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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION JAREK

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY, 5 OCTOBER, 2011

AT 10.33 AM

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THE COMMISSIONER: My apologies to all for the adjournment which unfortunately was necessitated by unforeseen circumstances. Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Commissioner, yesterday when I opened this public inquiry I made mention of evidence implicating officials and a total of 110 public sector organisations. As I made clear, I did so for the purpose of showing that the practice of giving and receiving incentives to individual officials involved in supply transactions and the public sector was widespread, insidious and pervasive. But it is impossible to investigate them all fully in the public hearing over the next, now, two and a half weeks. We have had to be selective. What I want to make clear is that each organisation or person concerned will have the opportunity if they wish to answer the evidence affecting them.

THE COMMISSIONER: That is including the 85 - - -

MR CAMPBELL: 95.

THE COMMISSIONER: - - - 95 entities.

MR CAMPBELL: Indeed, Commissioner, indeed and in fact to that end full particulars of the evidence affecting them will be given to each of the 95 other organisations over the next two days. They will be invited to respond if they wish. It goes without saying that I will not be seeking any finding of corrupt conduct on the part of any person except in relation to the supply of goods to the 15 organisations I am concentrating on.

THE COMMISSIONER: That is who are the subject of the oral evidence at the public inquiry.

MR CAMPBELL: Yes, Commissioner, the ones whom I, whose names I announced in open hearing room during the course of my opening address and may I repeat that the material relating to the other 95 is relevant to that part of the inquiry because it demonstrates the prevalence and pervasiveness of the practise in the public sector generally.

THE COMMISSIONER: Yes, thank you.

MR CAMPBELL: I call Mr Butow, B-O, sorry, B, B-U-T-O-W, Butow I'm told, Mr Ronnie Butow.

THE COMMISSIONER: How do you spell that, please?

MR CAMPBELL: B-U-T-O-W. Come forward please, sir.

THE COMMISSIONER: Won't you take a seat, Mr Butow. Is Mr Butow represented?

MS MUNN: Yes, Commissioner, I am Munn, I seek leave to appear for Mr Butow.

THE COMMISSIONER: Yes. And he falls in the same category as the other persons who have been - - -

MS MUNN: He does, yes, Jody Parker and Paul Goldin.

THE COMMISSIONER: I follow.

10

SHORT ADJOURNMENT

[11.37am]

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. I understand that the technical hitch has been ironed out. Mr Butow is in the witness box and I think you were just about to administer an affirmation to him.

20

THE COMMISSIONER: Yes.

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Butow, are you Ronald Daniel Butow?---Ronald Daniel Butow.

10 Butow, I do beg your pardon for my mispronunciation. And are you self employed but working as a sales agent for Momar Australia Pty Limited? ---That's correct.

And have you been working for that company since May 2007?---That's correct.

Before you commenced that occupation, what type of occupation were you in?---I was in the hospitality industry.

20 Yes. For how long?---Five years.

And before that?---Self employed, a horticulturist.

Oh right. Now in the course of your work as a sales representative for Momar, I will call them, do you have a particular designated region that you service?---That is correct.

And what is that region?---Wollongong down to Eden on the south coast. South of the Sturt Highway out to Balranald.

30 And when started with Momar, did you receive training in the methodology of sales adopted by that company?---Yes, I did.

Who provided that training?---Ellis Kahn.

And is he the national sales manager?---That is correct.

All right. And did that involve familiarity with a system referred to as the Gears of selling?---That is correct.

40 Right. And did that system involve building a relationship with a client? I'll withdraw that. Did that involve seeking to build a relationship with the buyer through various means?---Yes.

All right. And I'll come to some of those means in just a moment. Is it the nature of the work that you have to, you're out on the road and you canvas your buyers by calling upon them at their place of work?---Correct.

And whilst you're in the region where you may have an established buyer do you do what are referred to in your occupation as cold calls?---Correct.

And does that mean looking up other businesses in the same area which may have an interest in purchasing the type of products you sell?---Correct.

I think in very broad terms Momar sell industrial chemicals of various types. Is that right?---Correct.

10 And the customers from whom you obtain orders are both in the public and private sector. Is that right?---That's correct.

And are a large percentage of them in the public sector?---Yes.

Now the, in the course of, now is it part of the procedure in which you were trained that incentives of one kind or another are offered to the buyers?
---Yes.

20 Now when I say the buyers, I am referring to the person and the customer who, whose job it is to place the order. Do you understand that?---Yes.

And indeed was it part of the training that you received in these sales techniques that I've asked you about that the object of the relationship was making a relationship with the person whose job it was to buy in particular rather than necessarily with the organisation for which that person worked?
---Partially, not only the buyer but the user of the product.

30 All right. Well when you say the user of the product you're talking about the, the people whose job it is to apply those chemicals in the ordinary course of their work?---That is correct.

Again, there's a distinction between those individuals and, and the organisation by which they're employed. Do you agree?---Yes.

40 Perhaps, pardon me, Commissioner, I'm just going Commissioner to volume 10, tab 53. And I'm opening the folder at page 350. Now Mr Butow, you've got it opened at page 350, I think, you can see it on the screen, and you can see that it's a document that has Momar's logo on it?
---That's correct.

And it's entitled The Gears of Selling. Correct?---Correct.

And is that a document looking at that coversheet that you've seen before?
---Yes, I have.

And when you underwent the training in these sales techniques, when you started with the company, were you given a copy of this document?---Yes, I was.

MR CAMPBELL: Just, I'll ask that it be turned to page 359 which is page 10 of the document. Could I, could I just direct your attention to the third paragraph, Mr Butow, it commences with the words "The successful salesman will call on the same people for many years." Do you see that?
---Yeah.

10 Yes. And this is the type of advice that you were given by reference to this manual and no doubt by reference to your training at Momar, is that correct?---That's correct.

And the, the last, the last sentence of that paragraph says, "To establish the basis for a long term relationship ask such questions as" and it goes on to encourage you to find out about the individual's personal circumstances, interests and the like. Is that the case?---Yes, that's true.

20 All right. And that emphasises, does it, does it not, that, that right from the outset when you make contact, even with a new customer, you're to form a relationship with them on a more or less personal level?---Not from the outset but it does take time to break the ice, that's correct.

All right. Well, I mean - - -

THE COMMISSIONER: But that's your ultimate object?---Yes.

30 MR CAMPBELL: Yes. The only reason why I put it to you from the outset is if you look at the penultimate paragraph on that page commencing "Now is the time" it talks about shifting from the first to second gear, do you see that?---Yes, I do.

I rather assume that as part of the first gear you'd be at least initiating the process of, of building up that personal rapport with the buyer?---That's correct.

All right. And indeed, I won't ask you to look at an example of it but you are provided by Momar with client cards I think they're called?---Yes, that's right.

40 And the client's, the client card is a, is a printed forum which you, which has different categories of information for you to record on the printed forum, is that correct?---That is correct.

And, and you, you, the requirements are that you keep onto those cards in respect of each customer on your run, is that correct?---That's true.

And that each time you visit or call specified information is to be recorded on the client card, yes?---That's correct.

I'm sorry, you have to answer audibly?---Sorry, that's correct.

Thank you. Just you were nodding your head, that's all?---I'm sorry.

Now, the, and one of the categories of course of, of material that you're required to, to record is personal information, that's so, isn't it?---That is correct.

10 About the individual with whom you were dealing at each customer organisation?---That is correct.

Yeah. And as I say, I won't, I won't take you to it but, but typically say one might record on there the personal attributes of the individual as, as they strike you?---That's correct.

Their, their likes and dislikes?---Yes.

20 You might even record that they've been on holidays, is that right?---That's personal information, that's correct.

Yes, and you know, whether, whether their son or daughter's had a, had a child or something like that?---That's correct.

30 Yes. And all of this is part of a process of - I hesitate to the use the word ingratiating yourself but it's a process of getting an advantage over your competitors by virtue of having established this one on one personal relationship, that's so, isn't it?---I don't know if it's to be used as an advantage, it certainly is an advantage for myself with the customer but not with my opposition.

Oh, well, what - - -

THE COMMISSIONER: But it's a selling tool?---It's part of the selling tool, that's correct.

MR CAMPBELL: Thank you, Commissioner. And if it's a selling tool it's deployed to hopefully increase your sales?---That's correct.

40 All right. And now during the time that you have been with Momar, have there also been what are sometimes referred to in their literature as promotions?---Yes, there has.

What are they?---Promotions are incentives we give to our clients from time to time.

THE COMMISSIONER: What do you call, what do you mean by clients?
---People who are buying our produce or buying our products from us.

Well, I'm sorry- -?---The buyer or client is- - -

Who's doing the buying? Are you talking about the individual who actually physically places the order?---That's correct.

You're not talking about the entity for whom that person is acting?---No, I'm talking about the individual.

10 MR CAMPBELL: And indeed the whole mode of operating which is described in Gears of Selling is directed to building those type of relationships that we've been discussing with the individual who's doing the ordering, or as you said, perhaps using the product, rather than the organisation for which they work?---That's correct.

Now, and, and the promotions that I've been asking you, started to ask you about are directed to the same end?---That is correct.

20 Now, when you, we've heard evidence, and I'll take you to it straightaway, that at some stage Momar introduced, initially as a promotion, the idea that vouchers would be given to the individual in respect of orders placed over a certain amount. Are you familiar with that?---Yes, I am.

Right. Was, and we've heard evidence that although initiated as a limited opportunity it's become an established practice. Is that correct?---Yes, it is.

Right. And had it become an established practice by the time you commenced in May of 2007?---I believe so, yes. Prior to that I'm not aware of it.

30 All right. Now, we've heard the evidence that typically the amount involved, it would be an order of at least \$1,000 and that at that level the individual would become eligible for a gift voucher with the Coles Myer group of \$50. Is that consistent with your experience?---Yes, it is.

And is it also your experience that at that level the cost of that voucher is shared between you and Momar Australia Pty Limited?---That's right.

40 Now, the, thank you. Please don't take any offence at this question, Mr Butow, but if you went into any workplace and whether public or private and said to the individual who was authorised to place an order with you in the event that he ordered more than \$1,000 worth of goods, well, thank you for that and here's a \$50 note to say thank you and there will be one of those every time you place a similar order, you'd have no trouble in identifying that as a corrupt practice, would you?---Public or private, sorry?

I'm asking you either public or private?---Under those circumstances it would be corruption, yeah.

And, and it wouldn't matter whether it was public or private, would it, under those circumstances?---No.

No. I mean anyone would identify that as a kickback, would they not?
---(NO AUDIBLE REPLY)

THE COMMISSIONER: Or a bribe?

10 MR CAMPBELL: Or a bribe?---If it was worded in the way you said it, yes, that's correct.

Well- - -

20 THE COMMISSIONER: It doesn't matter how it's worded, it's what the effect is. If the individual is paid, is given \$50 cash because he places \$1,000 on behalf of his, his employer and he, is that not a bribe, do you not regard that as a bribe?---If I walked into a potential buyer and said to him, you will get \$50 if you buy, I would consider that a bribe, yes, but I didn't go into clients openly and say, if you will buy from me you will receive.

MR CAMPBELL: But that was the effect of the methodology that you were instructed to adopt in dealing with these clients was it not?---No, I was never told to walk into a client and offer them, for the use of a better word, a bribe.

No, I'm sure you weren't. But the effect of what you did under instructions from Momar Australia Pty Limited was the same wasn't it? Do you agree or disagree?---I agree.

30 And because, to spell it out, whether or not you explicitly said, what I ask you to assume for the purpose of my question, that was implicit in the process was it not?---Yes, it was.

And well let's concentrate on the public sector. Even at the time you commenced with Momar Australia did you have any view about whether the giving of vouchers for the placing of orders was a corrupt practice?---No, I didn't.

40 Had you had any experience in dealing with the public service before?
---Yes, I had.

And was it Commonwealth public service?---Yes, I had.

All right. And were you aware that government departments often have rules about staff receiving benefits?---In the beginning I didn't. It was only later on during my work time with Momar that I realised that some councils were upfront and said, look we couldn't, and I accepted that. And, and that's it.

Okay. When you said some councils, what you are referring to is some individuals working for some councils?--Right, some individuals working for councils.

Right. And those, those officials when you said, well you've placed an order of more than \$1,000, I'm going to give you this incentive, what was the response when you said something like that to an official who refused?
---I understood what he was saying and I accepted what his answer was, that
10 he couldn't accept.

He couldn't accept. And you understood that he was saying there are rules against this?--In his organisation where he was working it was, it was against the, obviously his rules to accept.

I mean we all know about from reading the press and hearing the News that people in government or in parliament have rules of conduct relating to receiving benefits from lobbyists and the like?---Yes, I have.
Even private companies, if a private company takes a member of parliament
20 to the tennis, then that has to be declared. You've heard that haven't you?
---Sure I have.

And that's because isn't it that the giving of benefits, especially if they're undeclared is conducive to the establishment of conflicts of interest. You understand that (not transcribable) don't you?---Sure.

And public life?---(NO AUDIBLE REPLY)

So that, but the purpose of the commercial transaction that leads to the
30 provision of cash, I'll withdraw that. The provision of cash vouchers is to encourage and promote the individual in the organisation buying the goods you're selling whenever possible?---Are you asking me that?

I'm asking you that?---I would say no worries, however thank you for buying at that particular time.

It encourages the belief that if you bought this and I'm saying thank you, I'll say thank you in the same way next time doesn't it?---It's human nature, yes.
40

You've already agreed that that was implicit in the arrangement have you not?---Yes, I did.

THE COMMISSIONER: You don't say thank you when it's below \$1,000?---Yes, I do.

But they say thank you by buying, by paying a voucher?---No, I say thank you by giving out other things such as pens.

MR CAMPBELL: But you give out the pen whether or not they buy anything won't you?---Not necessarily.

Well, the pen's a premium, isn't it?---To some customers, yes, it is.

That's what it's called in the documentation provided by Momar isn't it?
---Yes, yes, correct.

10 Yes. And, and its used even as a so-called ice breaker when you are cold calling - - -?---That's correct.

- - - a customer?---That's correct.

All right. Or a potential customer, yes. So that - - -

THE COMMISSIONER: Potential buyer.

MR CAMPBELL: A potential buyer, thank you, your Honour, oh,
20 Commissioner.

So that the - now, the purpose is to promote loyalty, isn't it?---Yes, it is.

Yes. Loyalty meaning, as I put it to you already, that they would prefer Momar, Momar's products to the products of their competitors?
---Hopefully, yes, that's correct.

Yes. So that it's a means of, of Momar I suggest to you getting an
30 advantage over its competitors by using those incentives. Do you agree or disagree?---I agree.

Now the - has anything changed at Momar in recent times? I'll withdraw that, Commissioner, perhaps I'll just go back to something else before I go on to that. Could Mr Butow be shown the, it's still volume 11, tab 57, page 128, 128 of, it's tab 57. Have you got that now, Mr Butow?---Yes.

Thank you. Now, that's a document issued to sales staff by Mr Kahn, the national sales manager?---That's correct.

40 And you've seen that document before I assume?---Yes, I have.

Okay. And I suppose you get these, these documents on different topics from time to time?---Yes, we do.

Okay. And when they're issued to you they're issued as directives from head office to the sales staff?---Correct.

And this one was sent out not - I'm sorry, I'll withdraw that. This one was sent out about 10 months after you started. Is that right?---Correct.

And that, it talks about the amazing successful of the Coles Myer voucher, do you, do you see that?---Yes, I do.

And, and it says, "We have decided to continue this promotion indefinitely." Is that correct?---Yes, that is.

10 That, that, does that accord with your recollection of when this method of using the vouchers became an established practice?---Correct.

And the, of course - and we've heard evidence about this but you'd agreed, Mr Butow, wouldn't you that a \$50 voucher is virtually the same as giving somebody \$50 in cash?---Correct.

Yes. And indeed the reason why Coles Myer vouchers are chosen is because there are so many shops associated with the Coles Myer group, is that correct? Don't know?---That I don't know why its chosen.

20

All right. In any event - I withdraw that. And you'll see the direction at, at the bottom of the page, "This voucher may only be sent to the customer's home address so please supply full details with your order." Now where it says the customer's home address you understood that to mean the individual buyer's home address, did you not?---Correct.

Because the council's not going to have a home address?---That's correct.

30 Yes. It couldn't be understood in any other way, could it?---That's true.

And if it were to be understood in any other way it'd be entirely inconsistent with this sales technique of building the relationship with the individual? ---Correct.

And - but it was also - I withdraw that. Was there any other reason that you can think of why it might be said that this should be sent to the home address?---Initially it didn't, I didn't pay two, two seconds thought to it.

40 Because I mean there would be lots of other ways of getting it to the buyer at work, would there not?---That's correct.

Yeah. Well, do you think, I withdraw that. Have you come to the conclusion that, that the reason why it should be sent to the customer's home address is to keep it secret from other people at work?---Correct.

Now, was one of the customers you dealt with from time to time Yass Valley Council?---Yes, it was.

And was the buyer there a man by the name of Kerry Smith?---That's correct.

And during the, is he still there?---I don't believe he is.

Now, during the time that you had been dealing with Yass Valley Council did you give Mr Smith vouchers of the type we're talking about?---Yes, I did.

10 And did, did you give him anything else?---Yes, I did.

What other things did you give him?---There would be times when I gave him a bottle of rum because I knew he liked to drink it.

Yep?---And there was a time when I gave him a fishing tackle box.

Were they things which were part of the promotion?---No.

20 No. They were things which you took upon yourself to give him to continue to foster the relationship?---Correct.

Right. And, all right. Now, we, we have established by other means that Momar has provided to officials at Yass Valley Council vouchers totalling \$1,150. Now, does that sound right to you?---I couldn't tell you off the top of my head.

THE COMMISSIONER: Well, is it in the ballpark of what you provided over the period?---Over a period of four years, plus or minus, yeah.

30 MR CAMPBELL: Yeah. All right. And you would, you'd be the only person servicing Yass Valley Council on behalf of Momar during that period of time?---Yes. Sorry, what was the period of time?

Well, since you started there in- - ?---Since I started I was the only one.

- - -2007?---Yeah, yeah.

Up until, well, it's still one of your customers, is it not?---Yes, he is. Well, the council, yes.

40

The council. Yeah. The buyer's changed I supposed?---The buyer's changed, yes.

All right. The, now, have things changed at Momar?---In regards to?

In regards to this incentive, I withdraw that. In regard to these vouchers provided to individuals in the public sector?---Yes, it has.

When did it change?---(NO AUDIBLE REPLY)

Perhaps I could ask you just to look at page 129 if you still have it there, behind tab 57, volume 11?---1st of March, 2011.

Yes. Now, and that's another directive that you, that you received this time from Mr Kahn, the national sales manager, and also from Mr Moskow, the managing director?---Correct.

- 10 Now, before that directive was issued, was there any meeting that you attended about this subject matter?---Yes, there was.

And when was that?---(NO AUDIBLE REPLY)

In relation to this your best estimate will do?---Prior to this letter coming out, it must have been between four to eight weeks prior to this.

All right?---I would imagine.

- 20 And did Mr Kahn say why there was going to be the change?---I don't, don't recollect Mr Kahn saying anything.

Did Mr Moskow say anything about why there was going to be a change? ---Yes, he did.

What did he say?---Because of recent events, dealing, dealings with ICAC, we will cease to be issuing the Coles Myer vouchers.

- 30 Did he explain why the dealings with ICAC made a difference to company policy?---I don't recollect it.

Well I suppose, and I'm not suggesting he said this, but I suppose if somebody said at the meeting, we've come to the conclusion this is corrupt practice, then you wouldn't have been surprised. Is that correct?---No, I wouldn't.

- 40 Now if somebody, I'll withdraw that. If your superiors at work had said to you when you started in May 2007, look we know because we've received correspondence from public sector clients that it's impermissible to offer these vouchers or incentives like that to any public sector employees, would that have made a difference to the way you operated?---It would have made it, well it would have been, if someone said to me, no there is no such thing as, it wouldn't have made a difference to me, I would have still joined the team.

No what I mean is would it have made a difference to the way you operated? I'm sorry if I didn't make that clear?---Yeah, sure.

And what would the difference have been?---There would be no thank you from me for buying our products.

Other than a thank you?---Other than a verbal thank you.

And you would have no trouble at all adhering to such a directive. Is that correct?---That's correct.

10 And you'd understand the reasons why it was given?---That is correct.

Now has the absence of a – the capacity to provide these vouchers to public sector buyers made a difference to your ability to secure orders?---No it hasn't.

What has? Has anything, I'm sorry, made a difference?---Yes, it has.

What has?---The contact between ICAC and these organisations.

20 And what have people said to you?---We won't buy from Momar again.

Well if you still, I mean you still supply some of these public sectors don't you, public sector organisations that were on your cards?---Some of them, yes.

And the – can I ask you this, in your private sector dealings, do you still use the voucher system?---No, I don't.

You've just decided to completely - - -?---I've decided to scrap it.

30 For the reasons that you and I have been discussing here today in evidence, the nature of the practice?---Yes.

And the - and with your private sector clients you having made that personal decision to scrap the vouchers, has it made any difference to the degree of difficulty in landing an order?---No, it hasn't.

And do you find you have to work harder with them?---No, I don't.

40 Now from what you've – looking at that memo I asked you about a moment ago from 1 March, 2011, is it your understanding that for what it's worth Momar still permit those vouchers to be used with private sector clients? ---It's not worded like that, but you can take it however you want.

Well how do you take it?---I personally have stopped - - -

I know you've explained that to me, and I'm not questioning your evidence about that, but do you know whether others are still using them?---No, I don't know if the others are using them.

All right. And do you know whether they're still available if you wanted them through Momar?---I believe they're not available any more.

At all, across the board?---At all, as far as I understood, they're not.

No further questions, Commissioner.

10 THE COMMISSIONER: Yes, thank you. Who wishes to cross-examine Mr Butow.

MR NAYLOR: Yes.

THE COMMISSIONER: Mr Naylor, well proceed then.

MR NAYLOR: Thank you, Commissioner.

20 Mr Butow, I appear for Mr Smith, Kerry Smith, who used to be employed at Yass Valley Council together with a number of other local council employees who were buying Momar product when they were so employed. There's just a small aspect of what you've already said that I, I want to clarify that's all. Counsel Assisting had referred you to a document dated 1 March, 2008 and we can get that back up on the screen for you if you like, that, that was described as a directive in relation to the gift voucher promotion, yes?---Yes.

Do you remember that document?---Yeah.

30 And that was the document which had the final paragraphs, it said words to the effect obtain the home address of the person so that the gift voucher can be sent to the home address.

THE COMMISSIONER: It says, "The voucher may only be sent to customer's home address so please supply full details with your order."

MR NAYLOR: I'm grateful, Commissioner, thank you.

40 Is it, is it - am I correct in understanding that you perceived of that document as being a direction from your supervisors that that as it were a policy that was to apply in the way that you did your business?---Yes.

There, there was an expectation then on you that you would provide gift vouchers in accordance with that promotion policy?---Expectations from who?

Did you perceive - - -?---Did I perceive?

- - - an expectation from those who were superior to you within Momar that you would provide gift vouchers in accordance with what was said in that document?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Do you understand the question?---I'm trying to decipher what, what the question is.

10 I think the question is did you, did you believe that your employers expected you to sell in accordance with this document of 1 March, 2008?---Yes, I did.

MR NAYLOR: You, you, you felt that you were expected to provide gift vouchers in accordance with that document?

THE COMMISSIONER: Sorry, Mr Naylor, do you mind just repeating that, please.

20 MR NAYLOR: Yes. You, you felt, sir, did you, that you were expected to provide gift vouchers in accordance with that company policy as published in that document?---I wasn't expected to do it.

THE COMMISSIONER: That's not what he said.

MR NAYLOR: No. What, what - having received that document in March 2008 what did you believe you could do and you couldn't do in relation to the giving of a gift voucher? What was it within your discretion to give a gift voucher or was there - - -?---Okay.

30 - - - some expectation upon you that you needed to give a gift voucher?---As a salesman it was an incentive for me to sell more products.

Yes?---There was certainly no pressure put on me by the company to give away Coles Myer vouchers.

THE COMMISSIONER: When you say it was an incentive for you you mean it was an incentive which you could use for others, that is, it's an incentive for others to buy from you?---Well, I'm a salesman, it was an incentive for me to sell more products in order to produce more money for myself.

40 I don't understand, why is it an incentive to you? You don't get anything? ---I get a, I'm paid as a percentage of my sales.

And therefore?---The higher the sales the higher - - -

Yes, so why is this, why is the voucher an incentive - I'm just - I'm sorry, I'm just trying to find out why you think this is an incentive to you, why the voucher system is an incentive to you as a salesman. That is that it's an incentive to you to sell more?---I retract what I said. It was, it was a, how

can I put it? It was an incentive for the client to buy more off me rather than the other way around.

MR NAYLOR: When, when that document was described in earlier evidence as a directive, that's not quite right then is it, having regard to what you've just told me.

THE COMMISSIONER: I don't, I won't allow that, that's not right.

10 MR NAYLOR: If the Commissioner pleases.

You didn't feel as though you were compelled to provide gift vouchers?

THE COMMISSIONER: Mr Naylor, there is an issue here.

MR NAYLOR: Yes. Can I- - -

THE COMMISSIONER: Just a moment.

20 MR NAYLOR: Yes.

THE COMMISSIONER: Mr Butow has never said that there was an obligation on him to provide gift vouchers. As I understand his evidence, and I'm sure he'll correct me if I'm wrong, that was in your discretion. Is that right?---That's correct.

But if you did provide gift vouchers you had to do it in accordance with this document of the 1st of March?---That's correct as well.

30 MR NAYLOR: Yes. Thank you, Commissioner. Thank you.

If, if it a buyer to whom you had offered a gift voucher had expressed some reservations or concerns about receiving the gift voucher, you didn't feel compelled in any way by virtue of that document or any, anything else said to you to nevertheless provide a gift voucher?---No, I didn't.

Thank you, Commissioner.

THE COMMISSIONER: Ms Munn, do you have any questions?

40

MS MUNN: No.

THE COMMISSIONER: Mr Campbell?

MR CAMPBELL: Thank you, Commissioner. Just one topic. You had a discretion but it was a discretion which you chose to exercise on occasions to provide the voucher to the individual buyer in the public sector?---It was up to my discretion, that's correct.

THE COMMISSIONER: And you did exercise your discretion sometimes?
---Yes, I did.

MR CAMPBELL: Nothing further, Commissioner.

THE COMMISSIONER: Yes. Thank you, Mr Butow, you may leave the witness box. Thank you for your evidence.

10

THE WITNESS EXCUSED

[12.31pm]

MR CAMPBELL: I call Mr Moskow, Commissioner, Mark Moskow.

MS EDGHILL: Commissioner, Kathryn Edghill. I seek leave to appear for Mr Moskow.

20

THE COMMISSIONER: Sorry, I didn't get your name.

MS EDGHILL: Kathryn Edghill.

THE COMMISSIONER: Edghill. Yes, you have leave. Are you a barrister or a solicitor?

MS EDGHILL: Solicitor at Truman Hoyle.

30

THE COMMISSIONER: Now, Ms Edghill, do you wish me to make a section 38 order?

MS EDGHILL: Yes, Commissioner.

THE COMMISSIONER: Please sit down, Mr Moskow.

40

Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Moskow and all documents produced by him during the course of his evidence at this compulsory examination are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document produced. Now, Mr Moskow, you are obliged to answer all questions asked of you and it is a serious criminal offence either to refuse to answer or to give false answers.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR MOSKOW AND ALL**

DOCUMENTS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT PRODUCED. NOW, MR MOSKOW, YOU ARE OBLIGED TO ANSWER ALL QUESTIONS ASKED OF YOU AND IT IS A SERIOUS CRIMINAL OFFENCE EITHER TO REFUSE TO ANSWER OR TO GIVE FALSE
10 **ANSWERS.**

THE COMMISSIONER: Do you understand that?

MR MOSKOW: I do.

THE COMMISSIONER: And do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

20 MR MOSKOW: Affirm, affirm, sir.

THE COMMISSIONER: Mr Campbell?

MR CAMPBELL: Thank you, Commissioner. Mr Moskow?---Good afternoon.

10 Are you Mark Moskow? Good afternoon to you. Are you Mark Moskow?
---Yes.

And are you the managing director of Momar Australia Pty Limited?---I am.

Right. And have you been in such capacity for the best part of quarter of a century?---Started the company when I came to live in this country in my garage at home.

All right. And what year was that?---25 years ago.

20 Okay. Okay. And, and to put it simply, the business of the company is to supply industrial maintenance chemicals. Is that right?---Correct.

And over the last quarter of a century you've built up a healthy business with both public and private sector customers?---Correct.

And you work in the business every day?---I do.

30 And you employ in the office Mr Ellis Kahn as the national sales manager?
---He's not entirely in the office all the time but he's there a lot.

There a lot?---Mmm. But he's employed full-time as national sales manager.

All right. He's on the road sometimes too is he?---Training and, and hiring and working with our salespeople.

All right. And how many salespeople did you have as at the end of 2010?
---It's either, between 14 and 16.

40 And, and operating nationally?---Correct.

And each salesperson had a, had a designated region- - -?---Correct.

- - -in which they ordinarily worked?---Correct.

And were they all commission agents?---Correct.

And no part of their earnings were provided by way of salary?---Correct.

Although they, you allowed them to take drawings on a weekly basis- - -?
---Correct.

- - -against their future earnings?---Correct. On a debit credit system.

Yeah. All right. Now, you've, you've been in the hearing room this morning since we commenced?---Yes.

10 And I'm grateful for your efficiency in answering my question, Mr Moskow, but it's probably best if you just allow me to finish completely the question so it can be accurately transcribed. Would you mind doing that? I'm not, it's not a criticism, just a suggestion?---You said was I in the room this morning and I said yes.

That's all right. It was a, it was the celerity with which you provided the answer which caused me concern?---I'll slow down.

20 Thank you very much. The, and were you here yesterday?---I was.

All right. So you've heard three of your sales representatives give evidence before the Commissioner?---I have.

Okay. That might enable me to go through some of these details a little more quickly if I may?---Pleasure.

30 Now, you've heard the description of the Gears of Selling. Firstly, is that something which you have concerned yourself with or have you left it to other people?---Our head office in the United States provided us with that as a document for which we started the company.

All right. I'll just ask you about that. Are you a shareholder in the Australian company?---I own it.

You own it?---I own two-thirds of it. My wife and myself own two-thirds of it.

40 Thank you. And your wife owns the other third or who owns the other third?---An overseas investor.

All right. Okay. Is that Mr Karro?---Correct.

And is it, it is a franchise or an agency in terms of the products?---Yes.

All right. And this is, this Gears of Selling is the American methodology which they provided to you, you've just told me, when you commenced the Australian company?---Yes.

Right. And is it a condition that you follow that methodology?---A proven success so I followed it.

Okay. But my question was, is it a condition of your business arrangement with the, with the American company that you do follow it?---Never had that discussion with them.

10 All right. Now, it's proved successful so you followed it. And I suppose that the incentive system we've been discussing in this inquiry was part of its success. Is that correct?---Can you repeat the question? I just- - -

Yes, I can. You've told me that the Gears of Selling methodology- - -?
---Yes.

- - -has proved successful for quarter of a century so you've continued to follow it?---I have continued to follow it, yeah.

20 And, and as part of the application of that methodology, the company has adopted over the years different promotions, they're sometimes called, to encourage the placement of orders. Is that correct?---Yeah. Yes.

And you've found that those promotions have been successful over the years so up until recently you've continued to follow them as well. Is that correct?---Yeah.

30 Right. And indeed you've, you've seen on display on the screen in court and you've been following the evidence the directive in relation to the continuation indefinitely of the Coles Myer voucher promotion?---Until it was ceased.

Well, I'm going to come to it, you- - -?---I pre-empted the question. I apologise.

If you'd like to tell me it ceased, I'll ask you now, when did you cease it?
---On- - -

Was that that- - -? - - -the 1st of March, I think, 2011, a week or two after I had my private hearing.

40 Did you, you needn't mention that. Did you, I'm sorry. You ceased it, we've seen the memo in relation to public sector clients on the 1st of March, 2011?---Correct.

Does it continue in relation to any other clients or customers?---It's ceased now.

And when did you, when did you cease in respect of public sector, I withdraw that, Mr Moskow. When did you cease it in respect of private

sector customers?---Gave the entire sales staff, sales force a directive on 1 July that it would cease on three months' time. It ceased in other words three days ago.

All right. All right. Now, you decided to cease it across the board because on reflection you came to the conclusion it was just inappropriate. That's so, isn't it?---No.

10 I see. Why did you cease it then?---I ceased it simply for public sector in terms of the fact that it's not legal, so that's, that's the one side. The second side of deciding to cease it was we felt that the procurement of doing business in our company would not be affected by ceasing it and, and we ceased it on that basis. We also found that it wasn't working correctly once the ICAC investigation came into, happened to us in the sense that the mojo of the whole program of incentive that way lost its incentive totally and even our sales team lost interest in, in that form of thank you.

You've heard the questions I asked Mr Butow?---I did.

20 I want to ask you a question I asked him and I'd be grateful if you just listen to me for a moment. Now, if a salesman went in to see the employee of a corporation or a government department to sell some of your product and if the individual buyer working for that corporation or department was impressed enough to place an order for \$1,000 and the salesman said here's a \$50 note. Every time you place a similar order I might give you one of these. Now just assume those facts for the moment. You'd agree with me wouldn't you that there'd be no doubt that would be a corrupt practice?
---That has never been done by anybody in our - - -

30 THE COMMISSIONER: Just answer the question, please.

MR CAMPBELL: It's a hypothetical question, Mr Moskow?---
Hypothetical question, yes, it would be, yes, the answer is yes.

The answer is yes. And it couldn't possibly be any other answer could there than yes to that hypothetical question?---I gave the answer yes, sir.

40 Thank you, Commissioner. I won't press it. It's just the same isn't it when you go into and I put to you whether it be private or public, you go in to an organisation, company or department and the person working for the company or the department is impressed with your product and places an order for \$1,000 and the salesman says, look give me your home address because when this order is processed at head office they're going to send you a \$50 voucher that you can spend at Coles Myer shops. Just the same isn't it?---And when you buy a TV set from Harvey Norman and they do that to me, is that, is that (not transcribable)

THE COMMISSIONER: No, no, no?---Okay. I misunderstood the question, sir.

MR CAMPBELL: Well I'll put it to you again. Okay?---Okay.

You agreed with me about my hypothetical question it constitutes clear corrupt practice. I'm going to put another question to you and I put it as a hypothetical question. Okay?---Okay.

- 10 Let's just assume a salesman from your organisation goes into a shire council somewhere in the country and talks to the officer of the shire who's got a delegation to order industrial maintenance chemicals?---Yes.

Demonstrates your product?---Yeah.

Says to the, to the buyer I've described, what do you think? The buyer says, I'm very impressed with your product, I'd like to put an order in for this and that and it's tallied up and it comes to \$1,000. Right?---Yes.

- 20 You're assuming these facts for me. The salesman then says to this buyer at the country shire council, give me your home address please, because when this order is processed back in Sydney they're going to send to your home a \$50 voucher that you can spend at any Coles Myer store. You got those facts?---Sure.

- 30 And the salesman says, every time you place a similar order with me, I might make sure you get one of these. Now if that transaction occurred in the manner in which I've asked you to assume for the purpose of my hypothetical question, you would agree with me wouldn't you that that was equally a corrupt practice?---I don't believe that a salesman would ever - - -

THE COMMISSIONER: No, just answer the question?---Well my answer is no then.

MR CAMPBELL: I see.

THE COMMISSIONER: Your answer is no?---Well, I can explain why though.

- 40 MR CAMPBELL: I'll give you that opportunity - - -?---Thank you, sir.

- - - but if I can ask you a follow up question just so I can understand your no answer. You say there's a difference between a \$50 note and a \$50 voucher that you can redeem for the value of cash in any number of shops, yes or no?---Well, there's a big difference between cash and the card. The card is - - -

THE COMMISSIONER: Cash and a card?---And the Coles Myer card, the card is totally transparent, followed through where it is, we have documentation as you've seen in, in, in your notes and that of exactly fully computerised how those cards are, it's not - a \$50 cash amount is in my respect something totally different.

MR CAMPBELL: Are you saying the difference between the two is that you have a, a business system which traces it, is that what you're saying the difference is?---Traceable.

10

Well, I suppose it would be equally traceable if in my first hypothetical example the salesman handed over the \$50 and made a note of it that you could record in your business systems back at work, it'd be equally traceable, would it not?---Where would he get the \$50 note from?

Oh, come on, sir.

THE COMMISSIONER: Mr Campbell, I don't think is - - -?---He doesn't get it from me.

20

There's no - little point in arguing this.

MR CAMPBELL: May it please the Commission. All right. So you've stopped it across the board?---I said so.

Yes. Now, when you were doing it - I withdraw that. Firstly, you agree that the industry in which you operate is very competitive?---Highly.

30

And the reason why the system was adopted in the first place was what you would describe as a loyalty programme?---That's correct.

And by that you mean it would provide an incentive to the individual buyer to prefer your products over those of your competitors, that's correct, isn't it?---The buyers were buying from every company.

Could you answer my question?---Well, it's, well, if you want me to say yes to that I'll say it but - - -

40

THE COMMISSIONER: Can you just answer the question?---Yes.

Don't argue?---I'm not arguing, no, I'll just say yes.

MR CAMPBELL: Yes, because I'm right, that's, that's true, isn't it? That's the purpose of a loyalty programme?---Yes, you're right.

Thank you. And, and it's an important part of, of the, of the process according to the Gears of Selling that, that the loyalty you encourage and

engender is the loyalty of the individual buyer who has the authority to place the order, that's so, isn't it?---(NO AUDIBLE REPLY)

Now, the - I know you've seen this, sir, but perhaps if I could just show it to you again, it's a - Commissioner, volume 10, tab 57, page 128, it's the, it's the memo of 1 March, 2008. 11, I beg your pardon, 11. Now, have you got it in front of you yet, Mr Moskow?---I assume it's the one with the vouchers to the (not transcribable)

10 Yes, it says new vouchers, dated 1 March.

THE COMMISSIONER: Page 128, Mr Moskow?---Yes.

MR CAMPBELL: Yes, okay. If you would turn that up?---Sorry, what tab number?

Tab number - - -

THE COMMISSIONER: 57.

20

MR CAMPBELL: 57?---I apologise.

Yeah, that's fine?---(not transcribable) I've got it.

Okay, thank you. The, the first one I want to ask you about, it says, "Due to the amazing success of the Coles Myer voucher"?---Yes.

What, what amazing success did you enjoy?---Customer loyalty.

30 And it reflected in an increase in orders, is that right?---Yes.

And indeed, such a big increase in orders after the introduction of the system that it was called by your sales manager amazing, is that correct? ---The sales managers.

Well, sales manager talk but I assume it was reflected in the company's bottom line, would you agree?---Yeah, yes.

A big spike in orders, would that be correct?---No.

40

No, a spike in orders?---A growth.

A growth at a rate you were very pleased with?---Was pleased with.

And, all right, and I'm going to ask you about the home address, so you anticipate me - - -?---No, I just meant that the document - - -

That's the document. I want to ask you about the purpose of saying it should go to the home address?---Okay.

Now was that your idea or Mr Kahn's idea?---No. Prior to this document we gave the voucher to the customer or in your terms now the buyer and we had a loss situation where we had phone calls that the voucher had never been received. We then contacted Coles Myer and discovered that the vouchers had in fact been cashed and in fact had been cashed very close to the proximity that, when I say cashed, having been spent - - -

10

THE COMMISSIONER: Been redeemed?---Redeemed, a better word, at a, at a proximity very close to where the recipient should have received it. So the, the, the conclusion had come to us that it may not have even been received by the person it was intended to and received by someone else and it had been used or the, the actual person who was intended to have received it and have used it and then said that they hadn't, which I didn't believe that taking place. I'll just diverse if I may for one second, we send parcels, drums and boxes of product out to councils, attached to is a delivery docket, an invoice, a (not transcribable) sheets of each and every product is attached
20 on a self-sealed and sealed envelope. I don't think a day goes by that I do not get at least five or six phone calls from councils where is that documentation. We said it's attached to the container. They say, sorry, can't find it.

MR CAMPBELL: Well you don't say that - - -?---That is the standard situation, sir, in relation to product and items delivered to the dock at a council.

Can I put it to you this way?---Yes.

30

That there would be other means readily available of making sure the voucher was securely delivered to its intended recipient at the workplace that didn't involve sending it to his home address?---I would agree to that, but I would just say that this became an easier practice.

Well can I, you've already agreed with me that the purpose of the, of the system is to, is to build up the loyalty of the buyer. That's so isn't it?---Yes, sir.

40

And the, can I suggest to you that the reason why you send it to the buyer's home is twofold. The first part of it, I'd ask you to view it separately, is so that the person with whom you want to build the relationship gets it?---Yes, sir.

And the second reason I suggest to you is so it's kept secret?---No, sir.

THE COMMISSIONER: Was it ever part of the training that you gave your salesmen to instruct them to inform the councils that you were giving the buyers vouchers?---(NO AUDIBLE REPLY)

Why not?---I erred.

Well, all right. And why do you say that Mr Moskow?---Well I realise, I realise now Mr Commissioner, that it's not correct to have allowed it.

10 All right. Thank you for that.

MR CAMPBELL: Thank you. I just have just a couple more questions, Mr Moskow, following what you've said to the Commissioner. The – is the reason why you chose the Coles Myer gift voucher was that Coles Myer had such a broad spectrum of shops where purchases could be made?
---Interesting.

20 Well let me, let me ask you this. Do you agree with this statement, the reason why we chose the Coles Myer gift voucher, that it was such a broad spectrum of purchasing that it could have or the customer would buy a bottle of, two bottles of whiskey or buy food or buy petrol or whatever it may be with, we found they were sometimes very hard to give somebody something that they want. Is that why you adopted it?---Yes.

Going back to what I asked you, I'll just ask you one more time, it sounds a bit like cash doesn't it?---I disagree entirely.

30 THE COMMISSIONER: I beg your pardon?---I disagree entirely. Cash is not traceable. These are totally traceable and, and totally transparent.

Well transparent to whom?---To, to, in our organisation.

But not to the council?---If the council requested it that we have it in black and white on our - - -

How is the council to know that you were giving rewards to the individual buyers for placing substantial orders?---As I said earlier, I erred.

40 All right?---And - - -

Sorry, I don't mean to interrupt - - -?--- - - -I'm not happy that I've erred.

No, I'm sure.

MR CAMPBELL: All right. Just a couple more questions Mr Moskow. Part of the reason why you erred, I suggest to you is because the Gears of Selling approach focused upon the individual buyer rather than upon the

true customer. Do you agree with that?---Our organisation the true customer is the buyer.

That's the philosophy upon which it's been built?---Correct.

But in fact you'd agree that in a commercial sense the true customer is the organisation for whom the buyer works. You don't agree?---(NO AUDIBLE REPLY)

10 THE COMMISSIONER: Well in a legal sense.

MR CAMPBELL: In a legal sense. Do you agree?---Sure.

And indeed in any sense the true customer must always be the entity that pays the bill. Would you agree?---I agree.

And now you've explained that it was the wrong thing to do and you've stopped it. What could have made a difference to you during the years you were doing it that might have alerted you to the fact it was the wrong thing to do?
20

THE COMMISSIONER: Did you understand what's being asked?---(not transcribable)

What we're really asking you is what should the council have done?

MR CAMPBELL: Thank you, Commissioner?---In terms of government gazetted documentation?

30 THE COMMISSIONER: No, no, what policy of the council would have helped you to know that what you were doing was a mistake?---I assume correspondence to that effect.

MR CAMPBELL: And whatever policy that all commercial (not transcribable) should call it a designated place before speaking with the buyer in your terms, well I'll put it in simple terms - - -?---I don't understand that, for sure.

40 That's supposing that there was a policy that the council had that said that you couldn't contact the storeman or the sewerage works manager until you first contacted the council officers that you were calling, would that have helped?---It would have helped.

In, in relation to matters such as - rather than having one person responsible for ordering this thing, whatever the product was, you had a person who ordered it and another person who approved the order and authorised it. Would that assist?---I'm not involved in sales at all.

No?---The sales are made by the sales people and we get the sales order. Whether the salesman has achieved that sale through the person that uses the product or then goes to the purchasing officer and gets the purchase order, I just provide the, the product and the invoice based on that information.

THE COMMISSIONER: So you're saying that you don't feel qualified to answer the question?---Well, I understand what's being alluded to, that - - -

10 Well, we're just trying to find a better way, Mr Moskow?---Yes, yes, I understand. I do understand what, what, what, where we're going.

MR CAMPBELL: Well, you're a man of business, Mr Moskow, you've come along today and you've told the Commissioner that you now realise that the company was doing the wrong thing in relation to these public, public sector buyers?---Correct.

So all we want to know as a practical man of business - - -?---Yes.

20 - - - how could it be avoided in the future, not with your company but with some other company who hasn't learnt it lesson, that's what I mean?---I'll hire myself to give advice. No, I have no idea how to help other companies.

Okay. All right. Okay. Well, I'll - we were just hoping - and I'm not criticising you, we were just hoping you might have some insights for us, that's all.

Yes, yes, I'm sorry, just one final thing, sir?---Yes.

30 Could you identify for me, it's volume, it is volume 10 this time and it's tab 52, Commissioner. It's not in there? Forgive me, Commissioner, my mistake because it will be in there in just a moment I hope. Could the witness be shown this bundle of material. Just, thank you, Mr Moskow, just look through it.

THE COMMISSIONER: And just explain to Mr Moskow what it is, Mr Campbell.

40 MR CAMPBELL: Yes. This, this, this is material that has been produced by your company in response to a notice to produce documents issued to the company by the Commission pursuant to section 22 of the ICAC legislation.

THE COMMISSIONER: Do you understand that, Mr - - -?---Yes, I do.

MR CAMPBELL: I'm just asking you to identify that, that the letter dated 19 January, 2011 which is the fifth page, it's page 211 of the bundle, and the documents appearing after it are documents produced by your company., compiled from its business records?---Yes, they are.

Okay. I tender those documents.

THE COMMISSIONER: Well, those documents will simply be inserted into folder, into Exhibit 10 and bear the numbers that are presently on the pages from page 207 to 223.

10 MR CAMPBELL: Thank you, Commissioner. And I do have a, Commissioner, an application for an Suppression Order in respect of some of the material relating to the - all the home addresses of the persons appearing next to the names of the organisations.

THE COMMISSIONER: Well, they'll be a Suppression Order in the terms requested by the Counsel Assisting.

20 **SUPPRESSION ORDER IN RESPECT OF ALL THE HOME ADDRESSES OF THE PERSONS APPEARING NEXT TO THE NAMES OF THE ORGANISATIONS IN EXHIBIT 10, PAGES 207 TO 223**

MR CAMPBELL: May it please the Commission.

THE COMMISSIONER: That's all, Mr Campbell?

MR CAMPBELL: I have no further questions, Commissioner.

30 THE COMMISSIONER: Thank you. Mr Naylor?

MR NAYLOR: No questions.

THE COMMISSIONER: No questions. Has anyone else got questions? No. Thank you, Mr Moskow, for your evidence, you may leave the witness box and never returned?---Thank you very much.

40 **THE WITNESS EXCUSED** **[1.03pm]**

THE COMMISSIONER: The Commission will adjourn till 2.00pm.

MR CAMPBELL: May it please the Commission.

LUNCHEON ADJOURNMENT **[1.03 pm]**