantial evidence" and in which the CAS panel held that adverse inferences cannot be drawn in circumstances where available evidence does not exclude another conclusion being reached). This determination is consistent with well-established international jurisprudence.

"***D. The evidence clearly demonstrates that Etisalat and Etihad met their sponsorship obligations in full in return for valuable rights and that the sponsorship payments were not funded by ADUG***

14. [T]*he evidence that MCFC provided to the Adjudicatory Chamber, as now supplemented in these proceedings, clearly demonstrates that both Etisalat and Etihad paid in full their respective sponsorship obligations in relation to each of the seasons in issue.*

15. *This evidence includes: (a) the results of an expert forensic review by Mr Dudney of AlixPartners; (b) relevant verifications by Ernst & Young in relation to ADUG that no "disguised" payments were made to Etihad or Etisalat; and (c) evidence from senior executives at Etisalat and Etihad, both as to the value of the sponsorship rights and as to relevant contemporaneous accounting treatment.*

16. *The Adjudicatory Chamber accepted in its* [Appealed Decision] *that the sponsorship agreements were legally binding on both MCFC and the sponsors and that the services provided for in those agreements were provided at all relevant times by MCFC. It is not even in issue that the agreements were entered into at fair market value.*

17. *In addition, the Adjudicatory Chamber accepted that:*

(a) *Etisalat paid all but [...] of the sponsorship fees due from it, either directly or through ADUG; and*

(b) *Etihad paid all the sponsorship fees due from it in full and directly to MCFC.*

18. *So what is left?*

1. Etisalat

19. *The issue is whether the two advance payments of [xxx] each (totalling [xxx]) which ADUG arranged to be made to MCFC with respect to the 2011/12 and 2012/13 seasons were reimbursed by Etisalat out of its payment of [xxx] on 18 March 2015, thereby meeting its legally binding sponsorship obligations with respect to those seasons? The answer is yes.*

20. *In this regard, the Adjudicatory Chamber accepted that Etisalat did pay the [xxx], and that it had a legally binding obligation to do so. Etisalat has confirmed that [xxx] of that payment was made in settlement of its sponsorship liabilities to MCFC with respect to the 2011/12 and 2012/13 seasons. This confirmation is supported by relevant entries in the MCFC creditors' ledger from Etisalat's accounting records. This evidence supplements the evidence from Etisalat that was previously before the Adjudicatory Chamber, including a letter from the Chairman of Etisalat.*

21. *The evidence from Etisalat is entirely consistent with the evidence from MCFC and ADUG regarding the two payments of [xxx].*

22. *Mr Dudney confirms that, when the two payments were made to MCFC, they were credited by MCFC to the customer account for Etisalat against invoices for the sponsorship payments due from Etisalat for the 2011/12 and 2012/13 seasons – ie MCFC recognised in its accounts that these payments were made on behalf of Etisalat.*

23. *Ernst & Young confirms that the accounting records of ADUG treated the two payments of [xxx] as creating a receivable from Etisalat. That receivable was shown as settled on payment from Etisalat of [xxx] – ie ADUG recognised that [xxx] of the [xxx] payment settled Etisalat's liability to it.*

24. *Ernst & Young also confirms that ADUG did not make any payment of sponsorship monies to Etisalat, whilst Etisalat has reviewed relevant bank statements and cash books to check for any material payments made to it by ADUG (or the Owner) since 2008 and confirmed that none was identified.*

25. *As to the speculative suggestion that Etisalat may have received funds from some (unidentified) "other sources" with respect to this payment of [xxx], the Adjudicatory Chamber accepted that there is "no transactional evidence" of any such funding having taken place and there is not even any attempt to tie it in to the core allegation against ADUG. Mr Harib of Etisalat anyway describes the suggestion as "ridiculous", in the context of a publicly traded company bound by stringent legal, corporate governance and accountancy standards.*

2. Etihad

26. *It is accepted by the Adjudicatory Chamber that Etihad paid directly to MCFC the approximately £220 million due from it under the sponsorship agreements for the seasons 2012/13, 2013/14 and 2015/16. The issue for this Panel is whether, of these payments that Etihad was legally bound to make, all but £8*

million per season (i.e. approximately £196 million in total) was funded by or at the direction of ADUG as "disguised equity funding"? The answer is no.

27. *As well as the evidence previously before the Adjudicatory Chamber, Etihad has confirmed through Mr Hogan, its President and CEO throughout the period in issue, that the finding of the Adjudicatory Chamber is "simply not true". He also explains that marketing costs, like other operational expenses, were met by funds managed both centrally and at the commercial team level. Mr Pearce explains that he understood that £8 million was available from the airline's marketing budget, with the remainder coming from Etihad's central funds.*

28. *This evidence is further supported by a confirmation from the Chairman of the Board Finance and Investment Committee of Etihad that the accounts of Etihad for the relevant financial years recorded (i) the full amounts payable under the sponsorship agreements as liabilities of Etihad and (ii) the payments made by Etihad to MCFC as settling those liabilities in full. In addition, no amounts were shown in the accounts as being set off against these sponsorship obligations.*

29. *Consequently, absent an allegation that the accounts of Etihad were falsely prepared, which even the CFCB has not to date been willing to make, the "disguised equity" funding allegation fails.*

30. *It should be noted that Etihad's accounts for each of the relevant financial years were audited by either KPMG or Deloitte – ie by one of the leading international accountancy firms.*

31. *For completeness, Ernst & Young also confirms that ADUG did not make any payment of sponsorship monies to Etihad.*

32. *The Adjudicatory Chamber's suggestion – which is pure speculation – that such funding could, nevertheless, have come from some (again unidentified) "other Abu Dhabi entities" is once more inconsistent with its core allegation that ADUG provided the funding, lacks any proper basis and is frankly irresponsible.*

33. *The only apparent basis for the statement is that Etihad's shareholder is the Government of the Emirate of Abu Dhabi, thereby entirely overlooking the many relevant legislative controls that apply in the United Arab Emirates and Abu Dhabi (similar to those applicable in many countries throughout the world), as set out in the witness statement of Samer Abdelhaq, Legal Adviser to the Abu Dhabi Department of Finance.*

E. Commercially irrational case theory

34. *The Adjudicatory Chamber's case theory is irrational because it disregards the value of the rights granted to Etisalat and Etihad under the sponsorship agreements in issue. An inferential conspiracy case based upon seven Criminally Obtained Documents and an incoherent case theory is unsustainable.*

35. *Mr Hogan of Etihad says: "...As MCFC became a world-class football team, Etihad became a world-class airline, and the value of the sponsorship rights to our business increased enormously. Both Etihad and MCFC have become global brands...".*

36. *Mr Harib of Etisalat describes its sponsorship of MCFC as having delivered excellent returns, "...providing direct benefits for Etisalat in 16 different*

markets, and consistently outperforming our evaluations of the returns on sponsorship...".

37. *Under the Adjudicatory Chamber's case theory, these valuable rights are effectively said to have been largely given away by MCFC, in the case of Etihad for £8 million a year, and in the case of Etisalat for [xxx] for two seasons. Even the CFCB's own valuations of these sponsorship rights for 2012/2013 ranged from £40 million to £77 million for Etihad per year and £4 million to £11 million for Etisalat per year.*

38. *There is no basis for concluding that MCFC was willing to provide these rights to its sponsors (which were not related parties) for amounts that were well below what they were worth, especially when the market for Premier League rights was booming. The theory is a nonsense. It would amount to a pointless, self-defeating conspiracy.*

39. *It should be noted that in the period 2009/10 to 2018/19 shirt sponsorship values alone increased on average by 350% in the Premier League, a period during which MCFC was the Premier League's most successful club.*

F. The alleged breaches of the CLFFPR are in any event settled and time barred

40. *All of the alleged breaches in these proceedings were, in any event, the subject of the* [Settlement Agreement]. *Those breaches cannot, therefore, lawfully be pursued by the CFCB.*

41. *The Adjudicatory Chamber erred in concluding that the facts alleged in the current proceedings fall outside the scope of the dispute settled by that agreement. The dispute in 2014 included the correct reporting by MCFC of its sponsorship revenues and involved looking at the same sponsorship agreements now in issue (again). MCFC did not accept the allegations about sponsorship revenues made at the time, but the settlement was agreed so that neither party had to go through a process of continued investigation and litigation. It was part of that deal that MCFC accepted certain disciplinary sanctions and agreed to have a bespoke settlement regime governing its compliance for the next three seasons. It complied with that regime and was formally released from it by the CFCB in April 2017.*

42. *It is not accepted that there are any new facts, let alone any new dispute, that could theoretically justify invalidating/rescinding the* [Settlement Agreement]. *In any event, even if the Criminally Obtained Documents do contain new facts, those new facts emerged at the latest when they were published (the publications were made between 2 November 2018 and 2 March 2019) and the CFCB ran out of time under Swiss law to make a claim of invalidation after the expiry of the maximum period of 12 months.*

43. *Further, the Adjudicatory Chamber rightly determined that it did not have jurisdiction to consider any claim for breach of the* [Settlement Agreement] *as the case was not referred to it under Article 15(5) of the CFCB Procedural Rules as required. Consequently, this Panel also has no jurisdiction to hear such a claim.*" (emphasis in original)

43(a) The Adjudicatory Chamber erred in concluding that the 5-year limitation period under Article 37 CFCB Procedural Rules ended on 7 March 2019, because it should have concluded that it ended on the date of the sanction issued for a violation of the CLFFPR, i.e. on 14 February 2020, and that, accordingly, any alleged breaches committed prior to 14 February 2015 are time barred.

43(b) Article 37 CFCB Procedural Rules does not define when the "prosecution" of a case starts. "Prosecution" does not, and cannot, mean the opening of an investigation, but instead means the right to sanction, i.e. the imposition and issuance of a sanction.

43(c) Article 37 CFCB Procedural Rules establishes a "*péremption*" ("*Verwirkung*") rather than "*prescription*" ("*Verjärung*"). *Péremption* has the peculiarity of having a definitive legal effect, that is the extinction of the right, rather than merely the paralysis of the right of action, as does a "prescription". Therefore, the correct interpretation to establish the *dies ad quem* of the limitation period is the date of the sanction that is issued for a violation.

"*44. Finally, the principle contra stipulatorem applies, which means that a stipulation cannot be interpreted in favour of the party that drafted it when there is another interpretation that is in favour of the party that did not draft it.*

G. Accounting and the accrual accounting basis

45. The accounts of MCFC and its returns to the CFCB were, at all times, correctly prepared in accordance with the relevant accounting standards [UK GAAP and FRS 101], *including the accrual basis of accounting and the need for a fair presentation.*

46. It is accepted that the sponsorship services contracted for were provided by MCFC, the invoices were correctly raised to the sponsors, pursuant to binding legal agreements, and the sponsorship fees were fair value.

47. Against that background, under accrual accounting, which is a core principle both of IFRS and other major global accounting standards and of the CLFFPR, revenue must be recognised when the sponsorship services are provided, not when cash is received. [MCFC] *issued invoices to the sponsors at regular intervals, as per the binding sponsorship agreements, and recognised revenue in accordance therewith. That treatment arises irrespective of the original source or sources of funds that may have been available to the sponsors. MCFC could not have accounted for the accrual of the sponsorship revenues in any other way. To do so would <u>not</u> have been a fair presentation of an entitlement which had clearly accrued.*

H. Alleged non-cooperation by the Club

48. MCFC has cooperated, in the face of a shifting and still unparticularised case involving allegations of fraud and conspiracy. The reason that the CFCB knows all about the impugned Etisalat and Etihad transactions is precisely because MCFC has cooperated and explained those transactions in great detail. MCFC cannot be criticised for not authenticating the Criminally Obtained Documents, because it has an entitlement not to do so and because this Panel ought to declare them inadmissible. Nevertheless, in order to cooperate, MCFC has addressed the contents of those seven documents <u>as if</u> they were genuine, including in the witness statements of Mr Pearce and Mr Widdowson. MCFC has not adduced evidence from the other persons mentioned in them, Mr Wallace or Mr Chumillas, given that both have long since left the business." (emphasis in original)

49. The obligation to cooperate under Article 56(a) of the CLFFPR does not require MCFC to comply with every demand made of it. The Adjudicatory Chamber acknowledge that the cooperation is only extended to "proper" and "reasonable" requests that are "relevant" to the CFCB's decision making and

this cannot include requests for illegally obtained documents before the admissibility of those documents has been determined by the proper body.

I. The CFCB breached its obligations of due process during the proceedings

50. The Investigatory Chamber breached its obligation to complete the investigation before issuing the Referral Decision, which denied MCFC the opportunity to present its case on key issues to the Appealed Decision. The Appealed Decision is predicated on an incorrect assumption as to the related party status of MCFC and the sponsors.

51. The Investigatory Chamber opened its investigation into both i) related parties' issues; and ii) the Criminally Obtained Documents. However, the Referral Decision expressly states that it "[…] *does not address the question whether or not any of the sponsors mentioned in this decision were or are related parties* […]." Since the Investigatory Chamber has not referred these issues to the Adjudicatory Chamber, the Adjudicatory Chamber had to proceed on the basis that Etisalat and Etihad were unrelated third parties, as they are in fact. However, the Adjudicatory Chamber's central finding is the "arrangements" between ADUG, Etisalat and Etihad which implies that they were related third parties. This finding was inappropriate, outside the adjudicatory powers and MCFC had no opportunity to defend itself in relation to this issue.

52. The Adjudicatory Chamber asserts that the Procedural Decision of 6 December 2019 has "*resolved both the confidentiality and impartiality complaints*" made by MCFC, but that is incorrect. It is a matter of deep regret that the CFCB has systematically breached its duties of confidentiality and impartiality. To date, no action has been taken to address, still less to remedy, these serious failings. Ultimately, MCFC has been investigated and prosecuted through a process that lacked impartiality and has, moreover, harmed MCFC. This violation of MCFC's rights renders the entire process before the CFCB a nullity and requires annulment of the Appealed Decision.

J. Proportionality of the sanction

53. The sanction must be proportionate to the breach, i.e. there must be a reasonable balance between the misconduct and the sanction. One of the main aims of a sanction is its deterrent effect. The deterrent effect of a sanction is necessarily reduced in circumstances where a long period of time has elapsed since the facts allegedly giving rise to the breach. In these circumstances, a sanction should be mitigated, i.e. reduced in severity.

54. The alleged breaches of the CLFFPR are said to have occurred in relation to filings made for the purposes of the 2011/12 to 2015/16 seasons, i.e. most of them were made more than 5 years ago, and were in any event the subject of prior sanction through the Settlement Agreement, including a fine of up to GBP 60,000,000 and limitations on squad size and player transfers.

55. The Adjudicatory Chamber recognized that it lacked jurisdiction to impose disciplinary measures for any breach of the Settlement Agreement. However, the Adjudicatory Chamber referred to the Settlement Agreement to emphasise the "scale of the unfair advantage gained". That approach cannot be lawfully right. Considering the facts and circumstances, namely because it was not challenged before the Adjudicatory Chamber that the sponsorship agreements were entered into a fair market value, the two-season ban from UEFA club competitions would be disproportionate and in excess of those previously imposed.

62. On this basis, MCFC submits the following prayers for relief:

> *"(a) an order that the AC Decision is annulled;*
>
> *(b) declarations that:*
>
> *(i) MCFC has not contravened Articles 13, 43, 47, 51, 56, 58 and 62 of the CLFFPR;*
>
> *(ii) MCFC shall not be excluded from participation in UEFA club competitions in the next two seasons (ie the 2020/21 and 2021/22 seasons);*
>
> *(iii) MCFC shall not be excluded from participation in UEFA club competitions in the two seasons following the final conclusion of this Appeal to CAS;*
>
> *(iv) MCFC is not liable to pay a fine of €30 million to UEFA;*
>
> *(v) MCFC is not liable to pay €100,000 to UEFA on account of the CFCB's legal costs; and*
>
> *(c) an order that the Respondent pay all costs and fees of the procedures before the Investigatory Chamber and before the Adjudicatory Chamber including MCFC's legal costs and other costs incurred in connection with these proceedings; and*
>
> *(d) an order that the Respondent pay all costs and fees of the Appeal, including the administrative fees and costs of the Panel, CAS and MCFC's legal costs and other costs incurred in connection with these proceedings."*

B. The Respondent

63. UEFA provided the following summary of its written submissions, supplemented with a summary of arguments deemed relevant by the Panel:

> *"644 This Answer to the Appeal has demonstrated the following:*
>
> *645 For many years, MCFC disguised equity contributions as sponsorship income. It falsely declared these contributions in its financial statements to The FA and in its Break-Even submissions to UEFA.*
>
> *646 MCFC attempted to disguise these equity contributions as follows:*
>
> - *Two payments of [xxx] each, made in 2012 and 2013, were not made by Etisalat. ADUG, the controlling entity of MCFC, "caused" [X] to make this payment instead of Etisalat. For more than three years, Etisalat did not make any payment of its sponsorship obligations. However, MCFC reported the respective payments as Etisalat sponsorship income.*
> - *Etihad's annual contribution to its sponsorship obligation was, over several years, only £8m. The remaining payments totalling more than £174m were funded or procured to be funded by or on behalf of ADUG. They were not made by Etihad. However, MCFC reported all payments as sponsorship income from Etihad.*
> - *Overall, at least an amount of £204m was so disguised as sponsorship income, while in reality it consisted of equity."*

646(a) More specifically, as to Etisalat, its sponsorship obligations were initially GBP [xxx] per season. These were paid by Etisalat. In or around May 2012 it was agreed, at least in principle, that Etisalat would increase its sponsorship

obligations to GBP [xxx] per year. Etisalat 1A documents this but the final form of agreement, Etisalat 2, was not executed until January 2015.

646(b) Etisalat says that it was unable to pay its obligations until the execution of Etisalat 2. Notwithstanding this, MCFC invoiced Etisalat for the increased sums due and there is nothing on record that Etisalat reacted or otherwise commented on these invoices – which it would have obviously done, if really it was unable at the time to pay against those invoices and payments were due from Etisalat.

646(c) On 13 June 2012, [X] paid GBP [xxx] towards Etisalat's sponsorship obligations. This sum was part of an aggregate payment of GBP [xxx] that included not only sums attributed to other sponsors, but also sums attributable to equity funding. The payment was arranged by [Mr Z] of ADUG.

646(d) No sensible explanation has ever been provided by MCFC as to why: i) ADUG was arranging payments on behalf of a number of Abu Dhabi-based partners; nor ii) why ADUG needed to engage the assistance of [X] to make the payment.

646(e) The aggregate payment was awkward for MCFC from an audit perspective: MCFC needed to be able to show separate receipt of equity funding and sponsorship income. Accordingly, on 6 September 2012, Mr Wallace sent an email to Mr Pearce asking that in future payments attributed to Abu Dhabi-based sponsors were to be physically remitted by those sponsors. He also set out the next instalment of funding from ADUG together with how that was to be attributed to sponsors. According to Mr Wallace's request, GBP [xxx] of the 2012/13 Q2 funding was to be attributed to Etisalat. In accordance with this, [X] made a further payment of GBP [xxx]. This was not the full amount due in relation to Etisalat's sponsorship obligation, which was GBP [xxx]. The balance of GBP [xxx] was not paid by Etisalat until 22 March 2015.

646(f) There is only one conclusion that is consistent with the emails of Mr Pearce, Mr Wallace and Mr Widdowson and with the mechanics of payment: HHSM / ADUG had agreed to fund GBP [xxx] of Etisalat's sponsorship obligations with Etisalat funding the remaining GBP [xxx].

646(g) As to Etihad, the emails of Mr Widdowson and Mr Chumillas consistently refer to Etihad's direct contribution being GBP 8,000,000 per season with the balance of Etihad's sponsorship obligations being funded by ADUG.

646(h) It is absolutely clear from these emails that sums funded by ADUG were to be remitted "*via Etihad*". It is no answer to this to argue, as MCFC seeks to do, that all sums due in relation to Etihad's sponsorship obligations were remitted to MCFC by Etihad; this is exactly what was envisaged and is irrelevant to the source of those sums. The emails make clear that the source was ADUG.

646(i) Corroboration of the fact that Etihad only made a direct contribution of GBP 8,000,000 per year is provided by the separate payments of the sum due in relation to the 2015/16 season. There is no sensible explanation as to why this invoice should have been paid in two instalments.

646(j) The latest explanation offered by MCFC is inconsistent with the payment of this invoice: If it were actually the case that GBP 8,000,000 came from the allocation for marketing expenses in Etihad's commercial operations budget and that the balance had to be paid from "*central funds*" with the approval of the CEO and CFO, then the payment of the balance would be expected to take longer than the payment of the initial GBP 8,000,000.

646(k) In fact the reverse is seen: ADUG's contribution of GBP 59,500,000 was paid 9 months before Etihad's direct contribution.

"*647 Furthermore, MCFC breached its obligation to cooperate with the CFCB. During the proceedings before the CFCB, it refused to provide answers, refused to produce documents, refused to make witnesses available to the CFCB and it gave written explanations which it knew were incorrect.*"

647(a) The entire FFP system depends for its effectiveness on complete and accurate reporting by clubs of their football income and expenses. Article 56 CLFFPR requires clubs to cooperate with the CFCB. If clubs do not truthfully disclose such information, the system cannot work.

647(b) The Appealed Decision recognised that a club facing serious allegations may properly decide not to make formal admissions which might jeopardise its interests in the event of further investigations or proceedings outside the scope of regulation by UEFA or The FA. However, this cannot excuse MCFC from refusing or failing to disclose information and documents which the Investigatory Chamber or the Adjudicatory Chamber consider relevant.

647(c) The Appealed Decision identified two specific respects in which MCFC failed to comply with its duty of cooperation: i) give an explanation to the CFCB (i.e. that payments were made by Etisalat to ADUG and then paid on to MCFC) that was objectively false and MCFC must have known this; and ii) constant and deliberate refusal to provide any other emails and information requested designed to obstruct the investigation.

"*648 The evidence on record is overwhelming. It consists not only of the Football Leaks Documents, but it is corroborated by accounting evidence. MCFC has no answer.*"

648(a) Under Swiss law, illegally obtained evidence is not inadmissible *per se*. The CPC provides that "[i]*llegally obtained evidence shall be considered only if there is an overriding interest in finding the truth*". The same test is applied in sports arbitration. In the Appealed Decision, the Adjudicatory Chamber very carefully applied this test and rightly concluded that the general public interest in establishing the true facts of this case outweighs such interest as MCFC may have in seeking to protect the confidentiality of commercial communications relating to payment of its sponsorship liabilities. Once the Leaked Emails were placed in the public domain they could not be ignored by the CFCB.

648(b) MCFC's argument that there are "*serious questions as to the reliability of the Criminally Obtained Documents*" is highly ironic: MCFC was repeatedly asked to confirm whether or not these documents are genuine. MCFC has refused throughout to provide an answer to this question, and it cannot therefore question the reliability of these documents, only to prevent them from being admitted into evidence.

648(c) MCFC also maintains its position that the CFCB's reliance on the Football Leaks Documents was made "*in bad faith*". It seems that MCFC bases this wholly misplaced allegation on the fact that the apparent hack against the Club's IT system was effected by way of an email imitating a UEFA mail. Obviously, if someone impersonates a UEFA email account, UEFA cannot be blamed. Someone pretending to be UEFA is not UEFA.

648(d) MCFC has repeatedly sought to characterise the CFCB's case as based solely on inferences drawn from the Football Leaks Documents. This characterisation is false. First, the Football Leaks Documents are contemporaneous communications between senior members of MCFC's management that set out in black and white arrangements by which HHSM and ADUG are to fund the majority of the Abu Dhabi-based sponsors' obligations. There is no need for inferences to be drawn from the Football Leaks Documents as the true situation is set out in them. Second, as the Appealed Decision makes clear, while it is mainly based on the Football Leaks Documents, it is also based on the fact that transactions described in the Football Leaks Documents were reflected in materials provided by MCFC. Finally, as to MCFC's suggestion that the Adjudicatory Chamber did not consider all of the evidence available to it, the Adjudicatory Chamber was not obliged to take evidence adduced by MCFC at face value or accept it unreservedly. Its task, which was fulfilled, was to consider the competing evidence affording such weight to each piece of evidence as it saw fit in the circumstances.

648(e) MCFC suggested that the CFCB's case theory is "*irrational because it disregards the value of the rights granted to Etisalat and Etihad under the sponsorship agreements in issue*". This assertion is simply incorrect. MCFC received the payments under the sponsorship agreements in full. The CFCB's case is that the ultimate source of the majority of those payments were not the relevant sponsor but that it was ADUG or HHSM. The acquisition of MCFC was seen as an ideal opportunity to raise the profile of Abu Dhabi and the UAE and that the association with MCFC could be used to generate publicity for other Abu Dhabi and UAE entities, including Etihad, Etisalat, Aabar and ADTA. The funding by HHSM/ADUG of the obligations of MCFC's sponsors was part of a broader plan to develop the economy of Abu Dhabi through promoting some of its companies as global brands. There is consequently nothing "*irrational*" in the CFCB's case theory. Rather, the financial support provided by HHSM to MCFC was of benefit to MCFC, its sponsors and Abu Dhabi.

"*649 MCFC's behaviour shows that it has something to hide. MCFC continues to criticise the process rather than giving answers on the merits. It changes its story and its explanations. It suddenly produces new witnesses with new and lengthy explanations, all of which are implausible.*

650 Nothing that MCFC advances in the Appeal Brief can change anything about the conclusions reached in the Appealed Decision. The CFCB AC's findings are unimpeachable.

651 MCFC breached the CLFFPR as follows:

- *MCFC did not provide correct Financial Statements to its Licensor and to UEFA over several years, breaching Art. 13, 43, 47 and 51 CLFFPR;*
- *MCFC therefore provided an incorrect Break-Even result to UEFA over several years, breaching art. 13, 58 and 62 CLFFPR.*
- *In addition, MCFC failed to duly collaborate with the CFCB throughout this entire case, breaching art. 56 CLFFPR.*

652 The arguments brought forward by MCFC in its Appeal Brief are without merit.

653 In particular, the two new explanations, advanced for the first time now before CAS, must be false:

- *The first new explanation is that Etisalat could not pay its sponsorship obligations between 2012 and 2015 because of internal rules. This totally contradicts MCFC's earlier statements. In addition, if no contract was*

signed until 2015, including these payments as revenue or relevant income was wrong.

- *The second new explanation concerns Etihad's direct contribution of £8m only. MCFC now says that the Football Leaks Documents only describe that £8m came out of Etihad's "marketing budget" whereas the balance came from "centrally held funds".*

  This is again a completely new explanation. There is no support for it in any contemporaneous documents. There is no explanation as to why emails between senior members of MCFC would have referred time and again to something that, on MCFC's latest case, concerned the internal budget of Etihad. This explanation is completely implausible.

654 For the rest, MCFC repeats its earlier arguments already advanced before the CFCB IC and the CFCB AC. The Appealed Decision already addressed those arguments in detail and in a convincing manner. There is no need to repeat these considerations here."

654(a) As to MCFC's argument that the Settlement Agreement should "*immunise*" it for any other possible breach of the CLFFPR, this is a nonsense. The Settlement Agreement did not give MCFC a sort of general blanket waiver for any other possible breach of the CLFFPR. At no point does the Settlement Agreement concern the issue in this case. The Settlement Agreement does not deal with the question whether amounts declared as sponsoring revenue were in reality payments made, or procured by, the ultimate owner of MCFC. The Appealed Decision also makes clear that UEFA did not invalidate the Settlement Agreement and that no sanction is imposed for a breach of the Settlement Agreement. Any discussion about *ne bis* is irrelevant: MCFC has never been sanctioned for what is at stake in this case. No sanction was previously imposed for disguised equity funding. UEFA's letter concerning MCFC's release from the Settlement Agreement merely confirms MCFC's compliance with these measures and the terms of the Settlement Agreement. It released MCFC from the imposed limitations. The letter confirmed nothing more.

654(b) MCFC argues that not all of the identified breaches fall within the limitation period established by Article 37 CFCB Procedural Rules. This is wrong. The first key issue to determine is when "*prosecution*" in this case started. This is the relevant date to establish the relevant five year period, i.e. counting back five years from that date. The Appealed Decision determined that this "*date of prosecution*" was the date the Investigatory Chamber opened an investigation, which was on 7 March 2019. Any breaches occurred before 7 March 2014 cannot be subject to prosecution.

654(c) The relevant date(s) of any rule breach are the dates on which the relevant financial information was submitted to the licensor (The FA) or to UEFA. The breaches at stake in this case consist of the submission to The FA of incorrect financial statements under Article 47 CLFFPR and the submission to the CFCB of incorrect break-even information under Article 62 CLFFPR. It is on this basis that the Appealed Decision, as mentioned, considered all the financial information submitted by MCFC as from 7 March 2014 to fall within the prescription period.

654(d) Throughout these entire proceedings, first before the Investigatory Chamber, then before the Adjudicatory Chamber and now before CAS, MCFC has focused on criticising the process, rather than providing genuine answers to the substantive issues. It is established case law of CAS that any possible procedural flaws are

cured by the *de novo* review by CAS under Article R57 CAS Code. What is more, in this case, there was already a *de novo* procedure before the Adjudicatory Chamber. In any event, all MCFC's individual objections against the procedure must be dismissed.

"655 *The sanction imposed by the CFCB AC is entirely proportionate. The Appealed Decision very carefully considered all the relevant circumstances and it weighed in all relevant factors to determine an appropriate sanction. The high threshold for CAS to review this sanction is clearly not met.*"

655(a) One must bear in mind that this case represents the most serious, sophisticated, deliberate and fundamental attempt to circumvent and violate basic financial fair play principles. Therefore, the imposed sanction must take into account the unprecedented nature of this case in scale, sophistication and duration. It must take account of the financial volume of this case. It must consider that MCFC overstated its sponsorship income by amounts exceeding GBP 200,000,000. It must therefore take into account that when only counting the seasons 2013/14 to 2016/17, MCFC obtained prize money from its participation in the UEFA Champions League at an amount of more than GBP 215,000,000. It must also consider the attitude of the Club, which not only refused to cooperate with the CFCB, but which also gave demonstrably incorrect information and continues to change its explanations. Moreover, the sanction must punish and serve justice. It must serve justice not only to MCFC, but also to all other clubs, which – directly or indirectly – suffered from the unfair advantage MCFC tried to gain. Other clubs respected the FFP regulations and could therefore not qualify for UEFA club competitions or which competed against MCFC with a financial disadvantage. The sanction must, in addition, deter other clubs from committing the same or similar violations of the FFP regulations. The sanction must also ensure that it is proportionate when comparing this case to others. Indeed, suspensions from UEFA club competitions have already been handed down for much smaller violations. If one considers all these factors, there can be no doubt: the imposed sanction, i.e. to exclude MCFC from participation in UEFA club competitions in the next two seasons and to impose a fine of EUR 30,000,000 is entirely proportionate.

"656 *Overall, there is no basis, neither in fact nor in law, to challenge the findings of the CFCB AC. This Appeal must be rejected and the Appealed Decision must be confirmed.*

657 Finally, UEFA wishes to add again that it considers MCFC to be a very important club and participant to UEFA club competitions. It welcomes all the positive impact which MCFC has brought to the world of football and it welcomes all the very significant investments made by the club and its owners.

658 However, the rule breaches committed by MCFC cannot be ignored. They must have consequences. The CFCB AC determined those consequences in a fair, transparent, neutral and objective manner. MCFC must accept this, like any other club that breaches the rules.

659 For all these reasons, UEFA respectfully requests the CAS to issue an Award in line with UEFA's Prayers for Relief."

64. On this basis, UEFA submits the following prayers for relief:

"*1. To dismiss the Appeal and to confirm the Decision under Appeal in its entirety;*

2. To charge all procedural costs of this arbitration to Appellant;

3. *To order Appellant to pay a contribution to the legal fees of UEFA at an amount of at least CHF 150,000.-*"

VII. JURISDICTION

65. Article R47 of the CAS Code provides that:

> "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

66. The jurisdiction of CAS derives from Article 34 CFCB Procedural Rules (2019 edition) and Article 62(1) UEFA Statutes (2018 edition).

67. Article 34 CFCB Procedural Rules provides as follows:

> "*1. A party directly affected has the right to appeal a final decision of the CFCB.*
>
> *2. Final decisions of the CFCB may only be appealed before the Court of Arbitration for Sport (CAS) in accordance with the relevant provisions of the UEFA Statutes.*"

68. Article 62(1) UEFA Statutes provides that "[a]*ny decision taken by a UEFA organ may be disputed exclusively before the CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration*".

69. The Appellant has exhausted the legal remedies at UEFA in accordance with Article R47 CAS Code, as confirmed by the Adjudicatory Chamber in para. 193 of the Appealed Decision:

> "*This is a final decision, incorporating the procedural decision made on 6 December 2019 (at Annex A), which may be appealed in writing before the Court of Arbitration for Sport (CAS) in accordance with Articles 34(2) of the Procedural Rules and Articles 62 and 63 of the UEFA Statutes.* [...]."

70. The Appealed Decision is a final decision of UEFA, within the meaning of Article R47 CAS Code.

71. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by both Parties.

72. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VIII. ADMISSIBILITY

73. The Appealed Decision was communicated to the Appellant on 14 February 2020 and the Statement of Appeal was filed on 24 February 2020, i.e. within the 10-day deadline fixed under Article 62(3) of the UEFA Statutes, which stipulates that the time limit for filing an appeal with CAS is 10 days as from the receipt of the Appealed Decision. The

appeal also complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

74. The admissibility of the appeal is not disputed by UEFA.

75. It follows that the appeal is admissible.

IX. APPLICABLE LAW

76. Article 63(2) UEFA Statutes provides the following:

> "[P]*roceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS.*"

77. Article R58 CAS Code provides the following:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

78. The applicable regulations are the various editions of the CLFFPR and the CFCB Procedural Rules.

79. Article 26 CFCB Procedural Rules provides that:

> "*In rendering its final decision, the adjudicatory chamber applies the UEFA Statutes, rules and regulations and, in addition, Swiss law.*"

80. Accordingly, the various rules and regulations of UEFA are applicable primarily, in particular the various editions of the CLFFPR and the CFCB Procedural Rules and, additionally, Swiss law. This issue is not disputed between the Parties.

81. Although different editions of the CLFFPR and the CFCB Procedural Rules apply, the Parties have not identified any material differences between the different editions and have consistently referred to the CLFFPR (2015 edition) and the CFCB Procedural Rules (2019 edition). The Panel does the same.

X. PRELIMINARY ISSUE – ARE THE LEAKED EMAILS AUTHENTIC AND DO THEY COMPRISE ADMISSIBLE EVIDENCE?

82. MCFC maintains that it does not deny or accept the authenticity of the Leaked Emails as they were stolen by means of an illegal hacking of its computer systems. MCFC also argues that the Leaked Emails do not comprise admissible evidence as the balance of interest test to be applied shall give higher protection to MCFC's personality rights than to the wider public interest. UEFA argues that the general public interest in establishing the true facts of this case outweighs the interests of MCFC in seeking to protect the confidentiality of commercial communications.

A. The authenticity of the Leaked Emails

83. The Panel notes that the matter of the authenticity of the Leaked Emails was resolved because MCFC ultimately – at least partially – submitted the unredacted original versions of the Leaked Emails into evidence. Leaked Email No. 4, however, still contained a part that was redacted. Furthermore, the attachment to Leaked Email No. 3 was not submitted. MCFC explicitly acknowledged that the original versions of the Leaked Emails produced on 18 May 2020 were authentic.

84. By comparing the Leaked Emails with the original documents, it transpired that the Leaked Emails were mainly selected parts of emails, from which certain information had been deleted, such as additional text, the names of the persons added in carbon copy and the dates. It is however true that Leaked Email No. 4, i.e. an email that was sent by Mr Pearce to Mr Chumillas on 29 August 2013 is in fact a combination of two separate emails. Although this gives a somewhat distorted impression, the Panel finds that it did not affect the veracity of the Leaked Emails on which UEFA primarily based its case.

85. The Panel took note of MCFC's legal position that it was entitled to refrain from acknowledging the authenticity of the Leaked Emails because they had been obtained by illegal means and that it had instructed the factual witnesses that were either authors or recipients of certain of the Leaked Emails (i.e. Mr Widdowson and Mr Pearce) to refrain from acknowledging the authenticity, but to testify based on a presumption that the Leaked Emails were genuine.

86. The majority of the Panel does not consider it necessary to make any determination as to MCFC's legal position, as it finds that Mr Widdowson and Mr Pearce acknowledged the veracity of the Leaked Emails by their testimonies. Mr Widdowson explicitly did so. Mr Pearce did not, but by referring to his thought process in drafting certain sections of the emails, the Panel finds that he implicitly also acknowledged the veracity of the Leaked Emails.

87. To avoid any doubt in respect of the authenticity of the Leaked Emails, the Panel does not rely on the Leaked Emails, but on the original versions thereof provided by MCFC on 18 May 2020. For ease of reference, the Panel however continues to refer to the Leaked Emails.

88. MCFC maintains that the Leaked Emails were only 6 emails and one attachment out of a total of 5,500,000 documents that were illegally hacked from MCFC. This information was not disputed by UEFA, nor could UEFA dispute this, because UEFA only learned about the Leaked Emails through media publications and was not alleged to be involved in the hacking. The Panel did not have evidence before it to establish whether the Leaked Emails are the only evidence that could support UEFA's case out of all the hacked emails, because such information was not disclosed by MCFC and – in the view of the majority of the Panel – because UEFA ultimately chose not to seek further disclosure.

B. The admissibility of the Leaked Emails and the original versions thereof

89. MCFC submits that the Leaked Emails are not admissible evidence as they have been illegally obtained, because a Portuguese judge decided that the hacked information

could not be used against the victims of the hacking. MCFC also argues that its personality rights prevail over the general interest in finding out the truth, whereas UEFA submits that the Leaked Emails are admissible evidence.

90. The Panel acknowledges the finding of a Portuguese judge in criminal proceedings against the person allegedly responsible for the illegal hacking of MCFC's servers that any documents or data obtained by such hacking should not be used as evidence in "[...] *a lawful and fair penal process, in any jurisdiction* [...]" against the victims of the hacking.

91. The Panel does not consider itself bound by such finding, because the facts before this Panel are different. UEFA has used information that was publicly available. It is not alleged that UEFA took part in the illegal hacking. Furthermore, the present proceedings are governed from a procedural perspective by Swiss law and on a substantive level by the various regulations of UEFA and, subsidiarily, by Swiss law. Accordingly, the question of whether the Leaked Emails can be used as evidence is to be answered based on Swiss law (as the law applicable to the procedure).

92. The admission of means of evidence is subject to procedural laws, i.e. the *lex arbitri*. Since the seat of the present arbitration is Switzerland, Switzerland's Private International Law Act (the "PILA") is applicable.

93. Article 184 PILA provides as follows:

> "*The arbitral tribunal shall take evidence.*"

94. Article 13(2) CFCB Procedural Rules provides as follows:

> "*All means of evidence may be considered by the CFCB Chief Investigator. This includes, but is not limited to, the defendant's testimony, witness testimonies, documents and records, recordings (audio or video), on-site inspections and expert reports.*"

95. Accordingly, Article 13(2) CFCB Procedural Rules does not explicitly permit or prohibit to use of illegally obtained evidence.

96. Absent any procedural provision agreed upon by the Parties, it is up to the Panel according to Article 182(2) PILA to fill this *lacuna*. In doing so, the Panel takes guidance with the respective rules governing the taking of evidence before state courts in civil matters. In this respect reference is made to Article 152(2) of the Swiss Code of Civil Procedure (the "CPC") to which the Parties also referred in their submissions. The provision requires in case of illegally obtained evidence a balancing of interests, i.e. whether or not there is an overriding interest in finding out the truth, or whether MCFC's personality rights prevail.

97. This test has been applied in CAS jurisprudence on other occasions:

> "*If a means of evidence is illegally obtained, it is only admissible, if the interest to find the truth prevails (Art. 152, 168 Swiss Code of Civil Procedure ("CCP"); HAFTER, Commentary to the Swiss Code of Civil Procedure, 2nd ed., para. 8). According to the Swiss Federal Tribunal and the ECHR, the courts shall balance the*

> *interest in protecting the right that was infringed by obtaining the evidence against the interest in establishing the truth. If the latter outweighs the first, the courts may declare a piece of evidence admissible for assessment even though it was unlawfully acquired (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 3rd ed., p. 461).*
>
> [...]
>
> *Finally, the Sole Arbitrator notes that, according to the Swiss Federal Tribunal, not only the interest of a complainant in abstaining from obtaining evidence in an illegal manner is relevant in this balancing, but also the interest of not having this evidence used against him:* [...]" (CAS 2016/O/4504, paras. 66, 69 of the abstract published on the CAS website)

98. Article 152(2) CPC provides as follows in a translation provided by MCFC that remained undisputed by UEFA:

> "*Illegally obtained evidence shall be considered only if there is an overriding interest in finding the truth.*"

99. The Panel is also prepared to accept that illegally obtained evidence should generally only be admitted with restraint (LEU, Art. 152 Recht auf Beweis, in: BRUNNER, GASSER, SCHWANDER (Eds.), ZPO Schweizerisches Zivilprozessordnung, Art. 152, N. 96, with further references to RÜEDI, Haftpflichtprozess, S. 170, and RÜEDI, OFK ZPO, Art. 152 N 38).

100. Embarking on such balancing exercise, the Panel considers it an important element that the Leaked Emails are already in the public domain and are highly publicised, i.e. that they are not alleged to have been illegally obtained by UEFA. The Panel finds that this excludes MCFC's interests in not having the Leaked Emails admitted in these arbitration proceedings.

101. Furthermore, the mere fact that *Der Spiegel* and other media outlets have published articles about and related to the Leaked Emails is demonstrative of the fact that there is clearly a public interest in the alleged contravention by MCFC of the CLFFPR.

102. It is also important that UEFA is not alleged to have been involved in obtaining the Leaked Emails, but only learned about them from the above-mentioned publications. It is unlikely that UEFA could have discovered the Leaked Emails in a legitimate manner, although MCFC ultimately provided UEFA (partly) with the original versions of the Leaked Emails, which evidence was not illegally obtained.

103. The Panel also finds that the CLFFPR do not only serve a private interest, but also a public interest in that the overarching objectives of these regulations are, as set out in Article 2 CLFFPR, *inter alia*, to encourage clubs to operate on the basis of their own revenues, to introduce more discipline and rationality in club football finance, to encourage responsible spending for the long-term benefit of football and to protect the long-term viability and sustainability of European club football.

104. The public interest is enhanced by the European Parliament's endorsement of the CLFFPR's objectives. In a resolution adopted on 2 February 2017, the European Parliament states that it:

> *"Welcomes good, self-regulatory practices, such as the Financial Fair Play initiative, in that they encourage more economic rationality and better standards of financial management in professional sports, with a focus on the long-term as opposed to the short-term, thereby contributing to the healthy and sustainable development of sport in Europe; emphasises that Financial Fair Play has encouraged better financial management standards and should therefore be applied strictly."* (2016/2143(INI), para. 33)

105. The Panel does not have sufficient evidence on file to determine whether the hacker is an extortionist that hacked documentation from MCFC's servers for his own personal gain or whether he is a whistle-blower. There is no evidence on file that any extortion demands were made to MCFC. Notwithstanding this, it appears clear that the hacker engaged in illegal conduct and that this is, in general, not something that is to be encouraged. The Panel, however, finds that the interest in discouraging people from engaging in such illegal hacking by excluding evidence is outweighed by the public interest in holding MCFC accountable for its alleged wrongdoing with respect to an alleged large scale deceit of the CLFFPR.

106. Finally, MCFC's reference to a Zurich Appeal Court decision (LA180031-O7U, Judgment of 20 March 2019), is misplaced. In such case, an employer illegally procured screenshots of Whatsapp messages of an employee violating the latter's personality rights. The Zurich Appeal Court determined that the interest in ascertaining the truth did not outweigh the protection of the employee's personality rights, since there were other – lawful – means at the employer's disposal to gather the relevant evidence. The Panel considers it to be a key difference that in such case the illegally obtained evidence was directly and illegally procured by the employer, whereas the evidence in the matter at hand was not said to have been procured by UEFA, but by an unrelated third person. Furthermore, the source of the evidence used by UEFA – the media – was not illegal and in addition, there was no other source available for UEFA to obtain the relevant evidence.

107. Considering all these elements, the Panel finds that the balance clearly sways in favour of the interest of discerning the truth at the expense of MCFC' personality rights that are not violated by using publicly available evidence in an arbitration procedure.

108. Consequently, although the evidentiary value of the Leaked Emails will be assessed in more detail below, the Panel finds that the Leaked Emails comprise admissible evidence.

XI. MERITS

A. UEFA's Club Licensing and Financial Fair Play System

109. Prior to assessing the legal issues at stake, the Panel deems it useful to provide a general background of UEFA's Club Licensing and Financial Fair Play System.

110. The issues raised in the Appealed Decision relate primarily to the audited financial statements submitted by MCFC to The FA as the national licensor and the break-even information submitted to UEFA between 2012 and 2016 concerning the sponsorship contributions derived by MCFC from Etisalat and Etihad.

111. The CLFFPR entered into force on 1 June 2012 and, as set out in Article 2 CLFFPR, aim, *inter alia*, at protecting the long-term viability and sustainability of European club football, at improving the economic and financial capability of club and increasing their transparency and credibility, at introducing more discipline and rationality in club football finances, encouraging clubs to operate on the basis of their own revenues, and at encouraging responsible spending for the long-term benefit of football.

112. The CLFFPR can largely be divided in two parts: the licensing process and the monitoring process.

i) The UEFA Club Licensing Process

113. The UEFA Club Licensing Process is set forth in Part II of the CLFFPR. Assessment of the financial criteria for admission to UEFA club competitions is initially the responsibility of the national licensor, i.e. here The FA. Under Article 47 CLFFPR, a club must submit to the national licensor audited financial statements, which must meet the requirements set out in Annex VI and VII CLFFPR. Those requirements include the preparation of financial statements containing a balance sheet, profit and loss accounts, and cash flow statements complying with proper accounting standards.

114. The disclosure of sponsorship revenues and cash flow from operating activities is required under sections C(1) and D(1) of Annex VI CLFFPR. If the relevant cash flows are not revenue from operating activities but cash flows from financing activities, including cash inflow from an increase of capital or equity, those cash flows must be reported as such. Under section E of Annex VI CLFFPR, transactions with related parties must be reported, including the amount and nature of transactions with a parent entity.

115. As per Articles 43(1)(i) and 51(2) CLFFPR, a club is required to present a declaration that all documents submitted to the licensor are complete and correct. The UEFA Club Licensing Process takes place prior to admission to an UEFA club competition.

ii) The UEFA Club Monitoring Process

116. Under Article 57 CLFFPR, all licensed clubs that have qualified for a UEFA club competition must comply with the monitoring requirements, i.e. the break-even requirements (Articles 58 to 64 CLFFPR) and other monitoring requirements (Articles 65 to 68 CLFFPR). The UEFA Club Monitoring Process takes place while a club is participating in an UEFA club competition, i.e. subsequent to admission.

117. Article 54 CLFFPR describes the monitoring process for assessment by the CFCB for a club's compliance with the break-even requirements. A club must file the required completed monitoring documentation to the national licensor for onward submission to UEFA, for assessment by the CFCB. Pursuant to Article 62 CLFFPR, clubs must provide the CFCB with all necessary break-even information, including the relevant income and the relevant expenses, as defined in Annex X CLFFPR. Under section A of Annex X, relevant income is defined as including revenue derived from the main sponsor and other sponsorship. The management of the club must confirm the completeness and accuracy of the break-even information submitted.

118. Compliance with the break-even requirements is assessed by reference to the "reporting periods" and the "monitoring period" as set out in Article 59 CLFFPR. A reporting period is annual. The monitoring period covers three reporting periods. Under Article 60 CLFFPR, the break-even results for the reporting periods are aggregated to compute compliance with the break-even requirement. The reporting periods are referred to as T, the period ending in the calendar year in which the competition commences, T-1 the preceding year, and T-2 the year preceding T-1. In 2013/14, the first season monitored under the 2012 edition of the CLFFPR, only two reporting periods, the year ended 2013 (T) and the year ended 2012 (T-1), were monitored.

119. If a club's relevant expenses are less than the relevant income for a reporting period, then the club has a break-even surplus; if a club's relevant expenses are greater than the relevant income for a reporting period, then the club has a break-even deficit. Under Article 61 CLFFPR, the acceptable deviation from an aggregate break-even deficit is EUR 5,000,000, but this level can be exceeded by up to EUR 30,000,000 if such excess is entirely covered by contributions from equity participants and/or related parties.

120. Under Article 63 CLFFPR, the break-even requirement is fulfilled if no indicator (as defined in Article 62(3)) is breached and the licensee club has a break-even surplus for reporting periods T-2 and T-1.The break-even requirement is also considered fulfilled if an indicator (as defined in Article 62(3)) is breached, if: a) the licensee club has an aggregate break-even surplus for reporting periods T-2, T-1 and T; or b) the licensee club has an aggregate break-even deficit for reporting periods which is within the acceptable deviation, having also taken into account the surplus (if any) in the reporting periods T-3 and T-4 as set forth in Article 60(6) CLFFPR.

121. Under the IT Solution Toolkit (the "Toolkit") requirements, each club that qualifies for a UEFA club competition must submit break-even information for the reporting periods T-1 and T-2 in June each year in the "BE.06 package". Clubs may be requested to submit break-even information for T in October in the "BE.09 package". MCFC was qualified to compete in the UEFA Champions League in all relevant years and was required to submit both packages. MCFC's accounting year, and thus its reporting period, ended on 31 May of each year.

B. The Main Issues

122. The main issues to be resolved by the Panel are:

i) Did the CFCB breach its obligations of due process and, if so, what are the consequences thereof?
ii) Does the conclusion of the Settlement Agreement in 2014 and the release therefrom in 2017 bar UEFA from charging MCFC for the issues at stake in these proceedings?
iii) Are the charges against MCFC time-barred and, if so, to what extent and what are the consequences thereof?
iv) Are the Leaked Emails authentic and do they comprise admissible evidence?
v) What is the applicable standard of proof?
vi) Did MCFC disguise equity funding as sponsorship contributions?
vii) Did MCFC fail to cooperate with the CFCB's investigation?

viii) If any violation is determined to be committed, what is the appropriate sanction to be imposed?

i) Did the CFCB breach its obligations of due process and, if so, what are the consequences thereof?

123. MCFC refers to two alleged breaches of due process by the CFCB. The first issue is related to the alleged premature issuance of the Referral Decision, i.e. the issuance of the Referral Decision by the Investigatory Chamber before having concluded its investigation into the "related party issue". The second issue is related to the alleged leaking of information during the proceedings before the Investigatory Chamber against MCFC. Both issues are addressed separately below.

a. The investigation into the "related party issue"

124. MCFC maintains that the CFCB breached its obligations of due process by prematurely issuing the Referral Decision and thereby denying MCFC the opportunity to present its case on key issues. In particular, MCFC submits that the Appealed Decision was predicated on an incorrect assumption as to the related party status of MCFC and its sponsors that could have been prevented had the Investigatory Chamber completed its investigation in this respect before issuing the Referral Decision.

125. UEFA principally submits that there were no procedural flaws in the process before the CFCB and that, even if there had been any such procedural flaws, these are cured by the *de novo* review of CAS under Article R57 CAS Code.

126. Section F of Annex X CLFFPR provides as follows:

> "*Related party, related party transactions and fair value of related party transactions*
>
> *1. A related party is a person or entity that is related to the entity that is preparing its financial statements (the 'reporting entity'). In considering each possible related party relationship, attention is directed to the substance of the relationship and not merely the legal form.*
>
> [...]
>
> *4. A related party transaction is a transfer of resources, services or obligations between related parties, regardless of whether a price has been charged (disclosure requirements in respect of related parties and related party transactions are set out in Annex VI).*
>
> *5. A related party transaction may, or may not, have taken place at fair value. Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable willing parties in an arm's length transaction. An arrangement or a transaction is deemed to be 'not transacted on an arm's length basis' if it has been entered into on terms more favourable to either party to the arrangement than would have been obtained if there had been no related party relationship.*"

127. The Panel finds that the "related party issue" is separable from the charges based on the Leaked Emails. Indeed, should the Investigatory Chamber and the Adjudicatory Chamber have concluded that any of MCFC, ADUG, Etihad and/or Etisalat were

related parties, MCFC may have failed to comply with its reporting obligations in this respect and could be sanctioned on such basis.

128. Accordingly, if MCFC's argument would be followed and that it be assumed that an investigation into the related party issue had not been finalised when the Referral Decision was issued, the Panel finds that MCFC is still not prejudiced by this, because now that the related party issue and the fair value of the sponsorship agreements of Etihad and Etisalat are not put in issue, it should be presumed that the sponsorship agreements were negotiated at arm's length between unrelated parties at fair value.

129. The Panel does not agree with MCFC's argument that the Adjudicatory Chamber's central finding is the "arrangements" between ADUG, Etisalat and Etihad and that this implies that they were related third parties. If this were the position of UEFA, it should have charged MCFC with such violation, but it did not.

130. Notwithstanding this conclusion, the Panel finds that even assuming that MCFC, ADUG, Etihad and Etisalat were not related parties, it may be that arrangements were made between these entities to disguise equity contributions from HHSM and/or ADUG as sponsorship income from Etihad and Etisalat. Such arrangements do not necessarily require that these entities are related parties in the sense of Section F of Annex X CLFFPR.

131. Indeed, assuming that such arrangements were put in place, Etihad and Etisalat could be deemed to profit from such arrangement, because they would have to pay fair value sponsorship fees to MCFC, while such sponsorship contributions would be largely funded by HHSM and/or ADUG.

132. Also HHSM and/or ADUG could profit from such arrangement, because for HHSM and/or ADUG it does not necessarily make a difference whether they would have to pay the relevant amounts as equity funding to MCFC directly or to Etihad and/or Etisalat if these entities would in turn forward such funding to MCFC as sponsorship contributions.

133. Finally, and this is the most controversial part as MCFC maintains that it is flawed, the Panel finds that MCFC could also profit from such arrangement in that it could report more relevant income for monitoring purposes, i.e. it could, at least in theory, maximise equity funding up to the acceptable deviation and receive additional disguised equity funding through its sponsors as sponsorship contributions where it may have been difficult to obtain the same sponsorship deals with these sponsors without such disguised equity funding. Accordingly, under the arrangement, MCFC could in theory both maximise equity funding as well as sponsorship contributions. Indeed, the assumption that the sponsorship agreements between MCFC and Etihad and Etisalat were concluded at fair value, does not derogate from the fact that Etihad and Etisalat may not have been inclined to pay the same sponsorship contributions without the financial support of HHSM and/or ADUG.

134. The Panel therefore does not regard MCFC's argument that UEFA's overall case theory is commercially irrational as persuasive. To the contrary, the Panel finds that the implementation of the "arrangements" could have made commercial sense for all entities involved. The Panel considers that such alleged arrangement could be

considered negotiated at arms' length between all entities involved, so that no related party issue arises. Accordingly, the absence of any finding or assumption that these entities are related parties in the sense of Section F of Annex X CLFFPR does not prejudice MCFC's case.

135. Consequently, whether there is sufficient evidence to establish such "arrangement" will be assessed in more detail below, but for here it suffices to conclude that the Panel is of the view that MCFC is not prejudiced by the Investigatory Chamber's decision to issue the Referral Decision before concluding its investigation into the related party issue.

b. The CFCB's alleged breach of confidentiality and impartiality

136. MCFC maintains that because of the leaks of information during and shortly after the proceedings before the Investigatory Chamber, the process lacked impartiality and therefore harmed MCFC. MCFC submits that this rendered the entire process before the CFCB a nullity and requires annulment of the Appealed Decision.

137. MCFC submits that the person(s) who disclosed the information must have known that such damage would occur when making the disclosures and that such person(s), therefore, cannot have been impartial as to the outcome of the process for MCFC.

138. Again, UEFA submits that there were no procedural flaws in the process before the CFCB and that, even if there had been any such procedural flaws, these are cured by the *de novo* review of CAS under Article R57 CAS Code. Moreover, UEFA submits that the proceedings before the Adjudicatory Chamber were also *de novo* proceedings, so that any alleged procedural flaws in the proceedings before the Investigatory Chamber were already cured.

139. First of all, the Panel endorses the findings of the CAS panel in *CAS 2019/A/6298 Manchester City FC v. UEFA* in that the alleged leaking of information by members of the Investigatory Chamber and/or the UEFA administration about the proceedings against MCFC is worrisome and too coincidental not to be taken seriously.

140. The Panel observes, after the issuance of the award in *CAS 2019/A/6298Manchester City FC v. UEFA*, the Adjudicatory Chamber rejected an application from MCFC to stay the proceedings pending an investigation into the alleged leaking for information by the Investigatory Chamber by means of the Procedural Decision and that MCFC subsequently filed a complaint with the CEDB. The proceedings before the CEDB are still pending, or at least the Parties have not provided the Panel with any information to the contrary.

141. The Panel took due note of MCFC's criticism on the findings of the CAS panel in *CAS 2019/A/6298 Manchester City FC v. UEFA*, more particularly that MCFC finds that the CAS panel in such proceedings had not considered MCFC's key argument in this respect, namely that the person(s) responsible for the deliberate leaking of the confidential content of the Referral Decision must have known that MCFC would suffer harm as a consequence of such leaking of information and can therefore not be considered impartial at any point during the process.

142. Having considered MCFC's criticism, the Panel supports the reasoning of the CAS panel in *2019/A/6298 Manchester City FC v. UEFA*. Indeed, the Panel finds that, even if there had been leaks by member(s) of the Investigatory Chamber, this still did not impact on the impartiality of the Investigatory Chamber, for the leaked information only anticipated what was later confirmed in the Referral Decision. Accordingly, although the Referral Decision may not have been communicated to MCFC at the relevant point in time, the decision had already been taken, for otherwise such information could not have been leaked. There is no indication that the leaking of information, even if the source of the leak was a member of the Investigatory Chamber, had any impact on the impartiality of the decision-making process.

143. In any event, the Panel is not convinced that the source of the leak, assuming that this was a member of the Investigatory Chamber, engaged in the leaking of information with the intention of harming MCFC. This issue is to be investigated by the CEDB, and it is not for the Panel to make any conclusions regarding the CEDB's investigation or its eventual outcome. Based on the limited information at its disposal, the Panel finds that such leaks should not have happened but is not convinced that it had any impact on the Referral Decision

144. Furthermore, even presuming for the sake of the argument that one or more members of the Investigatory Chamber did lack the required impartiality, this still would not have any bearing on the present proceedings. As correctly argued by UEFA, the Adjudicatory Chamber conducted *de novo* proceedings and there have been no reports about leaking of information by members of the Adjudicatory Chamber or that the members of this body lacked the required impartiality. Hence, any potential bias from member(s) of the Investigatory Chamber must in any event be presumed to be cured by the Appealed Decision issued by the Adjudicatory Chamber.

145. Furthermore, it is consistent CAS jurisprudence that the *de novo* power of CAS panels in appeal arbitration proceedings also has a curing effect:

> "*The issue of the powers of the appeal panel has also been considered time and time again by CAS appeal arbitration tribunals when considering allegations of a denial of natural justice in the making of the original decision. An equally well accepted view has been taken that as it is a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error ("even in violation of the principle of due process") which may have occurred at first instance, whether within the sporting body or by the Ordinary Division CAS panel, will be "cured" by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations (see for example CAS 98/211, at para. [8]). This approach to the issue is based on a commonsense construction of the appellate procedure rules in the CAS Code having regard to the fact that it is a repeat informal arbitration process with an express obligation on both parties to lodge witness statements and other evidentiary measures when initiating the appeal procedure where the panel has full powers to review the facts and the law.* [...] (CAS 2008/A/1574, para. 32 of the abstract published on the CAS website; see recent endorsements of this view in CAS 2018/A/5929, para. 91 of the abstract published on the CAS website; and CAS 2016/A/4648, para. 74 of the abstract published on the CAS website)

146. On this basis, the Panel finds that insofar as the alleged defects of the proceedings before the Investigatory Chamber had not already been cured by the Adjudicatory Chamber, such defects are cured by the present appeals arbitration proceedings before CAS.

147. Consequently, whether or not information was leaked to the media by member(s) of the Investigatory Chamber or the UEFA administration, the Panel is not convinced that one or more members of the Investigatory Chamber lacked the required impartiality and that the entire process before the CFCB must be considered a nullity and requires annulment of the Appealed Decision.

c. Conclusion

148. Consequently, the Panel finds that the CFCB did not breach its obligations of due process and that any such breach has in any event been cured by the *de novo* nature of the proceedings before the Adjudicatory Chamber and subsequently by the present appeal arbitration proceedings before CAS.

ii) Does the conclusion of the Settlement Agreement in 2014 and the release therefrom in 2017 bar UEFA from charging MCFC for the issues at stake in these proceedings?

149. MCFC maintains that all of the alleged breaches in issue in these proceedings were the subject of the Settlement Agreement and therefore can no longer be lawfully pursued by the CFCB, whereas UEFA submits that the issues covered by the Settlement Agreement do not concern the issues at stake in these proceedings.

150. The Settlement Agreement dated 16 May 2014 contains the following relevant terms:

> "*2. Break-even Status Today*
>
> *2.1* [MCFC] *is aware that the CFCB has come to the conclusion that* [MCFC] *has a Break-even deficit result of [EUR xxx] for the Monitoring Period T (2013) and of [EUR xxx] for the Monitoring Period T-1 (2012), i.e. an adjusted aggregate Break-even result – in excess of the allowable deviation – of [EUR xxx].*
>
> *2.2 For its part and for the reasons indicated several times to UEFA and the CFCB,* [MCFC] *considers that it is not in breach of the UEFA CLFFPR. However, and for the purpose of avoiding the costs, duration and risks arising out of any litigation, the Parties agreed to enter into this Agreement.*
>
> [...]
>
> *4. Attributable values of specific contracts*
>
> *4.1 The Investigatory Chamber of the* [CFCB] *is of the preliminary view that the sponsorship contracts concluded between* [MCFC] *and [...]and* [...] *are above fair market value.* [MCFC] *disputes this preliminary view on the basis that neither company is a related party and the amounts payable are not above fair market value. The Parties agree that the issue of the determination of the fair market value of the above-mentioned contracts may remain open due to the obligations set out in the present Agreement.*

[...]

5. *Financial Contribution and Withholding of Prize Money*

5.1 [MCFC] *agrees that a total amount of EUR 60 Mio. shall be withheld by UEFA at the latest by the end of the respective season from the revenues of the UEFA competitions 2013/14, 2014/15, 2015/16 (or any later UEFA competition, if* [MCFC] *does not qualify or if the amount of prize money is not sufficient). Of such total amount, an amount of EUR 20 Mio. is withheld unconditionally, as set out in Art. 8.4.1, and an amount of EUR 40 Mio. is withheld conditionally, as set out in Art. 8.4.2.*"

151. On 20 April 2017, the Investigatory Chamber confirmed that MCFC had complied with the final objective stated in the Settlement Agreement and could therefore "*now exit*" the Settlement Regime. The total amount withheld from MCFC's revenues as a consequence of the Settlement Agreement was therefore EUR 20,000,000.

152. UEFA does not charge MCFC for a breach of the terms of the Settlement on the basis of Article 15(5) CFCB Procedural Rules, nor does it seek to invalidate the Settlement Agreement. Any arguments submitted by MCFC in this respect therefore do not have to be addressed. The Settlement Agreement stands and remains binding upon the Parties.

153. The Panel finds that it transpires from the terms of the Settlement Agreement that the issues at stake at the relevant moment in time were MCFC's compliance with the monitoring process, more specifically i) whether it had a break-even deficit in excess of the acceptable deviation; ii) whether the sponsorship agreements with Aabar and Etisalat were concluded at fair value; and iii) whether or not the latter entities were related parties. The mere fact that the scope of the Investigatory Chamber's investigation in 2014 may initially have been larger, which derives from a document entitled "*Preliminary view prior to decision*" issued by the Investigatory Chamber on 2 May 2014, referring to Articles 1-3, 53-74 CLFFPR (Edition 2012), does not make this any different because this document is trumped by the content of the Settlement Agreement. In any event, because the Settlement Agreement was entered into, the Investigatory Chamber did not issue a referral decision. As will be set out in more detail below, the Panel finds that it is with the issuance of a referral decision that charges are made known to the defendant.

154. The alleged regulatory breaches that resulted in the conclusion of the Settlement Agreement are not put in issue in the present proceedings. Rather, the key issue in the present proceedings is whether HHSM and/or ADUG provided disguised equity funding to MCFC through Etihad and Etisalat and whether this was properly reflected in the financial information submitted by MCFC to UEFA for licensing and monitoring purposes. These specific charges do not touch upon the issues addressed in the Settlement Agreement.

155. MCFC maintains that the Adjudicatory Chamber mischaracterised the issue in considering that there was a "*dispute*" that was unknown at the time of the Settlement Agreement. MCFC argues that, rather, there are only (alleged) facts that were unknown.

156. The Panel finds that the relevant aspect is that the (alleged) new facts potentially result in violations that were not part of the charges investigated in the Investigatory

Chamber's investigations leading up to the Settlement Agreement. Accordingly, there was no need for the CFCB to make reference to the terms and meaning of the Settlement Agreement, and it was perfectly entitled to file new charges against MCFC, distinct from those that were the subject of the Settlement Agreement.

157. The alleged disguised equity funding may have impacted on MCFC's compliance with UEFA's Club Monitoring Process, but, importantly, MCFC has not been charged for a breach of Article 63 CLFFPR ("*Fulfilment of the break-even requirement*"), but only for violations of Articles 13 ("*general responsibilities of the license applicant*"), 58 ("*notion or relevant income and expenses*") and 62 CLFFPR ("*break-even information*"). MCFC's allegation that the scope of the Investigatory Chamber's investigation was impermissibly large as it involved issues that were covered by the Settlement Agreement is irrelevant because such issues are not at issue in the present appeal arbitration proceedings before CAS and such scope was in any event defined by the charges set out in the Referral Decision.

158. Since the issues covered by the Settlement Agreement are different from the issues set out in the Referral Decision and thus at stake in these proceedings, the Panel also finds it irrelevant that MCFC was released from the Settlement Agreement. The Settlement Agreement did not immunise MCFC from any possible further and different charges from the ones covered by the Settlement Agreement.

159. MCFC's argument that the release from settlement regime set forth by the Settlement Agreement, i.e. that it had to comply with a specific regime for determining compliance with the break-even requirements for the reporting periods ending in May 2014, 2015 and 2016, immunises it from issues in relation to the relevant period were closed, must be dismissed. As stated in the Appealed Decision, the release letter does not give rise to any reasonable or legitimate expectation that if evidence of other breaches of the CLFFPR were later discovered they would not be investigated.

160. Because of the Settlement Agreement, MCFC had to comply with certain specific financial targets for future reporting periods. Insofar as MCFC argues that the general framework and the provisions set forth in the CLFFPR and the CFCB Procedural Rules were not applicable to it because it was subject to a specific regime, this must be dismissed. The Settlement Agreement did set forth a specific regime, but nowhere in the Settlement Agreement is it indicated that this would release MCFC from its duty to comply with the CLFFPR and the CFCB Procedural Rules. Rather, the Panel finds that the Settlement Agreement established a regime with requirements to be complied with by MCFC in addition to those set forth in the CLFFPR and the CFCB Procedural Rules.

161. Finally, insofar as MCFC suggests that the Settlement Agreement contained sanctions and that UEFA is therefore precluded from imposing new sanctions for violations relating to its subject matter, the majority of the Panel finds, first of all, that no sanctions are imposed by means of the Settlement Agreement. Rather, the Settlement Agreement is a contract that contains reciprocal undertakings, considerations and concessions on the agreed and expressed "*purpose of avoiding the costs, duration and risks arising out of any litigation*" as set forth in Clause 2.2 of the Settlement Agreement. The withholding of EUR 20,000,000 in revenues is therefore not a sanction in the strict sense of the word, but part of a contractual arrangement voluntarily entered into by both

Parties. Second, the Settlement Agreement only settles the issues settled therein, i.e. it does not encompass issues not settled therein.

162. Consequently, the Panel finds that the Settlement Agreement does not bar UEFA from charging MCFC for the alleged breaches at stake in the present appeal arbitration proceedings.

iii) Are the charges against MCFC time-barred and, if so, to what extent and what are the consequences thereof?

a. When did the limitation period start?

163. MCFC submits that the Adjudicatory Chamber erred in the Appealed Decision by concluding that the 5-year limitation period under Article 37 CFCB Procedural Rules ended on 7 March 2019, because it should have concluded that it ended on the date of the sanction issued for a violation of the CLFFPR, i.e. on 14 February 2020, and that, accordingly, any alleged breaches committed prior to 14 February 2015 are time-barred.

164. In this respect, UEFA maintains that the "*prosecution*" referred to in Article 37 CFCB Procedural Rules commenced when the Investigatory Chamber opened an investigation, i.e. on 7 March 2019, and that, accordingly, any alleged breached committed prior to 7 March 2014 are time-barred.

165. In other words, MCFC's position is that a five-year limitation period applies running from 14 February 2015 to 14 February 2020, while UEFA's position is that a five-year limitation period applies running from 7 March 2014 to 7 March 2019. Thus, the Parties are eleven months and one week apart in terms of how far back the Panel is entitled to go in considering alleged breaches. MCFC argues that the Panel can go back to 14 February 2015, while UEFA argues that the Panel can go back as far as 7 March 2014.

166. Article 37 CFCB Procedural Rules provides as follows:

> "*Statute of limitations*
>
> *Prosecution is barred after five years for all breaches of the UEFA Club Licensing and Financial Fair Play Regulations.*"

167. The relevant issue is to determine when the "*prosecution*" in the present matter started. Once this date is established, one can calculate five years back to see whether any potential breaches were committed within or outside that five-year limitation period provided for in Article 37 CFCB Procedural Rules.

168. The Panel finds that MCFC's position that the date of the "*prosecution*" is the date of the sanction, i.e. the date of issuance of the Appealed Decision, cannot be right. If this had been the intention of the draftspeople of the CFCB Procedural Rules, this would have been explicitly indicated in Article 37 CFCB Procedural Rules by referring to "sanctioning". The Panel simply finds that the word "*prosecution*" cannot be considered to be an equivalent of the word "*sanction*". Someone being prosecuted is not yet sanctioned. The "sanction stage" should not be included in the calculation of the limitation period, in order to avoid potential dilatory defence tactics that could unjustifiably bar the CFCB's power to impose penalties.

169. The majority of the Panel, however, also finds that UEFA's position that the date of the "*prosecution*" is the date of the opening of the investigation cannot be right either. If this had been the intention of the draftspeople of the CFCB Procedural Rules, this would have been explicitly indicated in Article 37 CFCB Procedural Rules by referring to "investigations". Someone being investigated is not yet being prosecuted. The purpose of a limitation period is ultimately to create legal certainty after a period of time has passed. The "investigatory stage" should count in the calculation of the 5-year limitation period, in order to prevent "uncertainty" or "suspicion" of any potential breaches from extending beyond that period. Otherwise, the Investigatory Chamber could open an investigation, preserving the Investigatory Chamber's ability to bring charges for matters going five years back from the opening of the investigation and wait before charging a club under the rules for as long as the Investigatory Chamber wants. If the draftspeople had intended such a framework, it would have stated so expressly. The majority of the Panel finds that it is more a reasonable interpretation that the "*Statute of limitations*" in Article 37 CFCB Procedural Rules is meant to protect both the CFCB and the clubs, on the one hand allowing the Investigatory Chamber to bring charges on matters going back five years while on the other hand preventing investigations from being commenced and held open without any mandatory end.

170. Rather, the majority of the Panel finds that "*prosecution*" starts with the filing of charges, i.e. when the suspect is formally informed of the case he needs to answer, which is considered to be consistent with the definition of "*prosecution*" in the online Oxford dictionary: "*the process of trying to prove in court that somebody is guilty of a crime*" and "*the process of being officially charged with a crime in court*".

171. For present purposes, the majority of the Panel finds that this moment is the moment of issuance of the Referral Decision, because it was this document that explicitly and formally served MCFC with the charges filed against it. With the issuance of the Referral Decision the Investigatory Chamber concludes its investigations and the matter is put in the hands of the Adjudicatory Chamber, which body is then required adjudicate and decide the case.

172. In the matter at hand, the scope of the investigations was broader than the scope of the Referral Decision. For example, the related party issue was investigated by the Investigatory Chamber, but the Investigatory Chamber did not rely on this aspect in the Referral Decision. MCFC is therefore not prosecuted or indicted or charged for such issue.

173. The Panel further notes that the Settlement Agreement was concluded on 16 May 2014 and that the Referral Decision was issued five years less one day later, on 15 May 2019. The majority of the Panel finds that the date of the Referral Decision may well have been carefully chosen so as to avoid a potential issue with the Settlement Agreement falling outside of the limitation period.

174. Consequently, the majority of the Panel finds that the limitation period ended with the Referral Decision on 15 May 2019, so that the limitation period for the charges brought in the Referral Decision started to run on 15 May 2014. Consequently, breaches committed as from 15 May 2014 therefore fall within the limitation period and may be prosecuted, while prosecution of breaches committed prior to such date is barred by application of Article 37 CFCB Procedural Rules.

b. What are the practical consequences of such conclusion?

175. The practical consequence of this conclusion is that any breach related to the financial statements submitted by MCFC for licensing purposes before 15 May 2014 is barred from being prosecuted.

176. Likewise, any breach related to the break-even information submitted by MCFC for monitoring purposes before 15 May 2014 may not be prosecuted.

177. The Adjudicatory Chamber concluded in the Appealed Decision that any breach related to MCFC's financial statements for the years ended May 2012 and May 2013 fall outside or must be assumed to fall outside the limitation period. These alleged breaches therefore fall outside the scope of the present proceedings.

178. Although it is apparently unclear when the financial statements for the year ended May 2014 were filed, these statements were approved by the Board of MCFC on 9 October 2014 and could therefore only have been submitted to The FA or to UEFA after such date. Accordingly, the financial statements for the year ended May 2014 were filed after 15 May 2014. The Panel therefore finds that the Adjudicatory Chamber rightly concluded that any alleged breach related to such financial statements fell within the limitation period and may be prosecuted.

179. As to the alleged breaches of the break-even information submitted by MCFC for monitoring purposes, the Adjudicatory Chamber concluded in the Appealed Decision that information concerning T (the year ended May 2013) for the 2013/14 monitoring process must be assumed to fall outside the limitation period. Any alleged breach related to the filing of this break-even information therefore falls outside the scope of the present proceedings.

180. The alleged breach of the break-even information submitted for the 2014/15 monitoring process (comprising T (the year ended May 2014), T-1 (the year ended May 2013) and T-2 (the year ended May 2012)) fall within the limitation period, as BE.2014.06 and BE.2014.09 were requested to be submitted by 15 July and 15 October 2014, respectively, i.e. this financial information was filed after 15 May 2014 and, therefore, fall within the limitation period.

181. Accordingly, even though the Panel finds that the limitation period did not commence on 7 March 2014, but on 15 May 2014, this does not result in any particular differences with the findings of the Adjudicatory Chamber in the Appealed Decision with respect to the alleged breaches related to the financial information being considered time-barred.

182. Consequently, the Panel finds that the alleged breaches related to the financial statements for the years ended May 2012 and May 2013 are time-barred, but the alleged breaches related to the financial statement for the year ended May 2014 are not. Furthermore, the alleged breaches related to the break-even information submitted for the 2013/2014 monitoring process are time-barred, but the alleged breaches related to the break-even information submitted for the 2014/15 monitoring process are not.

c. Can the comparative information from the previous year in financial statements submitted for licensing purposes and break-even information regarding T-1 and T-2 submitted for monitoring purposes form a basis for prosecution if this information was originally filed outside the limitation period but is resubmitted within the limitation period?

183. Having determined which alleged breaches related to the financial statements and which alleged breaches related to the break-even information are time-barred, the Panel now turns its attention to the content of the financial information submitted within the limitation period to assess whether MCFC can be prosecuted for "actions" related to the resubmission of financial information originally reported the year before or two years before.

184. The relevance of this issue is most clearly demonstrated by looking at the alleged disguised equity funding received by MCFC through Etisalat.

185. The amounts at issue were transferred to MCFC on 13 June 2012 and 10 January 2013, i.e. outside the five-year limitation period. If it were true that these amounts did not comprise sponsorship payments but were in fact disguised equity funding, the financial information provided by MCFC in its financial statement for the year ended May 2013 and the break-even information for the 2013/14 monitoring process was incorrect and could have subjected MCFC to prosecution on this basis.

186. As concluded *supra*, the alleged breaches related to the filing of the financial statement for the year ended May 2013 and the filing of the break-even information for the 2013/14 monitoring process fall outside the limitation period, so no prosecution can take place on the basis of such information.

187. However, the financial statement for the year ended May 2014 and the break-even information for the 2014/15 monitoring process fall within the limitation period and are also based on the information that was first submitted for licensing and monitoring purposes the year before.

188. The Parties have divergent views on whether MCFC can be prosecuted on the basis of such "historic" information in "new" financial statements and break-even information. MCFC maintains that it cannot be prosecuted on such basis because this information falls outside the limitation period. UEFA submits that MCFC can be prosecuted on the basis of this information because it is submitted again within the limitation period.

189. The majority of the Panel finds that MCFC cannot be prosecuted on the basis of financial information that was first submitted at a point in time that lies outside the limitation period, because this would artificially extend the 5-year limitation period to a limitation period of 6 or even 7 years without a clear legal basis to do so. Indeed, if the reasoning of UEFA were followed, the limitation period could be open-ended, because if it were considered appropriate to prosecute a club on the basis of information concerning reporting period T-2, this information would in turn contain financial information of the reporting period T-2 in such year, i.e. T-4.

190. The Panel finds that there must be a clear cut-off date and that this is 5 years before prosecution, not 5+2 as argued by UEFA. The principle of legal certainty shall apply. Accordingly, the majority of the Panel finds that a breach is committed when information is submitted for the first time, not when such information is repeated or resubmitted in subsequent reporting periods.

191. The majority of the Panel finds that this may potentially be different for violations of Article 63 CLFFPR ("*Fulfilment of the break-even requirement*"), because the potential violation of this provision is based on the overall results of the past three reporting periods, but this is not in issue in the present proceedings, because MCFC has not been charged for such violation. MCFC is accused of having contravened a number of provisions of the CLFFPR, but all related to providing incorrect information for CLFFPR purposes and such violations are to be considered committed the first time such incorrect information is submitted.

192. Consequently, the majority of the Panel finds that the comparative information from previous years in financial statements submitted for licensing purposes and break-even information regarding T-1 and T-2 submitted for monitoring purposes do not form a basis for prosecution; any such prosecution must be based on the first time such financial information is submitted for licensing and/or monitoring purposes.

d. What are the practical consequences of such conclusion?

193. The above interpretation has as a consequence that, although the financial statements for the year ended May 2014 were filed within the limitation period, the comparative information contained in such statements concerning the year ended May 2013, according to the majority of the Panel, cannot form a basis for prosecution, as this information was originally filed outside the limitation period, and is, as such, time-barred.

194. Likewise, although the break-even information for the 2014/15 monitoring process was filed within the limitation period, the break-even information regarding T-1 and T-2, according to the majority of the Panel, cannot form a basis for prosecution, as this information was originally filed outside the limitation period, and is, as such, time-barred.

195. This conclusion has important practical implications for the scope of the charges at stake in these proceedings.

196. For the alleged disguised equity funding by HHMS and/or ADUG through Etisalat, this has as a consequence that UEFA is barred from prosecuting MCFC on this basis, because any such alleged breach falls outside the limitation period. MCFC received these payments on 13 June 2012 and 10 January 2013 and was therefore firstly reported in the financial statements of the year ended May 2013 and for the 2013/14 monitoring process. The alleged breaches related to these financial statements and break-even information are time-barred and the references to such information in financial information submitted to UEFA in subsequent years is time-barred as well.

197. Accordingly, the majority of the Panel finds that no other conclusion is possible than determining that the charges based on alleged disguised equity funding by HHMS and/or ADUG through Etisalat are time-barred.

198. As for the alleged disguised equity funding through Etihad, it is alleged that this took place in the seasons 2012/13, 2013/14 and 2015/16. The above analysis has as a consequence that UEFA is barred from prosecuting MCFC for the payments received in the season 2012/13, but that any alleged wrongdoing of MCFC with respect to payments received from Etihad in the seasons 2013/14 and 2015/16 may be prosecuted.

iv) What is the applicable standard of proof?

199. There is no doubt that UEFA carries the burden of proof in establishing that MCFC committed the breaches for which it is charged.

200. The Parties also agree that the standard of proof is that of comfortable satisfaction.

201. However, MCFC maintains that the Adjudicatory Chamber failed to apply such standard of proof correctly in the Appealed Decision. MCFC argues that the Adjudicatory Chamber recognised that, in applying the standard of comfortable satisfaction, "*the more serious the allegation, the more cogent the supporting evidence must be*". MCFC finds that the allegations made by the CFCB in the present proceedings are of the utmost seriousness and that, in those circumstances, the weight of the evidence to discharge the standard of proof is especially high; effectively beyond reasonable doubt.

202. With reference to the arbitral award issued in *CAS 2011/A/2625*, MCFC maintains that such case was also based on "*circumstantial evidence*" and in which the CAS panel held that adverse inferences cannot be drawn in circumstances where other available evidence does not exclude another conclusion being reached. Arbitral tribunals and national courts will not accept an inference of fraud where the primary evidence points in a different direction. MCFC also refers to the arbitral award issued in *CAS 2017/A/5379*, where the CAS panel, *inter alia*, held that "*inherent within* [the comfortable satisfaction] *standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven*".

203. According to MCFC, the CFCB's case against MCFC has been constructed solely on the basis of adverse inferences drawn from the Leaked Emails, which the Adjudicatory Chamber incorrectly characterised as "*direct evidence or arrangements made been the Club and ADUG*", while simply disregarding the comprehensive body of direct contemporaneous evidence, supported by expert evidence from Mr Dudney, provided by MCFC.

204. UEFA submits that the standard of proof is indeed comfortable satisfaction and that MCFC's suggestion that in light of the seriousness of the charges against it the standard of proof is especially high, is creative, but wrong. The standard of proof does not change. UEFA submits that the reference to the seriousness of the allegation can only be taken into account within the applicable standard of proof, and that, when assessing

the evidence, a CAS Panel must consider also the seriousness of the allegation which is made.

205. The Panel agrees that the standard of proof is that of comfortable satisfaction and that the seriousness of UEFA's allegations does not increase such standard to effectively being beyond reasonable doubt.

206. The Panel is satisfied to accept that the allegations in these proceedings are particularly severe. It not only concerns alleged arrangements between MCFC and ADUG as its main shareholder but also Etihad as one of its principal sponsors, concerning equity funding being disguised as sponsorship contributions over a significant period of time, resulting in an influx of relevant income for monitoring purposes, with the consequence that it could spend significantly more money (more than GBP 200,000,000) than it would have been able to spend without such arrangements.

207. The Panel also finds that, when assessing the evidence, it should keep well in mind the mantra that has been repeatedly cited in CAS jurisprudence, which is that "*corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing*" (*CAS 2010/A/2172*, para. 21 of the abstract published on the CAS website). The Panel finds that this mantra is not only applicable to cases involving corruption, but also to cases concerning an alleged dishonest concealment of equity funding as sponsorship contributions for CLFFPR purposes.

208. The Panel adheres to the reasoning of the CAS panel in *CAS 2017/A/5379* set forth above, and that, considering the particularly severe nature of the allegations in the present proceedings, the evidence supporting such allegation must be particularly cogent.

v) Did MCFC disguise equity funding as sponsorship contributions?

209. The Panel notes that UEFA's case is primarily premised on the Leaked Emails.

a. The content of the Leaked Emails

210. The content of the original documents is reproduced here in full (without email signatures):

Original version of Leaked Email No. 1:

From: Simon Pearce (EAA) [redacted]
Sent: Wednesday, April 14, 2010 3:42 PM
To: Mohamed[redacted]
Subject: rights package proposal and associated contract

Dear Mohamed,

It was a great pleasure to meet you yesterday. Thank you for making the time so promptly.

As promised, I am attaching the revised package proposal with a full description of all rights being offered. You will see that it now includes 3 minutes per game of perimeter LED signage for each of the remaining EPL games of this season. For the 2010/11 season that will increase to 6 minutes for each game.

I have also attached the contract that reflects the rights inventory described above. For the benefit of financial reporting/management within the club we have extended the term of the agreement to be effective as of December 1 2009. The agreement term is now Three years and four months long. As we discussed the annual direct obligation for Aabar is GBP 3million. The remaining 12 million GBP requirement will come from alternative sources provided by His Highness. The obligation for the initial four month period will also be covered from these alternative sources.

Therefore the actual financial payment obligation for you to oversee is:

- GBP 3million on 1st May 2010
- GBP 3 million on 1st April 2011
- GBP 3 million on 1st April 2012

All other amounts required will be directed by His Highness from alternative sources.

Please feel free to call me to discuss any of the above? If you are happy with the contract, please let me know and I will have execution copies prepared.

Could you also have someone send to me before tomorrow lunch-time, a high resolution version of the [redacted] and any brand guidelines that might be relevant so that we can prepare the LED graphics for Saturday's game?

Looking forward to hearing from you Mohamed.

With best regards and thanks.

Simon.

Original version of Leaked Email No. 2 (consisting of an email and an attachment thereto):

From: [redacted]
Sent: 06 September 2012 08:12
To: Simon Pearce (EAA)
Cc: Ferran Soriano; [redacted]
Subject: Re: Post Transfer Window Budget Update

Simon,

Please find attached an updated proposed funding schedule for Q2 funding.

We have an operational business need to be able to show separately the cash receipts into our bank account that relate to partnership income versus those that relate to direct equity funding. What we therefore need is that the monies we are attributing to Etisalat, ADTA, Aabar and Etihad, as shown, are physically remitted to us by those businesses, as opposed to a combined receipt of partner/equity funding all remitted in one lump – we need this to be able to demonstrate the separation of ownership funding from Abu Dhabi based partner monies, to avoid any related party influence/control considerations.

I appreciate for Mohamed that this is slightly more complicated than just remitting to us all in one instalment, however it is important for us to effect this for audit purposes.

Let me know if any issues please and if the proposed timing of later September/October works for Mohamed.

Thanks,

[redacted]

2012/13 – Q2 Proposed Timing of Cash Funding

Cash funding – Q2	Revised Budget (£m)	
Direct Equity Funding	88.1	See page 1
Funding for MCFA and Brookshaw	6.9	See page 1
Total 2012/13 Q2 Funding Required	95.0	

We have an audit requirement to be able to separately identify funds inflows in relation to equity funding as distinct from partnership income – to achieve our objectives in this regard it is requested that the Q2 funding is transferred to Club as shown below.

Cash funding – Q2	Revised Budget (£m)	
Already Received	28.9	Already sent as per original budget (£22m + £6.9m)
To be remitted direct via Etisalat	15.0	Target Date of receipt - 22nd September
To be remitted direct via Etihad	5.0	Target Date of receipt - 30th September
To be remitted direct via Aabar	1.0	Target Date of receipt - 30th September
To be remitted direct via ADTA	1.0	Target Date of receipt - 30th September
To be remitted in normal manner via ADUG as Equity	44.1	Target Date of receipt - 20th October
Total 2012/13 Q2 Funding Required	95.0	

Original version of Leaked Email No. 3:

From: Andrew Widdowson [redacted]
Sent Friday, December 07, 2012 4:45 PM
To: Simon Pearce [redacted]
[redacted]
Subject: Cash Funding for January 2013 - £42m

Simon,

Hope you are well. As in previous quarters can we ask for your help in facilitating the amounts due via the Abu Dhabi partners in January of next year. I attach a slide extracted from the Board book that indicates the amount of cash that we need lined up from the shareholder in January to be paid through the relevant partners (I have highlighted the relevant amounts in red).

In summary we need the following:

£27m to be funded via Etihad
£15m to be funded via Etisalat

£42m in Total

Can I ask that the relevant amounts be routed through the partners and they then forward onto us as part of the overall fees owing (£35m Etihad and £16.5m Etisalat) – certainly Etihad did that for us last year. At the year-end the auditors were keen to check that the monies came in through the bank so I want to ensure that they come through the correct channels and are not picked up as separate sources of funding.

I attach the relevant invoices. As in previous instances with the Abu Dhabi partners can I ask that you pass on accordingly or at least let us know whether we can send them direct.

Please note that we need the monies realistically in the first week of January (as per the attached the request is for 1st and 2nd of January). We certainly cannot go beyond the end of the second week if pushed. If that is going to be an issue then please let me know but hopefully you have enough time to get this in motion.

Just to reiterate there is no change to the cash request indicated at the latest Board meeting and which is exactly the same as the cash call set and approved by the Board in the revised budget.

Please let me know if you need anything else from me or you need any changes to the attached.

Regards

Andy

Original version of Leaked Email No. 4 (consisting of two separate emails):

From: Simon Pearce (EAA) [redacted]
Sent: Thursday, August 29, 2013 3:36 AM
To: Jorge Chumillas
Cc: Ferran Soriano
Subject: RE: ADUG Meeting Friday 30th

Jorge,

I have inserted answers and comments in blue against your e-mail below. I hope that they are helpful.

Also attached is an indicative [redacted] based on payments made in the last season.

A couple things of note:

- We included all outgoings for the Citystore, although some of these costs will be recovered, based on the performance of the store
- This year, under Citystore, we have included a line item for the cost of merchandise ([redacted] and [redacted] since we now must pay upfront for this

Also attached is the [redacted] payment list from last year for you to review.

I will be in the UK from lunchtime Thursday if and when you wish to discuss this.

Best,

Simon.

From: Jorge Chumillas [redacted]
Sent: Tuesday, August 27, 2013 3:14 AM
To: Simon Pearce (EAA)
Cc: Ferran Soriano
Subject: ADUG Meeting Friday 30th

Simon

I am working on the presentation for [redacted] Firday meeting. In order to prepare [redacted] need some additional information. I intend to produce a "pro-forma" [redacted] both individual and consolidated. Please let me know if you prefer me to ask [redacted] directly on any of those items.

[redacted]

- [redacted]

[redacted]

- [redacted]

[redacted]

I need to understand the mechanism by which additional sponsorship flows through ADUG. Ii it ADUG Shareholder->ADUG->Etihad->MCFC? Or is it rather ADUG Shareholder->Etihad->MCFC? It is important for me to understand this flow in order to account for it properly at ADUG. Jorge, we have to show that the money is required for the ADUG P&L but we can't show the payment routes. So its funding income that we should call partner funding and we should show the total and timing requirements for receipt, but we should not include any more detail than that.

[redacted]

Looking forward for your comments and suggestions. Best regards

Jorge

Jorge Chumillas
Chief Financial Officer
City Football Group

Original version of Leaked Email No. 5:

From: Jorge Chumillas [redacted]
Sent: Wednesday, December 11, 2013 11:01 AM
To: Simon Pearce (EAA)
Subject: Re: Cashflow

Hi Simon

The £57m are the original contract £65m minus £8m direct contribution by Etihad. In fact according to Etihad sponsorship contract total sponsorship fees increase from £65m to £67,5m from season 13/14. This is the amount (£67,5m) included in 13/14 MCFC P&L. However in the cash flow budget we kept the previous amount of £65m (-£8m = £57m), according to our cash flow projections we do not need the additional £2,5m this season. So the £2.5m can be paid to MCFC next season.

The sources for the payments should be structured as follows :
A) £31.5m from 12/13 and prior (ADUG contribution, split into £30m base fee uplift for 12/13 [from £35m to £65m] and 2 instalments for UCL qualification of £750k each from 11/12 and 12/13)
B) £57.0m for 13/14 (ADUG contribution to 13/14 sponsorship fee)
C) £8.0m from 13/14 (direct contribution from Etihad to 13/14 sponsorship fee)
In summary,
A & B) ADUG contribution for a total of £88.5m
C) Etihad direct contribution for £8m
In our 13/14 cash flow budget presented at ADUG Meeting the £31.5+£57m appears on the "Etihad" line (Total £88.5m). The £8m direct contribution from Etihad is included in "MCFC Operations" line.

In terms of invoices from MCFC :
A) Invoices from MCFC to Etihad for a total £31.5m already generated, to be paid now
B &C) Invoices for a total value of £65m from MCFC to Etihad to be generated and to be paid now

As for the £2.5m (fee uplift for season 13/14) invoices will be generated by MCFC this season according to contract, but they will only have to be paid next season.

Please let me know if you need further clarifications, or give me a call any time is convenient for you. Thank you.

Best regards

Jorge

Original version of Leaked Email No. 6:

From: Jorge Chumillas [redacted]
Sent: [redacted]
To: Simon Pearce ([redacted]
Cc: Ferran Soriano
Subject: Etihad Invoices

Hi Simon

Please find attached two invoices to be paid by Etihad to MCFC :

- 200011796 : UCL Qualification 14/15, £750,000.
- 200012107 : Sponsorship Fees 15/16, £67,500,000. Please note that out of those £67.5m, £8m should be funded directly by Etihad and £59.5 by ADUG.

Invoices from NYCFC and Melbourne City FC will follow (total £13.35m). So breakdown of cash for ADUG £69.15m is as follows :

- MCFC 14/15 UCL Qual £0.75m

- MCFC 15/16 Sponsorship Fees £67.5m-£8m partner contribution = £59.5m
- NYCFC & MelCFC Fees 15/16 (to be invoiced) £8.9m
- Total £69.15m

I confirm you that we already received Aabar monies.

Best regards

Jorge

b. The scope of UEFA's allegations

211. MCFC maintains that the Adjudicatory Chamber in the Appealed Decision and UEFA in the present proceedings cannot rely on the argument that the funding may not have come from HHSM and/or ADUG directly, but from unidentified third parties, because this is not the charge that was set forth by the Investigatory Chamber in the Referral Decision, which reads as follows:

> "*299. The breaches of* [CLFFPR] *committed by MCFC relate to the following:*
>
> [...]
>
> *(2) The funding or enhancement by ADUG of Etihad's sponsorship obligations at least through the seasons 2012/2013, 2013/2014 and 2015/2016 (totalling £175 million), and the fact that Etihad's direct contribution to its sponsorship obligations was of £8 million per annum, while the balance was paid by ADUG* [...]"

212. The Panel finds that, because of the Adjudicatory Chamber's *de novo* review pursuant to Article 16(4) CFCB Procedural Rules – i.e. "*The adjudicatory chamber may* [...] *modify the* [Referral Decision]" – and its finding that the funding may have come from unidentified third parties, this argument falls within the scope of the Appealed Decision and therefore within the scope of the present appeal arbitration proceedings.

c. Assessment of the evidentiary value of the Leaked Emails

213. Following the publication of articles on the basis of the Leaked Emails in various media outlets between 2 and 16 November 2018, the Panel finds that UEFA was basically

left with no other option but to commence an investigation into the dealings of MCFC, because the Panel agrees that the Leaked Emails provide *prima facie* evidence of potential rule breaches by MCFC. The Panel finds that, based on the Leaked Emails, MCFC clearly had a case to answer, as the emails exchanged at executive and board level of MCFC describe an arrangement by means of which equity funding from HHSM and/or ADUG would be disguised as sponsorship contributions from Etihad, which would have significantly and artificially inflated MCFC's relevant income for CLFFPR purposes. It was also recognised by MCFC that UEFA had a proper basis for commencing an investigation.

214. The Panel notes that the Adjudicatory Chamber reasoned as follows in the Appealed Decision:

> "*In their context the leaked emails provide direct evidence of arrangements made between the Club and ADUG, represented by Simon Pearce. This is not an inferential case or a case based on circumstantial evidence. The effect of the documents is clear in setting out the arrangements under consideration by the Club and Mr Pearce. Given the seniority of the persons involved in the emails, and the absence of any evidence produced for the Club to show that the arrangements under discussion were later abandoned or substantially changed, they are direct evidence of the arrangements made and implemented by ADUG and the Club, and of an intention to make payments on that basis.*"

215. The majority of the Panel does not agree with the Adjudicatory Chamber's statement that in the absence of any evidence produced by the Club, the Leaked Emails are direct evidence that the arrangements were made and implemented. MCFC is not charged for attempting to disguise equity funding as sponsorship contributions; it is charged for erroneous reporting of financial information, which requires a completed act. Accordingly, it is for UEFA to prove that the arrangements discussed in the Leaked Emails were as they appear to be and were indeed executed.

216. The majority of the Panel finds that the Leaked Emails by themselves are not sufficient evidence to support a finding that MCFC provided incorrect information to UEFA by disguising equity funding as sponsorship contributions. The arrangements discussed must be rooted in contemporaneous accounting or transactional evidence, for otherwise it cannot be ascertained that the arrangements discussed in the Leaked Emails were in fact executed. The references to the "Panel" in the remaining part of this sub-chapter are to the majority of the Panel only.

217. With the exception of Leaked Email No. 1 that was sent to Aabar, the Leaked Emails are all emails (and one attachment to one of those emails) between MCFC executives and an MCFC director. No email is sent or received by any third party such as HHSM, ADUG or Etihad, while, for the arrangements described to be executed, the cooperation and participation of third-party external companies would necessarily be required, i.e. at least from HHSM and/or ADUG and Etihad.

218. It is UEFA's case that Mr Pearce represented ADUG and that he made arrangements with MCFC's Abu Dhabi-based sponsors on behalf of ADUG.

219. The Panel notes that Mr Pearce is a key witness in these proceedings and a key person in the Leaked Emails. The Panel will therefore elaborate on his role in the arrangements

discussed in the Leaked Emails and whether he indeed represented ADUG, as maintained by the Adjudicatory Chamber in the quote set out above.

220. Mr Pearce is not only a non-executive director of MCFC, but he was also the director of the Executive Affairs Authority of the Emirate of Abu Dhabi (the "EAA") and later a special advisor to its chairman, Mr Khaldoon Al Mubarak, who is also the chairman of MCFC. The Panel is prepared to accept that Mr Pearce could "*help in facilitating the amounts due*" to MCFC, as referred to in Leaked Email No. 3. The Panel also accepts that Mr Pearce was close to HHSM and ADUG and may therefore have exercised a certain influence over the Abu Dhabi-based sponsors of MCFC and negotiate deals with them, but the Panel finds that it has not been established that he was also authorised to conclude contracts on behalf of HHSM and/or ADUG, i.e. it was by no means a given that an email requesting Mr Pearce to act in a certain way would undoubtedly be executed.

221. During his examination at the hearing, when asked the question "*have you ever arranged any payments to be made to Etihad in relation to its sponsorship obligations of Manchester City Football Club?*", Mr Pearce answered: "*Absolutely, categorically not*". Mr Pearce did not strike the Panel as being an unreliable witness, and indeed upholding UEFA's allegations would necessarily require a finding that Mr Pearce's testimony was false. The Panel does not find such conclusion to be warranted in the absence of evidence being presented by UEFA that Mr Pearce in fact represented ADUG.

222. UEFA relies on Leaked Document No. 1 to establish that Mr Pearce was making arrangements with MCFC's Abu Dhabi-based sponsors and arranged alternative funds for such companies from HHSM and/or ADUG and that this demonstrates a pattern, which also involves Etihad.

223. Mr Pearce disputes UEFA's reading of Leaked Email No. 1 and testified that the reference to "*His Highness*" in such email was not a reference to HHSM as alleged by UEFA, but to His Highness Sheikh Sultan Bin Tahnoon Al Nahyan, the Chairman of ADTA at the time.

224. The Panel has no reason to believe that Mr Pearce's testimony in this respect was inaccurate and there is no evidence from UEFA supporting the allegation that the reference to "*His Highness*" was in fact to HHSM. Accordingly, the Panel finds that it must be concluded that UEFA failed to prove that Leaked Email No. 1 demonstrates that Mr Pearce was entitled to conclude contracts at the behest of ADUG.

225. In any event, the Panel finds that a single email cannot establish a pattern whereby Mr Pearce would consistently arrange alternative sources of funds from HHSM and/or ADUG to contribute to the sponsorship obligations of MCFC's Abu Dhabi-based sponsors. Leaked Email No. 1 was also sent 10 years ago and two years before the implementation of the CLFFPR. So, even if true, at the time there would have been nothing wrong with channelling equity funding through sponsors. There is no evidence that similar arrangements were made after the implementation of the CLFFPR. The Panel finds that insufficient evidence is available to conclude that Mr Pearce represented ADUG vis-à-vis MCFC's Abu Dhabi-based sponsors with the aim of disguising equity funding as sponsorship contributions.

226. In Leaked Email No. 2, reference is made to a "*Mohamed*", of which Mr Pearce testified that this was [Mr Z] of ADUG. From this email the inference could be drawn, as UEFA indeed does, that ADUG would be the entity remitting funds to MCFC through the sponsors. There is however no evidence on file suggesting that this is also what happened in fact, and it is contradicted by the witness evidence and accounting evidence set out below.

227. Furthermore, none of the emails are sent to or received by someone related to Etihad. The Panel dismisses the Adjudicatory Chamber's finding that "[t]*he fact that Etihad was not a party to these* [Leaked Emails] *is only consistent with the conclusion that payments were managed by ADUG not by the sponsor*", because it is clear from the Leaked Emails that the intention was to channel equity funding through the sponsors. Accordingly, Etihad should have received such funding from a third party and the Panel does not find it credible that such funding would have gone unnoticed in a large commercial company such as Etihad, owned by the Abu Dhabi Government with governmental auditing oversight, as explained by Mr Hogan and Mr Abdelhaq in their testimony in writing and orally before the Panel.

228. Initially, UEFA's case was entirely premised on the Leaked Emails. It was only upon submission of evidence by MCFC that UEFA argued that the content of the Leaked Emails is also confirmed by accounting evidence. Indeed, UEFA now argues that while the Appealed Decision is based mainly on the Leaked Emails, it is also based on the fact that transactions described in the Leaked Emails were reflected in materials provided by MCFC.

229. In this respect, UEFA relies on the fact that separate payments of GBP 59,500,000 and GBP 8,000,000 were made by Etihad to MCFC in accordance with the content of Leaked Email No. 6 and that a payment ledger of MCFC confirms that the arrangement discussed in Leaked Email No. 2 was in fact executed. The Panel will assess this allegedly corroborating evidence below.

d. The GBP 59,500,000 and GBP 8,000,000 payments by Etihad

230. UEFA also relies on the fact that Etihad made two separate payments of GBP 59,500,000 and GBP 8,000,000 to MCFC, which are exactly the amounts described in Leaked Email No. 6 as having to be funded by ADUG and Etihad separately, arguing that there would be no reason for such split payments if Etihad funded all its sponsorship contributions from its own resources.

231. On 24 August 2015, MCFC issued an invoice to Etihad for an amount of GBP 67,500,000 in accordance with Etihad 2, which was paid in two parts: GBP 60,250,000 (GBP 59,500,000 + a bonus payment of GBP 750,000) was paid by Etihad on 16 September 2015 and GBP 8,000,000 was paid by Etihad on 16 June 2016, i.e. 9 months later.

232. MCFC's explanation for such separate payments, supported by Etihad's former CEO Mr Hogan, is that the amount of GBP 8,000,000 came from Etihad's marketing budget, whereas the amount of GBP 59,500,000 came from Etihad's central funds. Nothing in the emails makes reference to either of these two budgets. Nevertheless, the majority of

the Panel holds that this was confirmed by the testimony of Mr Hogan and Mr Pearce, who stated the following in his witness statement, which he confirmed at the hearing:

> "*Based on my various discussions with Etihad at the time, and in particular with Peter Baumgartner, who was the Chief Commercial Officer during this period, the understanding I came away with was that Etihad was meeting £8 million of its sponsorship costs from its marketing budget and the remainder from Etihad's central funds. I think it is likely that this is the reason that some of the Criminally Obtained Documents describe payments of £8 million as the "direct contribution" from Etihad*".

233. UEFA rejects this explanation, because this would mean that the higher amount of GBP 59,500,000 coming from Etihad's central funds would have been released before the lower amount of GBP 8,000,000 coming from Etihad's marketing budget. UEFA considers it more likely that GBP 59,500,000 was the amount that was indirectly funded by HHSM and/or ADUG, while the amount of GBP 8,000,000 was the actual sponsorship contribution funded by Etihad itself.

234. There is, in the view of the majority of the Panel, however, no evidence to support the conclusion that the payment of the amount of GBP 59,500,000 was funded, or procured to be funded, by HHSM and/or ADUG, as alleged by UEFA. The majority of the Panel considers the connection between the content of Leaked Email No. 6 and the two payments from Etihad insufficient to conclude that the only reasonable explanation therefore is that the payments came from two different sources, i.e. ADUG and Etihad. To suggest that the sequence of the two payments is demonstrative for this would necessarily require finding that both Mr Hogan and Mr Pearce were lying. This is not accepted and the Panel finds that MCFC's explanation is not incredible *per se*.

235. In any event, UEFA's case is that Etihad only funded GBP 8,000,000 of its sponsorship contributions during the Etihad Relevant Period per year. The above-mentioned payment of GBP 8,000,000 was however the only one throughout the Etihad Relevant Period. All other amounts transferred by Etihad to MCFC during the Etihad Relevant Period concern different amounts, whereas one would expect that such GBP 8,000,000 payment would be made each and every year if UEFA's allegations were true. The uncontested transactional evidence produced by MCFC is, in the view of the majority of the Panel, not consistent with UEFA's case.

236. Assessing all the above, the majority of the Panel is not convinced that the two separate payments of GBP 59,500,000 and GBP 8,000,000 are sufficient evidence to prove that the arrangements discussed in the Leaked Emails were in fact executed.

e. The creditor's ledger and the "Total Cash Investment" table

237. UEFA furthermore maintains that MCFC's creditor's ledger confirms that the same amounts requested to be paid in Leaked Email No. 2 had been paid before on 13 June 2012 and had been allocated exactly in accordance with the arrangement suggested in the attachment to Leaked Email No. 2.

238. MCFC's ledger entries confirm that an amount of GBP [xxx] was paid to it by a person named [X] on 13 June 2012, caused to be made by ADUG, attributing it to 6 different accounts: GBP [xxx] as "*share capital*", GBP [xxx] as "*share premium*" to Etisalat, and

GBP [xxx] to Etisalat, GBP [xxx] to "*Etihad Airways*", GBP [xxx] to [...] and GBP [xxx] to [...].

239. The latter four amounts indeed coincide with the amounts "*To be remitted direct via*" Etisalat, Etihad, [...] and [...] in accordance with the Q2 schedule attached to Leaked Email No. 2.

240. The Panel however notes that there is no evidence on file that the arrangement discussed in the schedule attached to Leaked Email No. 2 was ever executed. The information contained in the creditor's ledger predates the payments investigated here, i.e. the payments made by Etihad to MCFC in the seasons 2013/14 and 2015/16.

241. It is also not in issue that it had been a mistake of MCFC to allocate the amount of GBP [xxx] to Etihad and that this mistake was later corrected in the books by considering the amount as equity funding. Indeed, the Adjudicatory Chamber reasoned as follows in the Appealed Decision:

> "*On the terms of the 2009 agreement and the Etihad 1 agreement it is not possible to justify a further payment by Etihad of [...] in June or September 2012, as referred to in the email dated 6 September 2012, and there is no invoice for that amount in evidence. Mr Dudney says the credit of [...] to Etihad's account on 13 June 2012 was an erroneous entry which was corrected on 18 October 2018, a point which is probably correct, despite Mr Lindsay's view to the contrary. If [...] was not due under Etihad 1 it could not be presented to auditors as sponsorship revenue and therefore it made sense for it to be reallocated to equity funding. So it is unclear whether the reference to "Etihad did that for us last year" is a reference to the [...] credited on 13 June 2012.*"

242. More importantly, again, there is no evidence whatsoever that Etihad was somehow in on the arrangement discussed in Leaked Email No. 2 or the payments processed in MCFC's creditor's ledger. The majority of the Panel therefore remains of the view that there is insufficient evidence to conclude that the arrangements discussed in the Leaked Emails are proven to have been executed.

243. The table allegedly presenting ADUG's "*Total Cash Investment in MCFC*" also predates Etihad's payments in the 2013/14 and 2015/16 seasons. This table only provides information up to the end of the 2011/12 season and therefore does not prove in the view of the majority of the Panel that ADUG supplemented the Abu Dhabi sponsorship deals in the relevant seasons.

f. Interim conclusion

244. With reference to its finding above, i.e. that given the particular severity of the allegations at stake in the present proceedings the evidence must be particularly cogent, the majority of the Panel finds that the Leaked Emails in combination with the GBP 59,500,000 and GBP 8,000,000 payments by Etihad and MCFC's ledger entries are not sufficient evidence to conclude that MCFC committed the violations alleged by UEFA, in particular if the witness evidence (which was not before the Adjudicatory Chamber) and the accounting evidence (not all of which was before the Adjudicatory Chamber) as set forth in the two following sections are added to the equation.

g. The witness evidence

245. UEFA's allegation that Etihad's sponsorship contributions were funded, or procured to be funded, by HHSM and/or ADUG are vehemently denied by several persons with high executive positions in large commercial companies and categorically and repeatedly denied by MCFC's leading counsel. Below follows an overview of the most relevant statements, most of which were not before the Adjudicatory Chamber.

246. Mr Hogan's witness statement, which he confirmed at the hearing, provides, *inter alia*, as follows:

> "[…] [N]*either* [HHSM], *nor his private investment vehicle ADUG, nor any entity on their behalf, has funded or reimbursed the sponsorship obligations of Etihad under the sponsorship agreements. The sponsorship obligations were paid out of Etihad's own funds as described* […] *above.*
>
> *I was PCEO throughout the relevant period and I would have known if any arrangement had existed for the funding or reimbursement of the sponsorship fees paid by Etihad to MCFC, as alleged by UEFA, which I did not.*"

247. During his testimony at the hearing, Mr Pearce put it even a bit more forcefully by stating that "*there is no ways* [sic] *monies could have been injected into the company without the knowledge of the financial or internal audit group of Etihad*".

248. Mr Pearce's witness statement, which he confirmed at the hearing, provides, *inter alia*, as follows:

> "*Some of the Criminally Obtained Documents published by Der Spiegel and cited in the* [Appealed Decision] *have, wrongly, been interpreted as suggesting that Etihad and Etisalat only funded part of their sponsorship obligations. Specifically, it is suggested that (i) Etihad funded only £8 million for each of the 2012/13, 2013/14 and 2015/16 seasons, with the remainder being funded by ADUG, and (ii) Etisalat funded only [...] in the 2011/12 and 2012/13 seasons, with the remainder being funded by ADUG. That is simply not true for the reasons I explain below.*
>
> […] *Having reviewed the Criminally Obtained Documents in the context of these proceedings, it is apparent that this led to some confusion among individuals at the Club. In particular, there appears to have been a misunderstanding that ADUG was making funds available to Etihad in respect of the sponsorship fees, which are sometimes described as the "ADUG contribution" in some of the Criminally Obtained Documents allegedly sent to me. That suggestion is incorrect. Neither ADUG nor* [HHSM] *funded any of Etihad's sponsorship obligations – it seems very likely to me that I would have been informed if they did.* […]"

249. MCFC produced a letter from Mr Ahmed Ali Al Sayegh, Board Member of Etihad Aviation Group and Chairman of the Board Finance and Investment Committee. Mr Al Sayegh stated, *inter alia*, the following in this letter:

> "*The Company received invoices from MCFC/CFG relating to Etihad's sponsorship relating to the football seasons 2012/13, 2013/14 and 2015/16 and these were recorded in the Etihad financial accounting system at the time they were received. A list of these invoices is set out in Schedule C to this certification.*

The Company paid directly to MCFC or CFG the full amounts due under the Sponsorship Agreements (as set out in Schedule D to this certification). These payments were recorded as reductions of the MCFC creditor ledger at the time that they were made.

No prepayment, refunds or other amounts were received by the Company in respect of the MCFC Sponsorship Agreements and no amounts are shown as set off against or deducted from the sponsorship obligations recorded in the MCFC creditor ledger.

[...] *The Company did not receive any payments from ADUG or* [HHSM] *or any person or entity controlled or influenced by them, whether directly or indirectly in relation to any of the Sponsorship Agreements, whether by way of advance funding or subsequent reimbursement. As part of providing this certification, a member of my team conducted keyword searches across an electronic version of the general ledger of the Company for the period 23 August 2008 to date. The searches across the cashbook did not identify any receipts over £250,000 (or equivalent in other currencies) from either ADUG of* [HHSM]."

250. MCFC had already produced a letter of Mr Henning Zur Hausen, General Counsel and Company Secretary of Etihad, in the proceedings before the CFCB, stating, *inter alia*, as follows:

"2. *Each of the Sponsorship Agreements was fully and properly negotiated and executed on an arms' length basis, and duly approved by the Company's Board of Directors.*

3. *All sponsorship fees payable by the Company under the Sponsorship Agreements have been and are being paid from the Company's general funds and from sources available to the Company.*

4. *The Company did not receive any payments from* [ADUG] *or* [HHSM] *in relation to any of the Sponsorship Agreements.*"

251. MCFC had also already produced a letter of Mr Tony Douglas, Group Chief Executive Officer of Etihad, in the proceedings before the CFCB, stating, *inter alia*, as follows:

"*I refer to the letter of 1 April 2019 signed and sent to you by Henning Zur Hausen, General Counsel and Company Secretary (the "Letter"). On behalf of the Company and its Board or Directors, I reconfirm that the contents of the Letter are entirely correct, and I also confirm and specify the following:*

1. *Paragraph 3 of the Letter refers to "the Company's general funds" and to sources available to the Company. I confirm that the sources of funds that have been and are available to the Company from time to time include its shareholder, its banks and other financial institutions, creditors and debtors. For the avoidance of doubt, I also confirm that the sources available to the Company have never included (whether directly or indirectly)* [ADUG], [HHSM], *or any person or entity controlled or influenced by them.*

2. *Paragraph 4 of the Letter states that the Company did not receive any payments from* [ADUG] *or* [HHSM] *in relation to any of the Sponsorship Agreements. I confirm, for the avoidance of doubt, that the Company has never received any money whatsoever from* [ADUG] *or* [HHSM] *or any person or entity controlled or influenced by them, whether directly or indirectly. The Company is a commercial airline operating out of Abu Dhabi. As you no doubt understand,* [ADUG] *and/or* [HHSM] *may have acquired*

> *airline tickets from the Company over time without any connection whatsoever with the Sponsorship Agreements or any other sponsorship.*"

252. Finally, MCFC produced a letter from HHSM, stating, *inter alia*, the following:

> "*I can confirm that I have not authorised ADUG to make any payments to Etihad, Etisalat or any of their affiliates in relation to their sponsorship of* [MCFC], *nor have I authorised or arranged for anyone else to make any such payments to them. I can also confirm that I have not made any such payments myself.*"

253. UEFA argued at the hearing that the letter of HHSM can be easily explained by the fact that it was not HHSM that gave such instructions, but [Mr Z] of ADUG. Although this possibility cannot be excluded, the Panel finds that there is no credible evidence to this effect. Even accepting UEFA's understanding, the Panel finds that it would still be at odds with HHSM's statement that he had not authorised or arranged for anyone else to make any such payments. The Panel does not consider it credible that [Mr Z] could make such payments or arrange for such payments to be made on behalf of ADUG, without obtaining HHSM's authorisation.

254. The Panel agrees with MCFC that a finding that Etihad's sponsorship contributions were funded, or procured to be funded, by HHSM and/or ADUG would require a conclusion that the evidence of several high-ranking officials of large international commercial enterprises such as Mr Hogan, Mr Pearce, Mr Al Sayegh, Mr Zur Hausen, and Mr Douglas were false and that at least Mr Hogan if not Mr Pearce would be subject to criminal sanctions. This conclusion is not warranted based on the evidence available to the Panel. UEFA also accepted in answer to a direct question from the Panel that it was not alleging that HHSM gave false evidence and made clear that such a finding was not requested.

255. UEFA's theory would also mean that not only MCFC lied to The FA and UEFA, but also that accountancy firms such as BDO, Deloitte, Ernst & Young and AlixPartners that all examined accounts of one or more entities involved were all misled. The Panel finds that such allegations are also not warranted based on the evidence presented.

256. The Panel was also provided with credible and uncontested evidence regarding the functioning of Eithad's owner, the Abu Dhabi Government, as well as the Abu Dhabi Accountability Authority, particularly from Mr Abdelhaq. While in the absolute the Panel cannot exclude the theoretical possibility that Etihad may have received funding from third parties and that this was somehow indirectly arranged by HHSM and/or ADUG, this would add another "missing link" to the puzzle, because not only is there no evidence of such a link between HHSM and/or ADUG and such third party/parties, there is also no evidence to establish a link between such third party/parties and Etihad. This argument remains entirely unparticularised and unproven.

257. Although the Adjudicatory Chamber indicated in the Appealed Decision that Etihad is owned by the Government of Abu Dhabi and therefore did not "*exclude the possibility of indirect funding of the sponsorship obligations arranged by Mr Pearce through other Abu Dhabi entities*", the Adjudicatory Chamber did not have the benefit of all of the evidence submitted to the Panel and the majority of the Panel finds that such allegation was not established.

258. As testified by Mr Abdelhaq in evidence that was uncontested and that was not before the Adjudicatory Chamber, the UAE is a federal state that is constituted of seven Emirates, including the Emirate of Abu Dhabi. Each of the Emirates has its own government that is separate and distinct from the Federal Government of the UAE. Etihad is owned by the government of Abu Dhabi. HHSM has occupied a number of executive roles in the Federal Government of the UAE: Deputy Prime Minister, Minister of Presidential Affairs and Chairman of the UAE Ministerial Development Council. These roles do not give HHSM the ability to exercise any control over, or to direct, the Government of the Emirate of Abu Dhabi in respect of commercial matters or any commercial entities that are owned by that government. Also, Mr Abdelhaq testified that ADUG exercises no government functions and is completely unconnected to both the Federal Government of the UAE and the Government of the Emirate of Abu Dhabi. ADUG also does not own any part of, or otherwise exercise control or influence over, Etihad or Etihad Aviation Group.

259. The suggestion that the Federal Government of the UAE would be involved in the arrangements as the third party or as one of the third parties between ADUG and Etihad is not warranted in the absence of any evidence to this effect.

260. The Panel finds that the fact that Etihad is owned by the Government of the Emirate of Abu Dhabi provides no proper basis for such conclusion and that no evidence has been presented about the particulars of funding potentially having come from other unidentified sources. In the absence of such particulars, as argued by MCFC, UEFA's case with respect to funding being channelled through unidentified third parties is based on innuendo and does not meet the requisite standard of proof.

h. The accounting evidence

261. In addition to the witness evidence set out above, MCFC also provided accounting evidence in support of its position.

262. Mr Dudney provided an expert report for the present appeal arbitration proceedings after he had already prepared two expert reports for the purposes of the CFCB proceedings. The Adjudicatory Chamber indicated in the Appealed Decision that it "*accepted the accounting evidence of Mr Dudney*" and that it found his reports "*particularly helpful in setting out clearly the details of the relevant transactions*".

263. Mr Dudney concluded that the balance paid to MCFC directly by Etihad in relation to the Etihad Relevant Period was GBP 220,575,000 and USD 1,750,000, which was the exact amount due under the Eithad Sponsorship Agreements over the Etihad Relevant Period. He confirms that MCFC has issued invoices to Etihad for the full amounts due under the Etihad Sponsorship Agreements during the Etihad Relevant Period, that the sponsorship revenue in respect of those invoices was recognised in MCFC's accounting records for the correct financial year in accordance with UK GAAP and FRS 101 accounting standards, and that all payments made by Etihad were contemporaneously credited by MCFC in the customer account for Etihad against the invoices mentioned *supra*.

264. Mr Dudney's Expert Report is partially based on an agreed-upon procedure carried out by international accountancy firm Ernst & Young. The International Standard on

Related Services 4400 states about agreed-upon procedures that "[t]*he objective of an agreed-upon procedures engagement is for the auditor to carry out procedures of an audit nature to which the auditor and the entity and any appropriate third parties have agreed and to report on factual findings*".

265. Following the agreed-upon procedure executed by Ernst & Young, it reached, *inter alia*, the following conclusions:

- All payments made from bank accounts of ADUG AD greater than or equal to GBP 250,000 were reviewed and no such payments were made to Etihad, or entities related to Etihad.

- ADUG JAFZA had no bank accounts during the period under consideration.

- The total value of payments under GBP 250,000, and therefore untested, was GBP 21,976,091 (from which Mr Dudney concluded that "*such a large number of small payments appears incompatible with the suggested scheme of reimbursement referred to in the* [Appealed Decision], *and, in any event, the total value is insufficiently large to represent the amounts alleged to have been repaid or funded to the Sponsors.*"

266. Mr Lindsay and UEFA criticized the reliability of the agreed-upon procedure carried out by Ernst & Young, in particular that it was not an independent audit, because the terms of the investigation were agreed upon with ADUG without any input from UEFA, and that the investigation was carried out based on information provided by ADUG. Without criticising the work done or the standing of the firm in general, UEFA considers the reliability of the conclusions reached low because of the unreliable data that was provided to be investigated, or as counsel for UEFA put it, "*rubbish in, rubbish out*".

267. The Panel agrees with UEFA that the results of an agreed-upon procedure are not as reliable and independent as an official independent audit, where the auditor has full access to the books. The majority of the Panel nonetheless finds that the conclusions of Ernst & Young do support MCFC's case. In particular, the theory that ADUG directly funded or reimbursed Etihad for its sponsorship contributions to MCFC is discredited. Moreover, the Panel notes that the CLFFPR do not require that an official independent audit be performed in order to comply with the rules.

268. Although the Panel finds that Mr Dudney's Expert Report is immaculate, the relevance is somewhat limited because it is premised solely on accounting data of MCFC, while the arrangements of disguising equity funding as sponsorship contributions would not logically have been reflected in such accounting data, because Etihad's sponsorship contributions would be funded, or procured to be funded, by HHSM and/or ADUG, so that also in such scenario, the sponsorship contributions would logically be paid to MCFC by Etihad. Mr Dudney did not test the consistency of the accounting evidence against the proposition that Etihad's sponsorship agreements in excess of GBP 8,000,000 per year would be made available to Etihad by other means. This is no criticism of Mr Dudney's Expert Report, because he did as he was instructed by MCFC. The consequence however is that Mr Dudney's Expert Report is not decisive in excluding UEFA's proposition that equity funding was disguised as sponsorship

contributions, as this would not logically have shown in the accounting data based on which Mr Dudney prepared his Expert Report.

269. The same applies to Mr Lindsay's Expert Report, because his report is based on the premise that equity funding had been dishonestly concealed as sponsorship contributions, without taking note of any of the witness evidence presented by MCFC (and which as noted above was not before the Adjudicatory Chamber). This is no criticism of Mr Lindsay's Expert Report, because he did as he was instructed by UEFA. But the consequence is that Mr Lindsay's Expert Report is also not decisive in excluding MCFC's proposition that no equity funding was disguised as sponsorship contributions.

270. The Panel however finds that Mr Lindsay's evidence was relevant in another sense. When asked how he would go about in testing the various hypotheses discussed in his first Expert Report, he answered the following:

> "[…] *that exercise requires extensive access to accounting records that - - I talk about reviewing contemporaneous emails, relevant documents, board papers, where in essence it would have to be a very wide-ranging review to try to determine whether or not these payment mechanisms happened or not and it would require access not only to the books and records of the Club, of which I've seen very little, but more importantly it would require access to the books and records of both of the sponsors.*"
>
> Question from Panel member:
>
> "*If we look at the material that has been submitted, because you had an opportunity to look at that, you said little accounting from the Club. What about these other stakeholders that you referred to, are you satisfied with what you've seen in order to exclude other payment* [routes] *and mechanisms?*"
>
> Answer of Mr Lindsay:
>
> "*No, I 'm not satisfied with what I've been shown, because I feel I 've been shown in essence the tip of the iceberg. So we've been talking about, for example, the payment that was made by -- that was caused to be made by ADUG to the Club in respect of Etihad. Well, one of the problems why we're grappling with these issues is because we haven't been provided with any of the contemporaneous email traffic and other documents that put these transactions into context.*"

271. The Panel finds this significant in the sense that Mr Lindsay basically maintains that he has seen insufficient evidence to exclude any hypothesis. For example, if the hypothesis advanced by MCFC could have been excluded, the hypothesis advanced by UEFA could be considered established. This is however not the case. This begs the question, if Mr Lindsay could not exclude any hypothesis, how should the Panel come to the conclusion that UEFA's hypothesis must be accepted and MCFC's hypothesis dismissed?

272. The result is, according to the majority of the Panel, that neither hypothesis is established and then it boils down to the burden of proof. Given that UEFA carries the burden of proof and because the majority of the Panel finds that it did not succeed in satisfying such burden, UEFA's allegations must be dismissed.

273. The majority of the Panel finds that in any event it transpires from the accounting evidence that Etihad transferred the full amounts under the Etihad Sponsorship Agreements during the Etihad Relevant Period to MCFC and that there is no meaningful evidence corroborating the hypothesis that funding from HHSM and/or ADUG was channelled to Etihad directly, or that it was procured to be funded by HHSM and/or ADUG through unidentified third parties.

i. Adverse inferences from MCFC's non-cooperation with the CFCB's investigation

274. It is not in dispute that UEFA is largely dependent on the cooperation of football clubs in obtaining evidence for violations of the CLFFPR. Since this duty of cooperation is explicitly set forth in Article 56 CLFFPR, the CFCB had legitimate reasons to ask MCFC to provide additional information and evidence throughout the proceedings before the CFCB and before CAS.

275. Obviously, such requests must be reasonable.

276. In this respect, the Panel finds that the CFCB's requests to be provided with the original copies of the Leaked Emails, with the runs of emails of which the Leaked Emails formed part and that several witnesses be required to testify were reasonable.

277. However, to what extent football clubs can be required to produce accounting evidence from its sponsors is less straight-forward. For example, as noted above, is an agreed-upon procedure sufficient or is an official independent audit required? The CLFFPR do not provide expressly for official independent audits of sponsors. Indeed, sponsors of football clubs are third parties and sometimes major publicly listed international enterprises that may justifiably not always be open to be involved in investigations by UEFA into alleged CLFFPR infractions. Football clubs therefore clearly have a duty to cooperate, but to what extent such football clubs are required to provide information derived from third parties depends on the specific circumstances of the case. UEFA itself also recognised during the hearing that there may be limits as to what evidence a club can be expected to produce from independent sponsors.

278. This notwithstanding, the Panel finds that MCFC has been very reluctant and at times uncooperative in providing the CFCB with information requested, and substantial evidence was submitted by MCFC to the Panel that was not submitted to the Investigatory Chamber or Adjudicatory Chamber. As will be set forth in more detail below with respect to the charge of non-cooperation below, the Panel finds that the Adjudicatory Chamber rightfully sanctioned MCFC for such non-cooperation. The extent and severity of this failure to cooperate will be addressed below, but in the context of determining whether MCFC disguised equity contributions as sponsorship income, the majority of the Panel is faced with a situation that there is little evidence on file supporting UEFA's contention that the "arrangements" discussed in the Leaked Emails were indeed executed.

279. The Panel is cognisant of the possibility to draw adverse inferences from a failure to produce evidence without satisfactory explanation, i.e. to assume that evidence was not produced by MCFC because such evidence would be adverse to its interests.

280. The possibility to draw adverse inferences in international arbitration proceedings is well-settled. The most authoritative source in this respect is probably the IBA Rules on the Taking of Evidence in International Arbitration (edition 2010) (the "IBA Rules"). Articles 9(5) and (6) of the IBA Rules provide, respectively, as follows:

> "*If a Party fails without satisfactory explanation to produce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.*
>
> *If a Party fails without satisfactory explanation to make available any other relevant evidence, including testimony, sought by one Party to which the Party to whom the request was addressed has not objected in due time or fails to make available any evidence, including testimony, ordered by the Arbitral Tribunal to be produced, the Arbitral Tribunal may infer that such evidence would be adverse to the interests of that Party.*"

281. Accordingly, in order for an arbitral tribunal to draw adverse inferences, evidence must have been requested by the opposing party or ordered by the arbitral tribunal.

282. Although UEFA's Answer contained four separate requests for production of documents, MCFC only partially complied with such requests, following which UEFA did not consider it necessary to pursue its requests to be provided with the remaining evidence. Accordingly, there were no outstanding evidentiary requests before the Panel at the time of the hearing.

283. As a consequence, since UEFA did not pursue its request to be provided with the runs of emails of which the Leaked Emails formed part, the majority of the Panel finds that no adverse inferences can be drawn from the fact that MCFC did not provide such information.

284. As argued by MCFC, if UEFA had wanted to precipitate an interlocutory decision on admissibility of the Leaked Documents at an earlier stage of the proceedings, it could have done so, but it did not. Indeed, in the first appeal of MCFC to CAS of the Referral Decision (i.e. *CAS 2019/A/6298 Manchester City FC v. UEFA*), UEFA successfully sought a ruling from that CAS Panel that the appeal was inadmissible. UEFA could have maintained its documentary requests in the present proceeding and sought an immediate decision from the Panel, prior to the hearing, but it chose not to for whatever reason.

285. It appears UEFA was aware of the consequences of not insisting on further evidence to be produced by MCFC, i.e. that no adverse inferences could be drawn from the non-production of evidence and accepted that the Panel would decide the case based on the evidence on file, so as to have an award issued before the start of the 2020/21 UEFA club competitions season. In its letter to the CAS Court Office dated 15 May 2020, UEFA indicated the following:

> "*Under the applicable law, each party bears the burden to prove the facts that it alleges to its advantage (Art. 8 Swiss Civil Code). As indicated in its Answer dated 8 May 2020, UEFA is satisfied that already the evidence currently on record shows that the Appealed Decision is correct and that it shall be confirmed by CAS.*

MCFC has made in its Appeal Brief several new arguments and has filed some documents. UEFA notes that MCFC has decided which documents or other evidence it wishes to produce in support of these arguments, and which others it does not want to produce, which is the right of any party. As in every case, the evidentiary situation will then need to be appreciated by the CAS Panel.

UEFA does not wish to make the current procedure more complicated than necessary. It is also to be reminded that there is a general, undisputed interest that the present appeal procedure shall be concluded by a reasoned CAS Award no later than by 10 July 2020. In its last letter, Appellant has agreed to this.

For these reasons, UEFA does not see any need to insist on its Evidentiary Request no. 2, and is satisfied to proceed with the case (in order to ensure that the hearing can take place as scheduled) on the basis of Appellant's comments in relation to the other Evidentiary Requests, reserving its right to comment on any documents or information provided and not provided.

To avoid any possible doubt, by not maintaining its Evidentiary Request No. 2, UEFA does not recognize the existence or non-existence or any of the documents that were the object of Request No. 2 and that have not been disclosed by Appellant. Likewise, by not maintaining its Evidentiary Request No. 2, UEFA does not recognize any possible content of any of the concerned documents. All rights of UEFA remain, therefore, reserved."

286. UEFA's approach in this regard is understood, because it was faced with a dilemma between trying to obtain additional evidence and having an award issued before the start of the 2020/21 UEFA club competitions season. These two options could not realistically be reconciled as UEFA's insistence on the production of further evidence would inevitably have dragged the proceedings on into the new season. Facing this dilemma, UEFA apparently decided in favour of the latter option.

287. The majority of the Panel does not agree with the statement made by UEFA during the hearing that a procedural request for disclosure and a substantive duty to collaborate are two different concepts. Indeed, the Panel finds that both go hand in hand. Once a procedural request is not pursued, this may obviously have repercussions for the substantive findings, as is the case here, to the extent that the Panel does not deem it appropriate to draw adverse inferences from MCFC's failure to produce evidence because UEFA did not pursue its initial attempt to have such evidence produced.

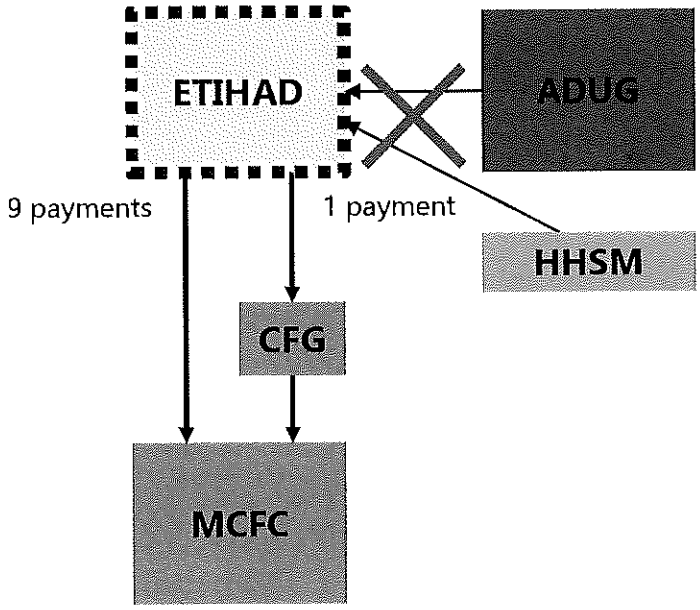
288. Consequently, the Panel finds that no adverse inferences can be drawn from MCFC's failure to produce evidence.

j. Conclusion

289. In view of all the above, there is no doubt that Etihad fully complied with its payment obligations towards MCFC and that MCFC rendered the contractually agreed services to Etihad in return. The majority of the Panel finds that Etihad Sponsorship Agreements are presumed to be negotiated at fair value and that MCFC, HHSM, ADUG and Etihad are considered not to be "related parties". The Etihad Sponsorship Agreements were legally binding contracts. There is no evidence that agreements were backdated or that MCFC otherwise retrospectively tried to cover up any alleged violations following the publication of the Leaked Emails.

290. The Leaked Emails discuss an arrangement whereby Etihad's sponsorship contributions would be funded, or procured to be funded, by HHSM and/or ADUG. The participation of HHSM and/or ADUG and Etihad is a prerequisite for the arrangement to be executed, but such participation has not been established. Mr Pearce may have tried to implement the arrangements discussed in the Leaked Emails, but in the view of the majority of the Panel there is no evidence on file establishing that he actually went ahead with or succeeded in such attempt.

291. Based on the evidence in front of it, in particular the witness statements which again the Panel notes were not before the Adjudicatory Chamber, the letters issued by Etihad executives and the accounting evidence provided by MCFC, the majority of the Panel is not comfortably satisfied that the arrangements discussed in the Leaked Emails were in fact executed. There is not sufficient evidence on file to establish that arrangements were actually made between MCFC and HHSM and/or ADUG or between HHSM and/or ADUG and Etihad or that HHSM and/or ADUG funded part of Etihad's sponsorship obligations directly. In the absence of a link being proven between HHSM and/or ADUG and Etihad (as indicated in the figure below), the majority of the Panel finds that UEFA's theory on disguised equity funding remains unsubstantiated.



292. Based on the evidence in front of it, the majority of the Panel is also not comfortably satisfied that the sponsorship contributions paid by Etihad to MCFC were procured to be funded by HHSM and/or ADUG through unidentified third parties. The theoretical possibility that this may have happened can certainly not be excluded, but that is not the standard to be applied. Rather, it is for UEFA to establish to the Panel's comfortable satisfaction that HHSM and/or ADUG indeed routed funds to Etihad through third parties, and the Panel finds that UEFA did not satisfy this burden.

293. Consequently, the majority of the Panel is not comfortably satisfied that MCFC disguised equity funding from HHSM and/or ADUG as sponsorship income through Etihad.

vi) Did MCFC fail to cooperate with the CFCB's investigation?

294. Although UEFA maintains that MCFC on countless occasions refused to answer questions, refused to provide documents, refused to arrange for the attendance of requested persons and – ultimately – it even instructed its own expert witness not to answer specific questions, the Appealed Decision identified only two specific respects in which MCFC failed to comply with its duty of cooperation:

> *The two particular respects in which the Adjudicatory Chamber considers that* [MCFC] *clearly failed to comply with its duty of cooperation were:*
>
> *(1) Advancing a case in* [...] *the written submissions dated 25 April 2019 which ADUG, which indirectly controlled* [MCFC] *through its 86% interest in CFG, must have known to be false* [...]. *The management of ADUG knew that the payments totalling [...] which it caused to be paid in 2012 and 2013 had not been funded by Etisalat. The receipt by ADUG of [...] from Etisalat in 2015 cannot have gone unnoticed and the purpose of causing such payment to be made via ADUG rather than directly to* [MCFC] *must have been the subject of some careful consideration by ADUG and Etisalat at the time of that receipt.*
>
> *(2) By letter dated 8 April 2019* [MCFC's] *solicitors stated that* [MCFC] *had decided not to answer any questions on the authenticity of the criminally obtained documents or to produce any of the documents requested, suggesting that the request had not been made in good faith by the Chief Investigator. As stated above, declining to make admissions as to the authenticity of the leaked emails could be supported but the Adjudicatory Chamber considers that the refusal to provide any other emails and information requested was designed to obstruct the investigation.*
>
> *For those reasons the Adjudicatory Chamber is comfortably satisfied that* [MCFC] *breached its duties under Article 56.*

295. UEFA submits that the Appealed Decision rightfully established that MCFC breached its duties under Article 56 CLFFPR, which provision provides as follows:

> "*Responsibilities of the licensee*
>
> *The licensee must:*
>
> *a) cooperate with the licensor and the* [CFCB] *in respect of their requests and enquiries;*
>
> *b) provide the licensor and the* [CFCB] *with all necessary information and/or relevant documents to fully demonstrate that the monitoring requirements are fulfilled, as well as any other document requested and deemed to be relevant for club monitoring decision-making, by the deadline set by the licensor and/or the UEFA administration (the reporting entity or combination of entities in respect of which information is required must be the same as for club licensing);*
>
> [...]"

a. Factually incorrect explanations for the GBP [xxx] payment

296. The Panel finds that the allegation with respect to the two payments totalling GBP [xxx] received in 2012 and 2013 are related to the allegations in respect of disguised equity

funding received through Etisalat. UEFA suggests that the explanation advanced by MCFC for these payments during the proceedings before the CFCB was known to be false and sanctioned MCFC on this basis.

297. However, as concluded *supra*, the prosecution of such charges is time-barred. If the CFCB would have taken the correct approach and would have considered the Etisalat issue time-barred from the start of the investigation, this alleged factually wrong explanation would never have come up. Accordingly, even though the alleged false information was provided within the limitation period, it is a "fruit from a poisonous tree" and the majority of the Panel finds that MCFC cannot be sanctioned on this basis.

b. MCFC's failure to cooperate with the investigations

298. The Panel observes that, in the Appealed Decision, the Adjudicatory Chamber limited the scope of its finding of obstructing the investigation to MCFC's letter dated 8 April 2019.

299. MCFC's letter dated 8 April 2019 was sent in response to a letter from the CFCB Chief Investigator dated 29 March 2019, that in turn refers to a letter from the CFCB Chief Investigator dated 20 March 2019.

300. The CFCB Chief Investigator letter dated 20 March 2019 provides, *inter alia*, as follows:

> "[...] *You will find enclosed at appendix 1 the email extracts which appear to contradict the position previously advanced by* [MCFC]. *Accordingly, the club is hereby (i) formally invited to comment on the accuracy and authenticity of the information, emails and documents mentioned above (ii) requested to provide complete and accurate copies of those documents to the CFCB Investigatory Chamber, and (iii) provide complete runs of the sequences of emails of which these form a part.*
>
> *The documents refer to a number of other documents, and there will also be a number of documents relevant to the subject matter. Attached at appendix 2 is a list of documents either referred to or arising out of the emails which the club is requested to provide copies of. Please also take steps to ensure that all relevant documents are secured and preserved.*
>
> *The deadline for* [MCFC] *to comply with the above questions and requests and to provide by email its response to the present letter expires on 27th* ***March 2019****.*
>
> *In addition, we request* [MCFC] *to provide consent to each of* [ADUG], *Etihad, Etisalat and* [ADTA] *answering requests from the CFCB Investigatory Chamber for the production of all correspondence, emails and documents in their possession and control relating to the sponsorship agreement or agreements, and all bank statements showing payments to* [MCFC] *and all relevant receipts from ADUG.*

301. The CFCB Chief Investigator letter dated 29 March 2019 provides, *inter alia*, as follows:

> "[...] [A]*s already requested in our letter dated 20 March 2019 and in accordance with Article 56 (a) to (c) of the* [CLFFPR] – *Edition 2018, your club is hereby once again formally requested to:*

i. provide its determination on the accuracy and authenticity of the information, emails and documents enclosed (see Enclosure 1);

ii. provide complete and accurate copies of those documents to the CFCB Investigatory Chamber; and to

iii. provide complete unredacted runs of the sequence of emails of which these form part.

The documents refer to a number of other documents, and there will also be a number of documents relevant to the subject matter. Enclosed is also a list of documents either referred to or arising out of the emails which your club is requested to provide copies of (see Enclosure 2). As previously advised, please also take steps to ensure that all relevant documents are secured and preserved.

The ultimate deadline for your club to comply with the above requests [...] *expires on* ***4th April 2019****.*

Furthermore, as communicated in yesterday's meeting and in accordance with Article 13 (1) of the [CFCB Procedural Rules] – *Edition 2015* [...]*, your club is requested to attend a hearing before the* [Investigatory Chamber] *on* ***11th April 2019*** [...].

This hearing will focus mainly on the information, emails and documents related to [MCFC] *made public in various media outlets during the first days of March 2019. The following persons, who have held or currently hold positions within your club, are requested to attend this hearing:*

- *Mr Khaldoon Khalifa Al Mubarak;*
- *Mr Ferran Soriano;*
- *Mr Simon Pearce;*
- *Mr Andrew Widdowson; and*
- *Mr Jorge Chumillas.*

Moreover, we request that you clearly identify the person named "Mohamed" (referenced in the email sent by Simon Pearce on 14 April 2010 and the email received by Simon Pearce on 6 September 2012) and to ensure that he will also attend the above-mentioned hearing.

We reserve the right to question the above-mentioned persons together or separately.

In order to ensure that the hearing is conducted as efficiently as possible, our Legal Counsel, Mr Mark Phillips QC, will also question the six above-mentioned persons.

[...]"

302. MCFC's response dated 8 April 2019 provides, *inter alia*, as follows:

"***The Club's Response to the Requests in the Investigatory Chamber's 29 March 2019 Letter***

In your 29 March 2019 letter, the Investigatory Chamber raised several requests. The Club sets out its position on those requests below:

(i) The Club's attendees at the 11 April hearing;

The Club's attendees will be:

- *Mr. Ferran Soriano*
- *Mr. Andy Young*
- *Mr. Simon Cliff*

- *Mr. David Casement QC*
- *Mr. Rhodri Thomas*
- *Mr. Julian Diaz-Rainey*
- *Mr. James Cranston*
- *Mr. Martyn Hawkins*

(ii) The suggested cross-examination

The Club does not agree to the Investigatory Chamber, or Mr. Mark Phillips QC, cross-examining individuals at the 11 April 2019 hearing. As explained below, the Club considers that such an approach would be unprecedented and outside the Investigatory Chamber's powers. Certainly, no good (or indeed any) reasons have been advanced for such an unusual and aggressive approach.

(iii) Requested confirmations and documents

The Club will not be validating whether to admit or deny the accuracy or completeness of criminally obtained documents reproduced in your Enclosure 1. The requests for documents refer to certain documents that were obtained by illegal means from the Club and partially published in redacted form in various news outlets in a form determined by them and separated from any context or explanation.

For the same reason, the Club does not consider it appropriate to provide the confirmation or to provide copies of documents that you have requested. Certain documents that were published were illegally obtained by criminals and then partially published in the press in a form determined by the media. The use of such documents is potentially unlawful. Further, the Investigatory Chamber will, or ought to, be aware of the wider implications of seeking to use illegally obtained documents in disciplinary proceedings. It is doubtless because of these concerns that the Investigatory Chamber has requested that the documents are volunteered by the Club. In the circumstances, we consider the request to be a breach of the obligation of good faith.

Notwithstanding that, as stated above the Club will address each one of the documents you highlighted, providing context, explanation and additional support material.

[…]"

303. As set forth in the Appealed Decision, the Adjudicatory Chamber did not consider it inappropriate for MCFC not to make admissions as to the authenticity of the Leaked Emails. This issue therefore falls outside of the scope of the present appeal arbitration proceedings and MCFC cannot be sanctioned on such basis (as opposed to the production of the original versions of the Leaked Emails).

304. It appears that the additional documentation requested as set forth in Appendix 2 to the CFCB Chief Investigator's letter dated 20 March 2019 has all been provided by MCFC, or at least no specific argument has been advanced by UEFA that this is not the case.

305. MCFC however failed to provide all but one of the witnesses requested by the CFCB Chief Investigator to attend the hearing before the Investigatory Chamber on 11 April 2019, as requested by letter dated 29 March 2019. Only Mr Soriano attended the hearing.

306. MCFC also failed to provide the complete runs of emails of which the Leaked Emails formed part, it failed to provide the original versions of the Leaked Emails and it failed to clarify who the "*Mohamed*" referred to in Leaked Email No. 2 was.

307. The Adjudicatory Chamber reproached MCFC for its "*refusal to provide any other emails and information requested*" and that such refusal "*was designed to obstruct the investigation*".

308. The Panel deems it relevant to make a distinction between the documents and evidence requested by the CFCB Chief Investigator that were not provided to the CFCB but that were ultimately produced in the present proceedings before CAS on the one hand, and the evidence requested by the CFCB Chief Investigator that was never produced on the other.

c. Evidence never produced by MCFC

309. The Panel finds that MCFC could potentially be sanctioned for both categories, but that, insofar as it concerns evidence that has never been produced, UEFA had a duty to clearly identify in the present appeal arbitration proceedings which evidence it wanted to be produced by MCFC, in order for MCFC to be sanctioned for a failure to cooperate.

310. In this respect, the Panel considers it noteworthy that MCFC indicated by letter dated 15 May 2020 that it was willing to partially comply with UEFA's document production requests, provided that:

> "*1. the provision of the emails in response to Request 1 will be solely for the purpose of this appeal and the emails that MCFC will submit to CAS will be kept confidential and not disclosed by UEFA to any other party (other than counsel and/or any expert instructed on UEFA's behalf for the purposes of this appeal) or used by UEFA (or those to whom it may disclose the emails) for any other purpose;*
>
> *2. the provision of the emails in response to Request 1 is without prejudice to MCFC's position as to the authenticity and/or admissibility of the Criminally Obtained Documents and/or such emails, as to which all MCFC's rights are fully reserved; and*
>
> *3. neither party will make any further requests to the CAS Panel for the provision of documents or information in this appeal pursuant to CAS Code 44.3 or otherwise.*"

311. On the same date, 15 May 2020, UEFA responded, *inter alia*, as follows to MCFC's letter:

> "[…] *UEFA has taken note and appreciates Appellant's comments regarding UEFA's Evidentiary Requests No. 1, 3 and 4. The deadline indicated, i.e. 18 May 2020, is acceptable to UEFA.*
>
> *UEFA has taken note of the objection of Appellant to comply with UEFA's Evidentiary Request no. 2, based among other things on timing reasons.*
>
> *In this regard, UEFA respectfully makes the following comments: Under the applicable law, each party bears the burden to prove the facts that it alleges to its advantage (Art. 8 Swiss Civil Code). As indicated in its Answer dated 8 May 2020,*

UEFA is satisfied that already the evidence currently on record shows that the Appealed Decision is correct and that it shall be confirmed by CAS.

MCFC has made in its Appeal Brief several new arguments and has filed some documents. UEFA notes that MCFC has decided which documents or other evidence it wishes to produce in support of these arguments, and which others it does not want to produce, which is the right of any party. As in every case, the evidentiary situation will then need to be appreciated by the CAS Panel.

UEFA does not wish to make the current procedure more complicated than necessary. It is also to be reminded that there is a general, undisputed interest that the present appeal procedure shall be concluded by a reasoned CAS Award no later than by 10 July 2020. In its last letter, Appellant has agreed to this.

For these reasons, UEFA does not see any need to insist on its Evidentiary Request no. 2, and is satisfied to proceed with the case (in order to ensure that the hearing can take place as scheduled) on the basis of Appellant's comments in relation to the other Evidentiary Requests, reserving its right to comment on any documents or information provided and not provided.

To avoid any possible doubt, by not maintaining its Evidentiary Request No. 2, UEFA does not recognize the existence or non-existence or any of the documents that were the object of Request No. 2 and that have not been disclosed by Appellant. Likewise, by not maintaining its Evidentiary Request No. 2, UEFA does not recognize any possible content of any of the concerned documents. All rights of UEFA remain, therefore, reserved.

As to the assumptions and conditions indicated by Appellant in the last part of its last letter, UEFA hereby (i) confirms that in lack of any exceptional circumstances as per Art. R44.1 CAS Code, neither party shall make any further requests to the CAS Panel for the provision of documents or information in these appeal proceedings pursuant to Art. R44.1 of the CAS Code or otherwise and (ii) confirms once again to respect in full the confidentiality requirements set out by the CAS Code. As to the Appellant's second condition, this would be for the CAS Panel to determine."

312. For ease of reference, UEFA's Evidentiary Request No. 2 was formulated as follows in its Answer:

"*2 Runs of emails*

Second, MCFC should be ordered to produce the complete and unredacted runs of emails of which these emails are a part. The emails might have been responsive to other emails and there will have been other emails sent in response to these emails. Those runs of emails surely exist and should be produced so that the CAS can see the extent to which other individuals confirmed the content of the emails, or corrected them.

The CFCB IC had already asked for these documents and MCFC refused to produce them. These documents are, however, undoubtedly relevant to the core matters of this case.

All requirements pursuant to art. R44.3 of the CAS-Code to make this evidentiary request are thus met."

313. The Panel finds that, by indicating that it "*does not see any need to insist on its Evidentiary Request no. 2*" and that it was "*not maintaining its Evidentiary Request No. 2*" in its letter dated 15 May 2020, UEFA did not pursue Evidentiary Request No. 2

even though it could have. UEFA therefore no longer expected MCFC to provide the runs of emails, nor did it request the Panel to order MCFC to produce such documents. The direct consequence thereof in the view of the majority of the Panel is not only that no adverse inferences can be drawn from MCFC's failure to produce these documents, but also that MCFC cannot be sanctioned for failing to do so.

314. Consequently, the majority of the Panel finds that MCFC cannot be sanctioned for its failure to produce the complete runs of emails of which the Leaked Emails formed part in these CAS proceedings, or indeed for any failure to produce evidence insofar not pursued in the present proceedings.

d. Evidence produced by MCFC for the first time during the proceedings before CAS

315. Several pieces of evidence produced by MCFC in the present proceedings before CAS, such as the evidence of Mr Hogan, Mr Harib, a further expert report from Mr Dudney, and the letters from Mr Al Sayegh of Etihad and HHSM were not requested by the CFCB. The Panel finds that MCFC cannot be sanctioned for not having provided such evidence in the proceedings before the CFCB. MCFC was obviously entitled to further substantiate its case following the issuance of the Appealed Decision.

316. As to the evidence that was requested to be produced by the CFCB Chief Investigator and that was not produced by MCFC during the CFCB proceedings, but that was ultimately produced during the present proceedings before CAS, the Panel finds that this failure is not repaired by the *de novo* nature of CAS proceedings, because allowing clubs to hold onto relevant evidence until the proceedings before CAS would seriously risk turning the proceedings before the CFCB into a farce and would render the entire CFCB process very inefficient. This cannot be tolerated or endorsed.

317. While the CFCB Chief Investigator had requested MCFC to bring Mr Simon Pearce and Mr Andrew Widdowson to the hearing scheduled before the Investigatory Chamber on 11 April 2019, MCFC did not comply with this request, but waited until one year later in the present appeal arbitration proceedings to provide evidence from these two persons, both of whom authored Leaked Emails. No arguments are advanced by MCFC as to why these witnesses could not have been made available before. The Panel finds that the CFCB Chief Investigator's request that these persons be made available was reasonable and that the Adjudicatory Chamber rightfully determined that MCFC breached its duties under Article 56 CLFFPR in this respect. Indeed, the Panel endorses the Adjudicatory Chamber's comment that it considered MCFC's failure to provide other emails and information that was requested was designed to obstruct the investigation.

318. Additionally, it was only because of Mr Pearce's evidence that the identity of the "*Mohamed*" referred to in Leaked Email No. 2 became known. While the Investigatory Chamber already asked for clarifications in this respect by letter dated 29 March 2019, as well as did the Adjudicatory Chamber by letter dated 15 January 2020, it was only with Mr Pearce's witness statement produced together with MCFC's Appeal Brief in the present proceedings that it became clear that this "*Mohamed*" was probably [Mr Z] of ADUG, which evidence was in any event accepted by UEFA. This issue could have been clarified long before, when originally requested, if MCFC had provided the

evidence of Mr Pearce when it was first requested to do so by the Investigatory Chamber. This would undoubtedly have facilitated the CFCB's investigations.

319. Furthermore, the CFCB Chief Investigator also requested MCFC to provide complete and accurate copies of the Leaked Emails. MCFC only (partially) complied with this request over one year later by letter dated 18 May 2020 in the present appeal arbitration proceedings. Again, no arguments are advanced by MCFC as to why these documents could not have been produced before. The Panel considers that this was a reasonable request from the CFCB Chief Investigator and that MCFC had no legitimate reason to refuse the production of such documents and therefore breached its duties under Article 56 CLFFPR.

320. The Panel does not find it relevant that not all requests for cooperation made by the Investigatory Chamber were not repeated by the Adjudicatory Chamber, despite a request from the Investigatory Chamber to do so, because the Panel finds that the fact remains that MCFC failed to comply with its duty to cooperate with a reasonable request from the Investigatory Chamber.

321. Consequently, the majority of the Panel finds that MCFC failed to cooperate with the CFCB's investigation in respect of three separate issues and therefore contravened Article 56 CLFFPR.

vii) If any violation is determined to be committed, what is the appropriate sanction to be imposed?

322. Article 28 CFCB Procedural Rules provides as follows:

> *"The adjudicatory chamber determines the type and extent of the disciplinary measures to be imposed according to the circumstances of the case."*

323. Article 29 CFCB Procedural Rules provides as follows:

> *"1. The following disciplinary measures may be imposed against any defendant other than an individual:*
>
> *a) warning,*
> *b) reprimand,*
> *c) fine,*
> *d) deduction of points,*
> *e) withholding of revenues from a UEFA competition,*
> *f) prohibition on registering new players in UEFA competitions,*
> *g) restriction on the number of players that a club may register for participation in UEFA competitions, including a financial limit on the overall aggregate cost of the employee benefits expenses of players registered on the A-list for the purposes of UEFA club competitions,*
> *h) disqualification from competitions in progress and/or exclusion from future competitions,*
> *i) withdrawal of a title or award.*
>
> [...]
>
> *3. Disciplinary measures may be combined."*

324. The majority of the Panel finds that UEFA's main charges, i.e. providing incorrect information to UEFA with respect to having received disguised equity funding through Etisalat and Etihad, must be dismissed. Any alleged wrongdoing of MCFC with respect to the Etisalat payments is time-barred. Any alleged wrongdoing of MCFC with respect to the Etihad payments is partially time-barred and, in any event, not established to the comfortable satisfaction of the Panel.

325. That said, the Panel is of the view that UEFA by no means filed frivolous charges against MCFC. As also acknowledged by MCFC, there was a legitimate basis to prosecute MCFC, but, based on the evidence on file, the Panel finds that it cannot reach the conclusion that disguised equity funding was paid to MCFC by HHSM and/or ADUG through Etihad.

326. The Panel does, however, find that MCFC failed to cooperate with the CFCB's investigations by failing to comply with reasonable evidentiary requests in several respects for over one year until this proceeding. By failing to offer witness evidence of Mr Pearce and Mr Widdowson before the CFCB, by failing to provide the CFCB with complete and accurate copies of the Leaked Emails, and by failing to reveal the identity of the "*Mohamed*" referred to in Leaked Email No. 2, all of which was eventually done in this proceeding before CAS, MCFC obstructed the investigations of the CFCB.

327. As argued by UEFA, the entire FFP system depends for its effectiveness on complete and accurate reporting by clubs of their football income and expenses. If clubs do not truthfully disclose such information, the system cannot work.

328. MCFC's failure to produce the original versions of the Leaked Emails is particularly serious, because the production thereof would have pre-empted any arguments of MCFC as to the authenticity, which has been a key argument of MCFC throughout the entire process. The production of the original versions of the Leaked Emails in an early stage of the proceedings would undoubtedly have facilitated the CFCB's investigations and may have allowed the CFCB to legitimately demand from MCFC that it produce the entire runs of emails, without the need of an interlocutory decision to establish authenticity and admissibility.

329. In 2014, MCFC was under investigation by the CFCB for potential breaching of the break-even requirements. That investigation ended with the execution of the Settlement Agreement on 16 May 2014. This is just within the five-year limitation period that applies to the 15 May 2019 charges before this Panel, and it is perhaps no coincidence that the CFCB brought its charges in the present case just before five years had passed since the Settlement Agreement. Be that as it may, and while the Settlement Agreement was concluded without any admission of liability, with agreed conditions, and no breach of the Settlement Agreement is alleged here, some of the information that was now provided by MCFC to the CFCB in the 2019 investigation would have provided a more complete and accurate picture of two payments to MCFC in 2012 and 2013 that were before the CFCB when the Settlement Agreement was entered into.

330. Accordingly, the Panel considers that this context makes the already serious breach by MCFC of the duty to cooperate more severe than would otherwise be the case.

331. Thus, the majority of the Panel finds that MCFC's failure to cooperate with the CFCB's investigation is a severe breach and that MCFC is to be seriously reproached for obstructing the CFCB's investigations.

332. Notwithstanding MCFC's request in its Appeal Brief that, should there be any finding of a breach by the Panel, it would be necessary to consider what might be a proportionate sanction and therefore reserved its right to make further submissions if such a situation would arise, the Panel notes that such situation indeed arises, but finds that a further round of written submissions is not warranted. MCFC has no "*right*" to file a further round of written submissions. Rather, pursuant to Article R56 CAS Code, the possibility for parties to supplement their argument is in principle reserved only for "*exceptional circumstances*", while the Panel finds that no such exceptional circumstances have been established. MCFC also made submissions at the hearing regarding the proportionality of the sanction in the case of a finding of breach and the Panel finds that it is perfectly capable of issuing an appropriate sanction on MCFC, without the need for another round of written submissions. Holding a further round of written submissions would also be incompatible with the Parties' initial joint request to have a reasoned award issued by 10 July 2020, subsequently revised by the Parties to their request that a reasoned award be issued on 13 July 2020, specifically.

333. The Adjudicatory Chamber imposed a two-year ban from participation in UEFA's club competitions and a fine of EUR 30,000,000. The Adjudicatory Chamber did not indicate to what extent such sanctions were premised on the alleged disguised equity funding on the one hand and on MCFC's failure to cooperate with the CFCB's investigations on the other hand.

334. The Panel finds that the charges with respect to the dishonest concealment of equity funding are clearly more significant violations than obstructing the CFCB's investigations. The majority of the Panel therefore does not consider it appropriate to impose any ban on participation in UEFA's club competitions for MCFC's failure to cooperate with the CFCB's investigations alone.

335. However, considering i) the financial resources of MCFC; ii) the importance of the cooperation of clubs in investigations conducted by the CFCB, because of its limited investigative means; and iii) MCFC's blatant disregard of such principle and its obstruction of the investigations, the majority of the Panel finds that a significant fine is to be imposed on MCFC and considers it appropriate to reduce UEFA's fine by 2/3, i.e. to the amount of EUR 10,000,000.

336. The Panel does not deem it appropriate to take into account as a mitigating factor the fact that the violations were committed a long time ago, because this is not the case. The violations of which MCFC is found guilty took place recently, i.e. during the proceedings before the CFCB.

337. The Panel also does not find it appropriate to take into account the argument raised by MCFC at the hearing that the current COVID-19 pandemic should be reflected in the sanctions imposed considering the impact this has and may have for years to come on stadium attendance. Although the landscape for football clubs has altered since the issuance of the Appealed Decision, MCFC does not argue that it is in a dire financial situation because of the pandemic. The Panel finds that the imposition of a fine lower

than EUR 10,000,000 would not be a sufficiently strong deterrent and that MCFC's failure to cooperate with the CFCB investigation is to be strongly condemned.

338. Finally, MCFC requests that it should not be held liable to pay EUR 100,000 to UEFA on account of the CFCB's legal costs, as determined in the Appealed Decision.

339. According to CAS jurisprudence, "*it is not for the CAS to reallocate the costs of the proceedings before the previous instances*" (CAS 2013/A/3054, para. 89 of the abstract published on the CAS website; CAS 2016/A/4387, para. 181-182 of the abstract published on the CAS website). MCFC has developed no argumentation to the contrary, nor has it invoked any legal or statutory basis in order to demonstrate that this solution should not apply in the present case.

340. Furthermore, the majority of the Panel finds that the new evidence presented by MCFC in the present proceedings before CAS, in particular the witnesses made available, i.e. Mr Pearce, Mr Widdowson and Mr Hogan, and the letters from HHSM and Mr Al Sayegh, had an impact on the Panel's findings. The Panel cannot put itself in the shoes of the Adjudicatory Chamber at the time of issuance of the Appealed Decision, but it finds that the possibility cannot be excluded that the Adjudicatory Chamber may have reached the same conclusions as the Panel in the present proceedings, had such evidence been made available to it.

341. The relevance of this is that MCFC may have avoided the Appealed Decision by already filing such evidence before the CFCB. The Appealed Decision is therefore not *per se* wrong, but, at least to a certain extent, is a consequence of MCFC's decision to produce the most relevant evidence at its disposal only in the present appeal arbitration proceedings before CAS.

342. In accordance with Article 32(3) CFCB Procedural Rules, determining that "[c]*osts caused unnecessarily by the defendant are charged to the latter, irrespective of the outcome of the proceedings*", the Panel finds it not inappropriate to leave the contribution of EUR 100,000 to be paid by MCFC towards the costs of the CFCB in place.

C. Conclusion

343. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the majority of the Panel comes to the following conclusions:

i) The Panel finds that the CFCB did not breach any obligations of due process and that any alleged breaches are in any event cured by the *de novo* effect of appeals arbitration proceedings before CAS.
ii) The Settlement Agreement does not bar UEFA from charging MCFC for the issues at stake in the present appeal arbitration proceedings.
iii) The alleged breaches related to the financial statements for the years ended May 2012 and May 2013 are time-barred, but the alleged beaches related to the financial statement for the year ended May 2014 are not.
iv) The alleged breaches related to the break-even information submitted for the 2013/2014 monitoring process are time-barred, but the alleged breaches related

to the break-even information submitted for the 2014/15 monitoring process are not.

v) The comparative information from the previous year in financial statements and the break-even information regarding T-1 and T-2 do not form a basis for prosecution, as any such prosecution must be based on the first time such financial information is submitted for licensing and/or monitoring purposes.

vi) The charges with respect to equity funding being disguised as sponsorship contributions from Etisalat are time-barred.

vii) The Leaked Emails comprise admissible evidence.

viii) The Panel is not comfortably satisfied that MCFC disguised equity funding from HHSM and/or ADUG as sponsorship contributions from Etihad.

ix) The Panel finds that MCFC failed to cooperate with the CFCB's investigation in respect of two separate issues.

x) The Panel finds it appropriate that a fine of EUR 10,000,000 is imposed on MCFC.

xi) The amount of EUR 100,000 ordered to be paid by MCFC to UEFA in the Appealed Decision as compensation for the CFCB's legal costs is confirmed.

344. All other and further motions or prayers for relief are dismissed.

XII. COSTS

345. Article R64.4 CAS Code provides the following:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
>
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*
> - *the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.*"

346. Article R64.5 CAS Code provides as follows:

> "*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

347. Having taken into account the Parties' submissions on costs and the outcome of the proceedings, in particular the fact that MCFC's appeal is partially upheld, that the core charges against MCFC have been dismissed, that MCFC is nonetheless found to have obstructed the CFCB's investigations, that MCFC's arguments with respect to violations of due process by the CFCB have been dismissed, that MCFC's arguments with respect to the Settlement Agreement have been dismissed, and that MCFC's arguments with respect to the admissibility of the Leaked Emails have been dismissed, the Panel finds it reasonable and fair that the costs of the arbitration, in an amount that will be determined and notified to the Parties by the CAS Court Office, shall be borne in equal shares by MCFC and UEFA.

348. Furthermore, pursuant to Article R64.5 CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, and in particular the circumstances set forth in the previous paragraph and that MCFC withdrew its initial prayer for relief that UEFA be ordered to pay MCFC's legal costs and other costs incurred in connection with these proceedings, the Panel rules that each of the Parties shall bear its own legal fees and other expenses incurred in connection with the present appeal arbitration proceedings.

* * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 February 2020 by Manchester City Football Club Limited against the decision issued on 14 February 2020 by the Adjudicatory Chamber of the Club Financial Control Body of the *Union des Associations Européennes de Football* is partially upheld.

2. The decision issued on 14 February 2020 by the Adjudicatory Chamber of the Club Financial Control Body of the *Union des Associations Européennes de Football* is set aside and is replaced by the following:

   a. Manchester City Football Club Limited has contravened Article 56 of the Club Licensing and Financial Fair Play Regulations.

   b. Manchester City Football Club Limited shall pay a fine of EUR 10,000,000 to the *Union des Associations Européennes de Football*, within 30 days as from the date of issuance of the present arbitral award.

   c. Manchester City Football Club Limited shall pay an amount of EUR 100,000 to the *Union des Associations Européennes de Football* on account of the legal costs incurred by the CFCB up until the issuance of the decision issued on 14 February 2020 by the Adjudicatory Chamber of the Club Financial Control Body of the *Union des Associations Européennes de Football*, within 30 days as from the date of issuance of the present arbitral award.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by both Parties in equal shares.

4. Each Party shall bear its own legal fees and other expenses incurred in connection with the present appeal arbitration proceedings.

5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 13 July 2020

THE COURT OF ARBITRATION FOR SPORT

Rui **Botica Santos**
President of the Panel

Andrew de Lotbinière **McDougall** QC
Arbitrator

Ulrich **Haas**
Arbitrator

Dennis **Koolaard**
Ad hoc Clerk