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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 2.15PM

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THE COMMISSIONER: Mr Campbell?

MR CAMPBELL: Thank you, Commissioner. I call Ellis Stanley Kahn, K-A-H-N.

THE COMMISSIONER: Mr Kahn, are you legally represented?

MR MAHER: If it please you, Mr Commissioner, Mr Maher, M-A-H-E-R. I seek leave to appear on behalf of Mr Kahn.

10

THE COMMISSIONER: Yes. Are you a barrister or solicitor?

MR MAHER: I'm a solicitor.

THE COMMISSIONER: Yes. Very well. Take a seat, sir. Mr Maher, do you want me to make a section 38 order?

MR MAHER: If it please you, yes.

20

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Kahn and all documents produced by him during the course of his evidence at this compulsory, at this, I beg your pardon, at this public inquiry 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.

30

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR KAHN AND ALL DOCUMENTS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS COMPULSORY, AT THIS, I BEG YOUR PARDON, AT THIS PUBLIC INQUIRY 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.

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THE COMMISSIONER: Now, Mr Kahn, 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. I'm sure you understand that. Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR KAHN: Affirm the truth.

THE COMMISSIONER: Yes. Would you administer the affirmation, please.

THE COMMISSIONER: Mr Campbell?

MR CAMPBELL: Thank you, Commissioner. Mr Kahn, are you Ellis Stanley Kahn?---I am.

10 And are you employed as a national sales manager by Momar Australia Pty Limited?---Correct.

Mr Kahn, I understand that you've undergone some treatment for a medical condition yesterday so if for any reason you need a break or some such thing please just let me know?---Thank you. I appreciate that.

Okay. Now, the, when you commenced with the company, I'll withdraw that, Commissioner. Could I ask you this, have you been here this morning, Mr Kahn?---No.

20 Right. The, this morning we heard evidence from Mr Moskow, who is the managing director of the company, that firstly that the practice of providing the vouchers in respect of public authorities ceased on 1 March, 2011. Now, is that correct?---100 per cent correct.

I didn't hear you I'm sorry?---100 per cent correct.

30 Thank you very much. He also told us that since then a general decision has been made not to use that form of, and I use the word used in some of the literature issued by the company, promotion to the private sector as well. Is that- -?---Yeah.

That's correct?---Yeah.

All right. And the evidence we heard this morning from Mr Moskow was that that decision had been made because upon reflection he decided that the technique was wrong and inappropriate. Is that correct?---Yes.

THE COMMISSIONER: Does that, do you agree with that?---Sorry?

40 Is that, is that your opinion or, as well?---To a lesser degree.

MR CAMPBELL: All right. Well, perhaps I'll ask- - -

THE COMMISSIONER: I wasn't sure what the question meant, Mr Campbell, that's all. I'm sorry.

MR CAMPBELL: No, your honour, Commissioner, you're quite right to clarify it and thank you very much. All right. Mr Kahn, well, when you started with the company, how long ago was that?---15 years ago.

And they were, they were using as their marketing manual a book which had been provided by the American related company, not in a technical sense, called Gears of Selling. Is that correct?---Correct.

10 That was built upon the notion that it was important in terms of achieving sales of the company's products that the sales representatives form personal relationships with the individual at customer organisations responsible for placing orders. That's correct, isn't it?---Correct.

And that the book contained instruction on going through what were called gears. That's so, isn't it?---Correct.

20 Now so far as you are concerned, you, you formed the view did you not that, that in the context of that method of achieving sales the, the person who was entitled to any promotion, in applying those various gears, was the person that the salesman is actually dealing with. That's so isn't it?---Correct.

All right. So that in circumstances as is common in the private sector as well as always the case in the public sector, the target as it were of the efforts of the salesman was the individual employee rather than the organisation for which he worked. That's so isn't it?---Correct.

30 And, yes, now the idea in relation the technique was that if the individual that the salesperson was actually dealing with was given the promotional material, it would encourage that person to choose Momar Australia when that person wanted a similar product in the future. That's so isn't it?---In most cases, yes.

All right. I'd like to, pardon me Commissioner, could the witness be shown volume 10, folder 11, tab 57 and page 128.

THE COMMISSIONER: Sorry, what tab did you say Mr Campbell?

40 MR CAMPBELL: Tab 57, Commissioner.

THE COMMISSIONER: It's folder 11.

MR CAMPBELL: Yes, folder 11.

THE COMMISSIONER: Do you have page 128 Mr Kahn? Tab 57, if you go to tab 57 and (not transcribable) 128?---Yep.

MR CAMPBELL: You have that. You recognise this as a document created by you on or about 1 March, 2008?---Correct.

And that was a document that was sent to, as it says, all of the sales representatives who are employed by Momar Australia Pty Limited? --- Correct.

Now you've said in that document, due to the amazing success of the Coles Myer voucher, we have decided to continue this promotion indefinitely.
10 Could you just tell me a little bit about the amazing success?---Well it worked very well for us as a company.

And when you say worked very well do you mean it lead to a noticeable increase in sales?---It lead to an increase in sales.

THE COMMISSIONER: It's an amazing success, doesn't that mean more than an increase?---We need to motivate our sales people and the use of the word amazing is a motivational expression.

20 Does that mean it's not true?---Well not at all.

So if it's true does it not mean a substantial increase in sales?---The use of the word substantial is - - -

Well what word would you use?---I would just use an increase.

What of a \$1?---I couldn't put a figure on it.

MR CAMPBELL: Normally a business would budget for growth, wouldn't they?---Yes.
30

And so you'd expect if your business was successful there would be growth in any given year. That's so, isn't it?---Correct.

And I suppose that most businesses would have some sort of projection for the rate of growth that they hope to achieve during a given year?---Correct.

And if they achieved that rate of growth that would be a success, is that correct?---Yes.
40

So it must necessarily mean that an amazing success is something over and above the projected success for a given year. Is that not correct?---Yes.

So can we say then that when you use that expression the amazing success the result in your mind of the Coles Myer vouchers was that growth had been received over and above what the company had projected for before the commencement of the use of that promotion?---Yes.

And it was because of that uplift in growth that, that it was decided to continue the vouchers?---Correct.

And in that context, although in sales it may be important to use motivational language to encourage the troops, still true to say that the vouchers seem to lead to what you regarded as an amazing success?---Yes.

10 And now the, you've told me that the idea was to promote sales with the individual responsible for placing the order rather than with the company. I meant to ask you this question, do you agree - I will ask you a hypothetical question, understand? I'll ask you to assume some facts. I want you to assume that a salesman from Momar attends upon the storeman or some other employee responsible for ordering goods at a country council, demonstrates one of Momar's products with which the individual is pleased and the individual places an order for \$1,000 worth of the product. Assume that the salesman says, well, as you've placed an order for \$1,000 here's a \$50 note. Every time you place an order of this value with me I, I might give you another one of these. Have you got those assumptions?---Yes.

20 Now, if that was, if that happened in real life you would regard that as an example of corrupt practice, could you not?---Yes.

If you substituted in my example a cash voucher for the \$50 note you get the same result, don't you?---In most cases.

And it's for that reason that Momar Australia have discontinued the practice, that's so, isn't it?---Yes.

30 And it would be fair to say, wouldn't it, that if anyone in management at Momar had stopped for a moment to give those considerations some thought then he would have arrived at the same conclusion back in March 2008 as he does today, do you agree with that?---Yes.

Now, when you said to the Commissioner that - in answering a question I'd asked you that you were less convinced that Mr Moskow about the inappropriateness - - -

40 THE COMMISSIONER: Mr Campbell, I don't think that Mr Moskow said it was inappropriate, he said it was an error.

MR CAMPBELL: May it please the court, I mean please the Commission. Well, you'd agree it was an error, would you not?---Yes.

And you'd agree certainly in view of the answers you've given me today that it was more than an error, it was wrong for the company to have embarked upon this style of marketing. Do you agree?---I don't agree 100 per cent because at the end of the day it's a loyalty program and there are hundreds of companies around Australia, including someone like Qantas,

offering a loyalty program and that's what this is, it's a loyalty program, and therefore I gave my, my answer as didn't agree 100 per cent with Mr Moskow from the point of view that this is part of a loyalty program.

On any analysis on a commercial basis the true customer is the customer who pays for the goods. That's so, isn't it?---Yes.

10 So that any proper loyalty program in a commercial setting would be directed at the customer. Do you agree with that? That is the entity who pays for the goods?---It starts with the person that you're dealing with and that's where the loyalty begins.

Well, sending a cash voucher to the home of an ordinary worker employed in a store in a country shire council doesn't do anything to engender loyalty on the part of the country council, does it?---That depends on the worker.

THE COMMISSIONER: What do you mean it depends on the worker?
---Well, it depends on the worker, how far he takes this situation.

20 Well, Mr Kahn, yes, Mr Campbell.

MR CAMPBELL: This type of marketing technique encourages the worker to take it as far as he can, doesn't it?---I'm not sure what you mean by that.

Well, to keep coming back so the worker keeps getting these cash vouchers that he can use at any shop in the Coles Myer group. That's so, isn't it?
---Correct.

30 And- - -

THE COMMISSIONER: Without telling his employer?---I don't know that. I don't know that.

But you don't tell the employer, you do?---No.

Your company's policy is to tell, is to give the money to the employee without telling the employer, isn't it?---But we don't have any- - -

40 Isn't it?---We don't have anything to hide.

Isn't it? Just answer the question?---(NO AUDIBLE REPLY)

Your policy has been in the past to give the voucher to the employee without telling the employer. Is that right or wrong?---I can't say it's right or wrong because at the end of the day it's the employee's- - -

Are you telling the truth?---It's the employee- - -

Are you telling the truth?---Yes.

And you don't know what, what your company's policy is?---(NO AUDIBLE REPLY)

I'm asking you what the policy of the company is and I'm asking you whether that policy is to give the voucher to the employee without telling the employer that that is what you are doing. Is that the policy of the company?---No.

10

What is the policy of the company?---The policy of the company is to give the promotion to the person you are dealing with.

Without telling the employer?---That's, that's the, that's the, the, the employee's prerogative.

You're not answering the question, Mr Kahn, and it's not getting you anywhere. I'll draw my own conclusions if you don't answer the question. Is it your policy, do you instruct your employees, your salesmen, that when they give the voucher to the employees of the customer that they should tell the customer that they are receiving a financial reward for placing an order with them?---(NO AUDIBLE REPLY)

20

Do you tell, you seem not to be able to answer the question. I'm asking you whether it is, whether you tell your employees to tell the employer of the buyer that you have given the employee, sorry, I'll start again. Do you instruct your salesmen that when they give vouchers to the buyer that they should tell the buyer's employer that that is what they are doing?---No, we do not issue that instruction.

30

MR CAMPBELL: Thank you, Commissioner. You see if you wanted to deal with the true customer, it would be an easy thing to do to give say some small cash rebate to the council itself if it ordered goods above \$1,000 or more would it not?---Sorry, could you repeat the question?

Yes. If you wanted to encourage the council as opposed to the individual buyer to continue to deal with you in some sort of loyalty program it would be easy to give the council a cash rebate on its purchases. That's so isn't it?---Yes.

40

And that cash rebate I suppose, I'll withdraw that. So the policy to direct it to the buyer not to the entity was a policy that was deliberately adopted was it not?---We never issued that instruction not to, not to tell the employee.

Well, the employer you mean?---The employer, yeah.

Well the whole Gears of Selling approach is to be build up the relationship with the person who's doing the buying, the employee is it not?---Yes. But we never issued that instruction.

No, but that's what you taught your salesmen to do was it not?---I think you're trying to put words in my mouth. That's not what - - -

THE COMMISSIONER: Answer the question.

10 MR CAMPBELL: Was that what you taught the salesmen to do?---Yes.

That's what the manual says is it not?---Yes.

And it's the manual they were supposed to follow is it not?---Yes.

And likewise on that document of 1 March, 2008 the direction that was given to all Momar sales people was that the voucher may only be sent to the customers home, may only be sent. That's so isn't it?---Correct. But there's a reason for that.

20

Well let me ask you is this one of the reasons, because, I'll withdraw that. Firstly, that's a direction to the salesmen is it not?---(NO AUDIBLE REPLY)

An instruction from the employer?---Yes. With a good reason for that.

Well you tell me the reason then, please Mr Kahn?---Because initially when this promotion was first initiated the voucher was sent with the goods. And it then came to our notice that the person was not receiving the voucher.

30

And as a result of the actual person not receiving the voucher, we changed, we changed the policy that it should go to the, to the persons home address. That way we ensured that the correct person would receive the voucher.

Well can I suggest to you that way you ensured the wrong person received the voucher, because the person entitled to the rebate was the entity. Do you agree?---Yes.

40

And in any event, there would have been other means readily available of making sure the vouchers were accurately and reliably delivered at the place of work if that had been your intention. That's so isn't it?---Logistically that's not always possible.

THE COMMISSIONER: Well what about registered post?---I beg your pardon?

What about registered post to the person personally?---You mean sending the voucher with registered post?

Yes?---I suppose that could have been done, yes.

MR CAMPBELL: And that could have been to the person care of the work address could it not?---Yes.

I mean the true reason that it may only be sent to the customers home was to keep it secret wasn't it?---(NO AUDIBLE REPLY)

10 THE COMMISSIONER: Sorry, I think that that noise might have overcome your answer. Could, do you mind repeating your answer?---Yeah.

Was it yeah?---Yeah.

MR CAMPBELL: Mr Kahn, you've been in business for a long time?---Yes.

20 Working in, in sales. If you worked on an assumption that this form of marketing to the public sector was wrong and indeed a form of corrupt practice have you any suggestions as to how a stop could be put to it?

THE COMMISSIONER: By the council?

MR CAMPBELL: By the council?---Sorry, could you repeat that.

30 THE COMMISSIONER: Let me just try and explain this to you, Mr Kahn. We're also interested in making suggestions how to improve the system and I take it that if the council had said to you this is not allowed you wouldn't have done it?---Correct.

Well, we're asking you if you can provide any suggestions as to how the system could be improved so that this doesn't happen again?---I just need to explain that when we decided upon this promotion, and I did say this at a previous hearing, that we did not separate the public and the private sector. We as a company had a promotion and at that point in time I stated that I was not aware that that was not a correct practice. I am certainly aware of it now.

40 No, no, I'm not asking about you individually?---I'm, I'm aware of it now and obviously as a result of being aware of it now we have stopped the promotion with immediate effect at the time.

MR CAMPBELL: And in fact you've stopped the promotion across the board?---Subsequently, yes.

All right. I have no further questions for Mr Kahn, Commissioner.

THE COMMISSIONER: Are there any questions for Mr Kahn? Thank you, Mr Kahn, you may leave.

THE WITNESS EXCUSED

[2.42 pm]

10 MR CAMPBELL: That completes, so far as Momar is concerned, Commissioner, our evidence about their practices and we don't require any of the Momar witnesses that you've heard from over the last two days to come back for any further part of the inquiry.

THE COMMISSIONER: Yes, thank you, Mr Campbell. Yes, you may be excused, thank you.

20 MR CAMPBELL: Commissioner, we are now about to call some witnesses from the company I've referred to as NCH and the evidence in relation to that company will be - the incentives were of a different type, that they tended to take the form of gifts rather than these vouchers but according to the same methodology I expect I'll be able to establish. I call Mr Sri Ramachandran.

THE COMMISSIONER: And is Mr Ramachandran represented?

MR McLACHLAN: Yes, he is, Commissioner. My name is McLachlan, M-C-L-A-C-H-A-N and I seek your leave to appear for Mr Ramachandran.

THE COMMISSIONER: So are you a barrister or solicitor?

30 MR McLACHLAN: Barrister.

THE COMMISSIONER: You have leave, Mr McLachlan.

MR McLACHLAN: Thank you, Commissioner.

THE COMMISSIONER: Do you wish me to make a section 38 order?

MR McLACHLAN: Yes, I do.

40 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Ramachandran and all documents produced by him during the course of his evidence at this public inquiry 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.

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR RAMACHANDRAN AND ALL DOCUMENTS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY 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.

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THE COMMISSIONER: Mr Ramachandran, 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. Do you understand that?

MR RAMACHANDRAN: Sure (not transcribable)

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

20

MR RAMACHANDRAN: Under oath, thank you.

THE COMMISSIONER: Would you swear Mr Ramachandran in please.

THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Ramachandran, are you Sri Ramachandran?---Yes, Mr Campbell.

10 And are you employed by NCH?---I certainly am.

And are you employed as a sales representative?---Yes.

And for how long have you been in that job?---Seven and a half years.

And before you were, before you worked in a, I withdraw that. I think that you, that you come from India?---Yes, that's right.

And you worked for the company in India- -?---Yes.

20 - - -as an industrial chemist?---That's right.

When you came to Australia did your role change?---Yes, it certainly did.

And when you came here did you have any experience in sales?---I didn't have any experience in sales when I came here, no.

And did the company train you in the sales or marketing techniques that they used to sell their products?---They certainly did.

30 And do you remember who it was who gave you that training?---There were a few trainers over a period of time, yes.

Yes. Who were they?---It was Michelle Jennings and Gary Blackford at that time.

All right. And, and did you, do you know Jacqueline Verdeyen?---I know her as a colleague, yes.

40 Yes. But was she involved in any way in your training?---No.

All right. And the, and the person to whom you report to at NCH, is that, is that Mr Robert Epps?---That's right.

And he is, has the title of the national division manager. Is that correct? ---Perfect.

All right. Now, was there, when you received this training in sales which you hadn't done before, was there a particular manual that was, that was used to train you?---Yes, there was.

And was that a manual which had the title, the Gears of Selling?---Yes.

And did the trainers who carried out the training give you a copy of it?
---I believe actually yes, they did, yeah.

10 Right. And did they impart information to you during the training sessions by reference to it?---Yes.

All right. And, Commissioner, the version from NCH is in folder 9 tab 44.

THE COMMISSIONER: Does it have a page number?

MR CAMPBELL: Yes, it does. It starts at page 41 and I'm sorry, going to page 60, I'm sorry, Commissioner.

20 THE COMMISSIONER: Perhaps Mr Ramachandran could just identify the document at page 41.

MR CAMPBELL: Thank you?---Yes, yes.

THE COMMISSIONER: That's the Gears of Selling you were trained on?
---That's right.

MR CAMPBELL: If it could be turned up to page 60 of the bundle, please, Commissioner, page 3 of the book.

30 THE COMMISSIONER: Do you have that, Mr Ramachandran?---Yes, I do.

MR CAMPBELL: Thank you. And I just want to ask you about that, sir, that looking at the material that's printed at the top of the page, you, the thrust of the strategy was that you were to establish a relationship with the customer?---That's right.

40 And you understood that to be to attempt to establish a personal relationship with the person actually responsible for buying the goods at the organisation you were marketing to?---Yes, Mr Campbell.

Because your company deals in, I haven't asked you. What sort of products does your company deal with?---Industrial speciality maintenance products.

And including some chemicals?---It does include chemicals, yes.

And what other things do you sell?---We do sell programmes water treatment, lubricants, yep.

So that type of – and in that type of industry in which you engaged the public sector is a large consumer of those type of products . Is that correct?

---Yes, considerable sector, yes.

Now, and you were told weren't you, looking at the top of page 60 again - -
-?---Ah hmm.

10

- - - that the, the first Gear was to establish a relationship and the reference there with a customer you were taught was a reference to the individual who was placing the order, say at the council?---That's right, Mr Campbell.

And just looking at the introduction where there is a diagrammatic representation of various phases of the, of the introduction, you'll see in there that the third one in the line of fire is a novelty presentation. What's that about?---A novelty is a very small icebreaker of very small value that we give to a customer to thank him for his time.

20

THE COMMISSIONER: Up to \$20 or so of value?---Usually I would say that, sir.

MR CAMPBELL: And if you could turn over to page 68, it's page 11 of, of the book. And you'll see that we have, perhaps Mr Grainger (not transcribable) to that. Now you'll see we have the same diagrammatic presentation of the novelty presentation but if you look down the page to the paragraph, the second full paragraph on the page, therefore we've developed some other commonly used business practice and that material again is to encourage you to develop this personal relationship with the person placing the order. Is that correct?---Yes, that's right.

30

And in the paragraph, the third paragraph commencing, another way to advertise and develop a personal relationship is to use personalised novelties. You see that there?---Yes, I do.

And at the foot of the page you, the idea was you were to get to know the person well so you could send birthday cards and things of that nature?---If needed, yes.

40

If needed. That was, that was part of the ongoing process. Is that correct? ---That's right, Mr Campbell.

All right. Now if we go to page 14, which is paragraph 71 of the bundle, now this section of course that we're dealing with is to do, centred around how you're supposed to properly deploy these novelties in the process. Is that correct?---Yes.

And, and we see, if you go over the page to, to 15, we see the objects of using, using that technique there, it relaxes your customer. Do you see that? I'm sorry, have you got it? 72 now. Thank you, you can't see behind there, it says it relaxes your customer, creates the connection, you see, it demonstrates you're sincere and personal interest in a customer. It shows your thoughtful remembrance of holidays, you can see them there, creates goodwill and creates psychological indebtedness to cause a need for reciprocity. Do you see that last one?---Yes, I do.

10 Now it would be fair to say wouldn't it Mr Ramachandran, that all of those things, especially taken sequentially and cumulatively, are directed towards that final one of creating a psychological indebtedness and a need for reciprocity. That's so isn't it?---I wouldn't interpret it that way, Mr Campbell.

You wouldn't. How would you interpret it, sir?---I would interpret it as part of the sales process that the company's had for over probably 95 years.

20 Well, okay. Part of it is you would agree that idea that by this conduct you create a psychological indebtedness to cause a need for reciprocity. That's so, isn't it?---Without being too much complicated from my end, Mr Campbell, the idea when I go and meet the customer is hoping that I can build some long-term relationships and I can get some future orders from them. If I'm putting the right way and if I'm answering your question, that's what I mean.

30 That was in the book, that final bullet point, was it not?---Well, I can see it now. I don't remember it at that time. It's been seven and a half years since I've seen this.

That's okay, sir. And I'm not, please don't think I'm trying to show you up or any such thing, I'm not, I'm just trying to find out what you know about it?---I understand.

But looking at it there it does say, "Create a psychological indebtedness", does it not?---It does say it, yes.

40 Yeah, yeah. Okay. Looking at those factors and those considerations it would be fair description, wouldn't it, of that process to call it, you know, a way of grooming the customer. Would you agree with that?---Yeah, why not, yes.

And, all right. Now, okay. Can I just, while I'm on that page, do you see, do you have it there, if you could, back on that page, please, Paul. On the page you have do you, do you have the, the box area in red?---Yes.

Got that?---Yes, yes.

And you will see, notwithstanding perhaps, notwithstanding what's gone before, it says that the small advertising novelty has been found to be helpful in establishing name and product recognition. But it says, "Under no circumstances can any type of reward be offered to the customer for the receipt of an order." Do you, do you see that?---Yes, I do see that, sir.

And then, and the policy strictly prohibits the use of advertising novelties as an inducement for the purposes of the company's products. Do you see that?---Yes, I can see that.

10

Now, were there any rewards offered for the placement of orders?---I wouldn't call it rewards, Mr Campbell.

What would you call it, Mr Ramachandran?---They were termed as, at one stage they were termed as customer loyalty programs, at another time, at a later stage it was called customer promotions.

THE COMMISSIONER: Sorry, I beg your pardon? I didn't hear the last part?---Customer promotions.

20

Customer promotions?---Yes.

MR CAMPBELL: When did the name change, do you remember?
---Honestly not.

All right?---Probably in the last two years somewhere, yeah.

Okay. Now, well, before the last two years, what type of things were, were done in this customer loyalty program?---From memory, Mr Campbell, we had a loyalty program where a customer signs off for it- - -

30

THE COMMISSIONER: What customer?---The buyer signs off for it and he would be able to accumulate some points for what he has bought over the, for a period of time and he could redeem those points against some goods that were then available on the promotion program.

MR CAMPBELL: All right. Now, you say that, and the person who accumulated the points was the individual employed by the entity who was placing the order. Is that so?---That's right.

40

All right. And we, what type of goods could he earn or she earn for that matter?---Sorry, what was that?

What type of goods?

THE COMMISSIONER: What type of goods?---Oh, it's been varying over the years, it's varied over the years, Commissioner.

Well, tell us?---Um- - -

Just give us some examples?---Right from duffle bags to jackets to coolers, fans, iPods, iPhones, laptops.

MR CAMPBELL: A laptop can be a fairly expensive item, can't it?---It could be.

10 Yeah. I mean an iPhone costs some hundreds of dollars if you buy it in the marketplace, does it not?---I don't know, I don't use iPhone.

Don't you? All right. If your Honour pardon me for just one, if the Commissioner pardon me just one moment.

Could you perhaps turn up tab 45 and just, just to page, yes, page 131 will, is, is, will do. I'd like you to assume for me, Mr Ramachandran, that these documents I'm about to ask you about were produced to the Commission by NCH Australia Pty Limited?---Sure.

20 Okay. Now, firstly, at 131 do you know the organisation Paula M Promotions?---I don't know them, I don't know anybody there in person but I know they, they are a promotion company.

And does the promotion, what does, what does that promotions company do?---To the best of my knowledge when we enter orders and put the promotion item in there according to the catalogue for the quarter or for the month the company sends a list of the items to the promotion company and they ship it out directly.

30 So just, just, just looking at, at that page 131 - - -?---Sure.

- - - we, we see that on, on 6 January, 2010 the company apparently got the promotions company to ship out five angle grinders to various customers. Is that correct?---Yes, that would be right.

Yes. And we can see that the, that the - and do you remember an angle grinder being one of the promotional items that were available?---Yes, Mr Campbell, as a matter of fact there were a lot of professionally used equipments in the promotions.

40 I'm sorry?---There was, there were a lot of professional use equipment in the promotions and an angle grinder was one of them.

Okay. I will come, come back to that?---Sure.

But, but if you could just tell me what did you have to do - what did the customer have to do to become eligible for a angle grinder of a value of \$129.95?---From memory I would think it was an order for \$2,000.

All right. So if a person at a country council placed an order for \$2,000 worth of chemicals from NCH Australia then that person became eligible for the angle grinder if that was the person's choice?---That's right.

All right. Now, if the person chose the angle grinder for another item how did you go about getting the, the, the goods to the buyer?---(NO AUDIBLE REPLY)

- 10 You're the salesman in this example?---Yes. Usually it is, it is shipped directly by the promotion company. When I enter in the order in the local ordering system on the Internet it's downloaded the next day and probably by the end of the week or the end of the month the company sends it to the promotion company and they ship it out. This is my understanding, Mr Campbell.

All right. And where do they ship it to?---A registered business address or a registered home address.

- 20 All right. Well, when, when you have made the order, you have taken the order - - -?---Yeah.

- - - and, and, and the buyer has selected the - can we call it a gift?---(NO AUDIBLE REPLY)

- 30 We'll call it the promotional item for the moment, promotional item, do you ask them where do you want this sent?---Yes, I certainly do ask, I give an option but it's got to be, the company's director wants to send it to a registered business address or a home address so I do give them a choice between home and office.

Well, if you're talking to the storeman - - -?---Ah hmm.

- - - at a country council - - -?---Ah hmm.

- - - say who's got authority to order \$2,000 worth of chemicals - - -?
---Sure.

- 40 - - - you ask him the question, don't you?---I do.

Yes, and you say to him where do you want me to send this, is that correct?
---That's right.

And he, he says it was, he gives you the address, is that right?---That's right.

And more often than not in those sort of circumstances it's the home address isn't it?---No, a very lot of times in the past I have shipped it to the store depots itself.

Oh, I see. Well, can I - do you ever send it to the, do you ever send it to the person's home?---I have send a few to home, yes.

You've sent quite a few to home haven't you?---Yes, I have.

And, and that's because the item is for that persons personal use. That's right isn't it?---I really not wanted to, what to do with it, Mr Campbell.

10 You don't ask?---I don't ask, no.

I see. If they want to keep it for their personal use it's none of your business. Is that correct?---Yes.

All right. And - - -

THE COMMISSIONER: Do you tell the customer?---Sorry, Commissioner, what - - -

20 Do you tell the customer?---Tell the customer what?

That you are sending something to the buyer?---When you say the customer, that's the public sector, the council as such, but the buyer - - -

Who do you think the customer is?---The buyer is the first, the customer as long as I'm concerned, Mr Commissioner, he's my customer.

Is that what the company tells you, NCH?---That's the way we have been trained, Mr Commissioner, to answer your question.

30

MR CAMPBELL: Now could I, all right, now just go to page 134, please. And if you look down the page can I ask you about the Sony Blue Ray DVD player. Do you see that?---Yes, I can see it there.

And this has a value apparently of \$455?---I can see that, yes.

Is that one of the promotional items?---Yes, it was one of the promotional items, yes.

40 And was that something which the individual buyer and a public sector customer to whom you were selling product could elect to receive?---Yes, he could if he wanted to, yes.

And what, how much did you have to order to get goods of that value? ---From memory I think it was around about \$5,000.

And it was again, you'd ask the buyer where, where the buyer wanted it sent?---Yes, the choice was given, yes.

If he said home it'd be shipped to home?---Yes.

No questions asked?---No.

THE COMMISSIONER: And does that apply to all these items that one sees at page 134?---I can see a date of 12 February - - -

10 What I mean is that all the items on page 134 are promotional items are they?---Yes, yes, Mr Commissioner.

And, and just as a matter of interest for the Lenovo Notebook, what would you see, what do you have to sell to get a Notebook? How much is what I'm asking?---I think it's a \$10,000 order.

I see. And the iPod dock that's a smaller order is it?---It should be 3,500 from memory.

20 MR CAMPBELL: Can you accumulate points?---No, not any more.

Well let's ask you back then in February 2010, could you accumulate points?---Not even then, no.

When did they last stop allowing you to accumulate points?---About four years ago.

30 So if you wanted, after that time if you wanted one of these promotional items you had to place the bigger orders in the one go. Is that correct?---If the, the customer will be entitled to get - - -

The buyer?---Yeah, sorry, the buyer will be entitled to get Lenovo Notebook when he places a \$10,000 order, that's right, Mr Campbell.

THE COMMISSIONER: I mean I take it that, who pays for the goods that you sell?---The council, accounts payables in the council.

40 MR CAMPBELL: See if we, these prices contained in the Paula M Promotions documentation they're the prices which Paula M Promotions actually charges NCH Australia Pty Limited. That's so isn't it?---That is my understanding, Mr Campbell.

So that even from a \$10,000 order, if , if you're giving someone a Notebook, if it's requested, then something just short of nine per cent of the price is being spent on the promotional product. That's so isn't it?---894 of 10,000 is close to nine per cent, that's right.

Well, let's call it 8.95 per cent if you like?---Yeah.

It's pretty close to nine per cent, isn't it?---Yeah, that's right.

Yeah. It's sort of a, well, might be a matter for the Commission but that rather reduces the profit that you might otherwise get from the sale, does it not?---(NO AUDIBLE REPLY)

THE COMMISSIONER: That NCH gets from the sale.

10 MR CAMPBELL: That NCH gets from the sale. Unless of course the cost of that is factored into the sale?---I've never, never ever gone into that part of it.

THE COMMISSIONER: Who pays Paula Promotions?---The company, NCH pays.

MR CAMPBELL: Now, just to go, I'm sorry, through some of the things
- - -

20 THE COMMISSIONER: And, Mr Campbell, it might be interesting just to understand from Mr Ramachandran what his earnings are and how that works.

MR CAMPBELL: Thank you, Commissioner. I'll do that. Mr Ramachandran, are you a salaried person?---Yes, I am.

Do you have a mix of salary and commission on your sales?---Yes, I do.

Right. So the more you sell the more you earn?---That's right.

30 Now, forgive me for asking, is the largest part of your income your commission?---Last year it has been, the year before that it was not big. It's a mix and match on a given particular year.

How much do you have to, how much business do you have to write before you're eligible for a commission?---Probably \$20,000 a month. \$20,000 a month.

40 Okay. So that's about, I should know this, \$120,000 a year. Is that correct? ---No. \$20,000 a month is about a turnover of- - -

240,000---?- - -\$240,000 a year.

I beg your pardon?---That's right.

And once you get to that level, do you get a certain percentage of the excess as income?---That's right.

THE COMMISSIONER: What percentage?---It's varied over the years. It's basically an understanding between me and the manager usually. Roughly 10 to 20 per cent.

And what's the commission measured on, what is it, a percentage of what?
---The invoiced amount for the year or for the month.

10 So you don't, the amount of, the cost of the promotional item doesn't have any relationship with your commissions?---No, it doesn't.

So the cost of that is borne entirely by NCH?---That is my understanding, Mr Commissioner.

Is that factored into the price at all, to the price paid by the council?---To the best of my knowledge, no.

So the council, the amount paid by the council is not affected by the cost of the promotional item?---No.

20 MR CAMPBELL: You wouldn't have to be an economist to figure though, would you, that on the \$10,000 order which produced the \$895 laptop, that the same net result would obtain to NCH Australia if the council was given the \$895 as a rebate, if the council was given \$895 as a rebate rather than the buyer being given the laptop for his own personal use. That's so, isn't it?---That's really up to the company to decide, Mr Campbell.

30 I'm just asking you about the maths though, Mr Ramachandran, and I suppose as a chemist you might know something about that, probably more than me?---I certainly can comprehend with what you tell, yes.

THE COMMISSIONER: Mr Ramachandran, do you have any idea what the retail price is of this Lenovo Notebook?---I would imagine it was around the price that's mentioned here, Mr Commissioner, \$895.

Do you know?---I'm not sure but that is what I assume. I've really not digged into it. As a matter of fact the first time I've seen these documents was just before my private hearing.

40 MR CAMPBELL: Just to turn over the page and look at page 136, over a couple of pages, on that page we've got the first item, three of which were apparently despatched on the 1st of, on the 12 February, 2010, a Grundig LCD TV and DVD.

THE COMMISSIONER: And that's page?

MR CAMPBELL: That's page 136, Commissioner?

THE WITNESS: Yes, I can see that.

MR CAMPBELL: Unit price, \$755?---Yes.

Again, can you tell me, have you ever processed one of those TVs for one of your buyers?---I vaguely remember doing it, yes.

10 All right. And again once the, once the buyer had placed his order, did you ask him where does he want it sent?---Yes, I do. Having said that, Mr Campbell, I should have told you a bit earlier, after February we were issued a directive from the company to send the goods only to the buyer's business address and after that I continued to send it to the business address.

That's from what, February 2011?---To the best of my memory, yes.

All right. And is it the case that, I was getting to that, Mr Ramachandran- - -?---Sure.

- - -at some stage?---Sure.

20 Is it also the case though while you've mentioned changes that since that time that it's changed and these sort of gifts are no longer on offer?---The change that the gifts were no longer as an offer came into effect to the best of my memory from 1 May, 2011.

All right?---From the new financial year as far as NCH was concerned.

I see. But there are other things offered these days as promotional items? ---On a monthly basis professionally used equipment, a couple of items, for now, yes.

30 And what are they?---It's a twin flood construction light and/or a drill set.

I'm sorry?

THE COMMISSIONER: A drill set.

THE WITNESS: A drill set.

40 MR CAMPBELL: A drill set. Now, thank you. Now, could you look at tab 46 and page 293. I'm sorry, go to page 294, I beg your pardon. Now, without saying too much about customers, the pages 294, 295 and 296, sorry, just pages 295 and 294 show entries in respect of gifts that you've organised for people. Is that correct?---That's correct, yes. Not gifts, customer promotions as I would call it, Mr Campbell.

I do beg your pardon Mr Ramachandran. But they're buyer promotions really aren't they?---Just to clarify on this question of buyer and the customer all the time, we don't differentiate between the buyer and the

customer, Mr Campbell. In the private entity if I'm dealing with the maintenance manager I don't let the managing director of the company know that your maintenance manager is getting a promotional item. Similarly with the council I wouldn't go to the general manager and tell them because I don't have any dealings with them.

10 Well isn't that part of the problem, I'll withdraw that. Don't you agree that that's a problem Mr Ramachandran, that you don't make distinction between the council and the council's buying officer?---In my understanding there has been no indication from my buyer that I have to go and tell it to, tell it to whoever his superior is or who the actual customer is.

Well you'd have the understanding wouldn't you that the actual customer is the person who writes the cheque to pay the invoice when the goods are delivered. That's so isn't it?---Mr Campbell, the customer gets a good service and - - -

THE COMMISSIONER: Just answer the question?---Yes, yes.

20 MR CAMPBELL: Thank you. So there can't be any confusion about that in anyone's mind can there Mr Ramachandran?---Sorry, I don't understand that.

There can't be any confusion of who the customer really is in anyone's mind can there?---Yep.

You agree with me?---Yes, I do.

30 And it might be that if your marketing strategies don't make any distinction between the buyer at the store and the shire council, then they should. Don't you agree?---I'm not understanding the question, Mr Campbell.

Well you've told me already that the way you think about it, the way you've been told to think about it as a sales representative of NCH Australia is there's no distinction between the man in the store and the managing director because you just deal with the man in the store. You've said that haven't you?---Yes, I did.

40 Well if that's part of the company policy don't you agree that there might be something wrong with the company policy if it fails to identify as the customer the person who actually pays for the goods?---I don't believe so, Mr Campbell.

All right. Now, at times the promotional material has, has included such things as a dozen bottles of wine has it not?---Yes, it has.

And you mentioned to me earlier when I asked you about the angle grinder that some of those type things can be used at work I think you said. Is that right?---Yes, I did.

You wouldn't be using a dozen bottles of wine at work would you?

---Probably not.

Not if you're proposing to do any work I suppose. Would that be right?---I think you can use it in a Christmas raffle.

10

Well I suppose that would be, if you gave it to the buyer he could make his own mind up what you did with it. Would that be correct? Do you agree with that?---Again, Mr Campbell, my understanding of the buyer and the customer is the same, I understand, sorry.

Now have you dealt with anyone at Ballina Shire Council? I'll withdraw that, I know you haven't. What about Bathurst Council, have you dealt with anyone at Bathurst Council?---Yes.

20

And who have you dealt with there?---Mark Luther and (not transcribable) White in engineering.

And the – and have you sold them goods?---Just once.

All right. And what about, what about Burwood Council?---No.

Byron Shire Council?---No.

30

The City of Botany Bay?---No.

Lithgow City Council?---Yes.

And who have you dealt with there?---Peter Bradford, Steve McMurtrie and Lee Warner.

And have you made sales to them?---Yes, I have.

40

And have you made sales to them has qualified any one of them for the promotional reward?---Yes.

And in those cases did you send it to their home address?---A few times I've sent it to their home address. A couple of times I've sent it to the office address.

Pardon me, Commissioner.

THE COMMISSIONER: Page 295, there's a reference in there to two sets of wine, a dozen wine bottles and I'd be interested to know the background to that and what the sizeable order would be and the cost of the wine bottles.

MR CAMPBELL: Yes sir, yes Commissioner. Pardon me. Could you look at, this is behind tab 46, it's page 295?---Yes.

This is not one of yours I don't think - - -

10 THE COMMISSIONER: Yes, it is.

MR CAMPBELL: I do beg your pardon, Commissioner, yes, I'm looking in the wrong column. This is, this is one of yours Mr Ramachandran. It's the second last entry on, well two entries, there's the last two entries on the page relate to all the numbers. Do you see that? Have you got them?---Yes.

And you've arranged for the shipment of wine to a named person. Now one dozen red wine bottles. Can you see that?---Yes, I can see that, yes.

20 Now can you remember what the value of that wine was?---You mean the wine bottles?

How much, how much did the case of wine cost?---I don't know.

And what sort of order did he have to place to have the case of wine sent to him?---In my memory \$2,000.

All right.

30 THE COMMISSIONER: And why are there two, two, the orders are dated the same date, 24 November, 2010 each?---That's right. There could be two orders.

So he could make two orders?---There could be two orders, he would have ordered two orders, yeah.

What two different items?---Yes.

40 Could you split orders?---That's what he wanted to do, he wanted to split the order. He wanted do it on two purchase orders.

He could order the same item and split it?---No. When there are two purchase order there are two different items.

I see. And that's his home address?---I think so. It's (not transcribable) yeah.

It's not the council's address?---(not transcribable) the postcodes are the same.

MR CAMPBELL: Sorry, Commissioner.

THE COMMISSIONER: While Mr Campbell is looking at his papers, can you just turn to page 296?---Yes.

10 There's a café grill - - -?---Yes.

- - - that's a promotional item sent to a council. Do you see that?---Yes.

What's the value of the café grill?---I should only assume, I assume it would be about \$100.

What is a café grill?---Just a, something like a sandwich toaster, a bigger size that they use in café.

20 All right. Thank you.

MR CAMPBELL: Could I take you to page 298, as I was going to. And we find that on that page, have you got it there Mr Ramachandran?---Yes, I do.

It's just coming up. On that page we have a number of orders with promotional items placed by you in respect of orders made by employees of the Lithgow City Council. Do you see that?---Yes.

30 And for instance one of the names you mentioned was Mr Lee Warner?
---That's right.

And once, once again we see that there is a please provide one dozen red wine bottles to Peter Bradford's address?---That's right.

Who's Peter Bradford?---Peter Bradford is a supervisor at the Lithgow City Council who works under Lee Warner.

And then - - -

40 THE COMMISSIONER: So does that mean that Lee Warner asked you to send the wine to Peter Bradford?---No, it was Peter Bradford's choice.

I beg your pardon?---No, it was Peter Bradford's choice. Peter Bradford was the - - -

But the buyer's name is Lee Warner?---Yes, Lee Warner makes the order, Peter Bradford puts him in a position for him to make the order.

I see.

MR CAMPBELL: So he had the wine sent to his place, is that right?---By the looks of it, yes.

THE COMMISSIONER: Did you tell Lee Warner that this is what's happening?---I have not had an opportunity to talk to him regarding this.

Do you ever talk to him?---Yes, I certainly do.

10 Often?---Not any more.

But at this time?---At that stage, yes.

MR CAMPBELL: All right. If I can just show you another one, the next one down is order number 7-1-9-7, it's one of yours, it's again - I'm sorry, it's 7-1-9-6, again it's Lee Warner and you were asking for one JVC socket set, 46 piece to Lee Warner at 21 (not transcribable) Close, Lithgow?---Yes.

20 Yes. Well, that's not the council chambers, is it?---Well, that's his residential address.

Yes. And the 46 piece socket set is a pretty big socket set, isn't it? Do you know?---Yes.

It is, yes. And how much was that worth?---I don't know.

What did he have to order to get it?---Probably \$2,000.

30 And then we've got 7-1-9-7 and we've got, again, a, it's a T-A-C DVD player, is that right?---T-E-A-C DVD player, that's right.

Well, what does that mean?---It's just a brand.

All right. Okay?---(not transcribable)

It says DAVD but it's DVD is it?---That's DVD, yes.

40 Yes, okay. And it's to be shipped to Steve McMurtrie is that right?---That's right.

And again, that's his home address, is it?---Yes.

It's not the council chambers?---No.

And that's his personal mobile number that's there, is that right?---I've got only number of Steve's and I think that's the council give him one to the best of my understanding.

I see?---He uses that for work he's told me.

THE COMMISSIONER: So does he place the order? Sorry, does he - do you deal with him?---Yes, he's - - -

Steve McMurtrie?---Yes.

10 THE COMMISSIONER: You deal with the three of these men, do you not, at Lithgow?---Yes. Yes, just to clarify the system Peter Bradford and Steve McMurtrie put their requisitions across to Lee Warner, Lee Warner gives the final tick so it's ultimately these two people who are using the products and who know what they want and who order what they want.

So if you look at, at the next one, 7-2-0-4?---Sure.

You send the Apple iPod to Steve's residence but the invoice to Lee Warner?---Yeah, that - - -

20 How does that - why is that?---Lee Warner was the one who prepares the purchase order.

But the actual negotiation is between you and Steve?---No commercial negotiations, only what the product he wants, all the commercial negotiation - - -

You talk to Steve and then he arranges for Lee Warner to make the order, is that it?---That's right.

30 MR CAMPBELL: But sometimes Lee orders things directly for his, for use at, for his section of work, is that right?---That's right.

And then when he does that he is entitled to specify the promotional item and its sent to his place, is that right?---That's right.

For instance if we, if we, if we go down again to order 2-7-9-0 the, the Dyson blade fan to Lee Warner's residence - - -

THE COMMISSIONER: Sorry, 2-7-9-0?---That's the postcode.

40 That's 12 - - -

MR CAMPBELL: Oh, you're right, Commissioner. If you go to 7-2-2-4.

THE COMMISSIONER: 7-2-2-4.

MR CAMPBELL: 7-2-2-4. That's again, but that's, what's, what's that item, advice and no blade fan?---I've not seen it.

All right. It's a bladeless fan is it? Something like that?---I would assume so, yeah.

I see. I think we've got it in the hearing room, Commissioner. Could it be shown to Mr Ramachandran. Is that, you don't know I suppose, you've told me you don't know but - - -?---I've not used this at my home or (not transcribable)

10 Now I assume that that, that's, that's, that's, that's a bladeless fan?---Yeah.

And that's the type of item which, which has been to Mr Warner's house?
---Yes.

Yeah. All right. And the, if we go down the page again to - I think I might have asked you this one but the 7-2-3-4 - - -

THE COMMISSIONER: I think 7-2-3-0 is of interest.

20 MR CAMPBELL: 7-2-3-0, I'm sorry for jumping that, Commissioner.
You see again we've got - - -

THE COMMISSIONER: Sorry, not that one it's - yes, 7-2-2-5 is the one.

MR CAMPBELL: Yes. We've got here, again we've got another 12 bottles of wine and a case of wine to, to Lee's residence, is that right?---That's right.

30 THE COMMISSIONER: How do you know what wine to order?---I don't do the order I just put the wine, the, the promotional condition has got a clause in it there saying that the wines will be ordered but there's no particular brand that we put in, it will be seasonal. I have never seen any of these wine bottles, it goes directly from the promotion company so I don't know what - as far as I know they do only red wine.

MR CAMPBELL: You don't know whether it's any good?---That's right.

Okay. But what did you have to order to get it?---It was on the promotional catalogue for a \$2,000 order.

40 Oh, right?---That's my, that's from my memory, yes.

Now, I mean, what the, looking at these things and I'll ask you about some more in a moment but quite simply you've got, we've asked you from this one page of, of the records about three different men who work for the one entity, that's right, isn't it?---That's right.

Yes. And, and even though they're all ordering through Mr Warner goods on behalf of Lithgow City Council each of them is entitled to choose

something from the promotional list for himself if he's the one who causes the order to be made to be delivered to his section, is that correct?---That's correct.

So it's as though you've got three buyers, not one customer. Is that correct? ---Yeah, I've got three buyers, that's right.

10 And, and the way the system works is, is to encourage that each one of them stay loyal by rewarding them all, that's right, isn't it?---That's right, yeah.

THE COMMISSIONER: Mr Ramachandran, just please look at the last one, 7-2-8-6?---Yes.

It's also to Lee Warner, that's a, a Lenovo Notebook, that's one of the most expensive promotional items isn't it?---From memory, yes.

20 And can I carry on reading, it says "please send separate invoice for promo equipment, do not include promo on product invoice"?---That was his request.

I beg your pardon?---That was on request from him.

But why did he want that?---I really didn't go into that, Commissioner.

What did you think?---In all honesty I didn't give much thought to it either.

What do you think about it now?---(NO AUDIBLE REPLY)

30 It's pretty obvious isn't it?---Well, we still sent the product (not transcribable)

It's pretty obvious, isn't it?---What was obvious, Commissioner?

Why, what he, why he didn't want the Lenovo Notebook to be mentioned on the product invoice?---I understand, I understand that it could be the case because he's not using it there. He's not using it at work probably.

40 So if he's not using it at work he doesn't want it on the invoice, is that it? Is that what you're saying?---That would be my understanding, yeah.

Why, why wouldn't he want it on the invoice simply because he's not using it at work?---That's, that was his request.

I know it was his request but I'm asking you why you think he wanted this concealed because that's the effect of what he was doing wasn't it?---If it was concealed I, I wouldn't have sent it to the office address, that was sent to the address, the store address.

Yes, I know?---Yeah. There was no reason for me to conceal it.

But from the council, conceal it from the council?---Again, Commissioner, that was his decision.

I understand that. But you send out the product invoice?---Yes.

10 And there's a deliberate request to say nothing on the product invoice about this relatively expensive notebook that you're giving him personally to his home address?---No. That notebook was sent to the office store address. I remember that pretty well because that was in the February, month of February. I didn't send the notebook to his home, it was sent to the office address.

If it's sent to the office address why doesn't it go on the invoice?---That's a question for Lee Warner I would assume. It was his request.

20 Don't you think it's strange?---Not really, because we have not put the product information on any other invoices either.

So why mention this specifically?---Honestly, Commissioner, I don't recall, but I would assume it was as a request.

MR CAMPBELL: I note, Commissioner, the date of that order is 23 February, 2011. The, can I just take you to a separate part of the folder you have there and I want you to go to page, I'm sorry, tab 44 and page 26.

THE COMMISSIONER: Sorry?

30 MR CAMPBELL: Sorry, folder 91 sorry.

THE COMMISSIONER: Tab 44 page 26.

MR CAMPBELL: Yes. Now- -?---Yes.

Sorry?---Yes, I've got it here.

40 Now, this, I think that, that, that we can see that a summary of these items we're looking at in terms of the actual expanded document at 298, but from that we can see for instance that, pardon me, Commissioner.

THE COMMISSIONER: This doesn't seem to be complete.

MR CAMPBELL: It may not be. If you look at the, no, it does not seem to be complete, Commissioner.

THE COMMISSIONER: This doesn't record some of the items that we've been discussing.

MR CAMPBELL: No. This covers a period where the, it says it covers the period from page 25 from 4 November '09, to 18 February '11, but- - -

THE COMMISSIONER: I mean for example, that notebook discussed last is not mentioned here.

MR CAMPBELL: No. This- -?---Sorry, you just mentioned there- - -

10 THE COMMISSIONER: Where's that, a laptop?---The third one from the last.

You're quite right. I'm wrong and you're right.

MR CAMPBELL: I think this is an earlier version of the information on page 26 that was provided Commissioner. What we were looking at at page 298 was a more recent compilation of the material provided by NCH.

20 THE COMMISSIONER: I see.

MR CAMPBELL: But this gives us an idea of something. It might give us an idea of the quality of the wine, Commissioner, because if we have a look at for instance- - -

THE COMMISSIONER: It does.

30 MR CAMPBELL: It gives us a value. There are two items in the middle of page 26, one's 9 December, 2010 is the entry, Lithgow Council, Peter Bradford, it's Mr Ramachandran and it's one dozen wine. It's \$239.40.

THE COMMISSIONER: Does it contain the two sets of, the two cases of wine sent on the same day? I don't see that.

MR CAMPBELL: No, I don't see that. But as I've said, Commissioner, what we had earlier was, what we looked at earlier at page 298 was a more recent provision of information by NCH than this version.

THE COMMISSIONER: I see.

40 MR CAMPBELL: My only purpose in going to this at the moment is to demonstrate some of the values of some of the items that do appear on page 298.

(PUBLIC HEARING SUSPENDED)

(PUBLIC HEARING RESUMED)

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Now, Mr Ramachandran, taking you through all of these things this afternoon, it's quite apparent from looking at this selection of documents that we've looked at that these so-called promotional items are firstly all consumer goods of a type that one might usefully use at home. That's correct, isn't it?---You could use it at home as well, that's right.

Yeah. Well, you wouldn't be using wine at work, we've established that, haven't we?---As I told you, there are a lot of cases where they put it in the Christmas raffle.

I see. And they're all consumer items of some value, are they not?---Yes.

Including items as we've looked at he selection worth \$895. That's so, isn't it?---Ah hmm. Yes.

And even some of the cheaper items are say \$121 or something like that. That's so, isn't it?---That's what I can see, yes, sir.

And all of these items have been sent to the residence of the council buyer for whom they're intended. I'll withdraw that. The laptop apparently went somewhere else, but let me just ask you, the wine we've been asking you about, the socket set, those items all went to the residence of the council officer named. That's so isn't it?---In most cases, yes.

And that's because, I'll withdraw that. And to the extent that anything was very delivered to the place of work, it was only delivered there because that's what the council officer asked you to do. That's correct isn't it? ---Yes, yes, that's right.

The whole system of promotional items was designed to encourage the individual council officer or other authority officer to continue to buy products from NCH Australia when he was purchasing things. That's correct isn't it?---It was an order to order basis, Mr Campbell, so even at this stage I don't know if there's a certainty that he's going to order another product just because he's got a promotion item.

Well you remember Mr Ramachandran, I asked you about whether the process described in the, in the Gears of Selling could be described as grooming and you agreed with me?---Yes, I did, yes.

The whole idea of this type of grooming is to form a relationship with a

council officer so that they are more likely to come back and buy your product rather than the product of your competitor. That's correct isn't it?
---As a salesperson, yes.

And indeed another part of the idea of this process of grooming I've been asking you about and the availability of these consumer items for the personal use of a buyer is to encourage them to place larger orders to get an item that they desire. That's right isn't it?---That is not my understanding, Mr Campbell.

10

I see. It's a pretty - I'll withdraw that. When something was common in the industry of marketing is upselling isn't it? You've heard that expression?
---Yeah, I've heard (not transcribable)

You know what it means don't you?---Upselling?

Yes?---No, I don't.

20

I see. It means that the customer says, places an order worth \$900, say, the salesman might say, look if you spend 1,000, you can have this item. That's upselling isn't it?---That might be upselling but I have not done that, Mr Campbell.

But don't you ever say to them when you're selling them product, I'll withdraw that, Commissioner. You provide them with the catalogue that has these items in it. Is that right?---I show, I show it to them.

And it says - - -?---After the sale.

30

After the sale?---Yes.

I suppose the one catalogue is current for a period of time. Is that correct?
---Yeah, it probably is.

THE COMMISSIONER: For how long?---It's vary, Mr Commissioner, sometimes three months, sometimes just for the month.

40

MR CAMPBELL: In any event you show them the catalogue so that they can choose what they want and have it sent to their home address if they choose. That's the system isn't it?---After the sale is made, yes.

And - well - and after the sale is made they know that next time if there's going to be a sale, there's going to be a promotional item of a similar value on offer if they buy the same amount. That's so isn't it?---I don't know what their understanding about that is, Mr Campbell.

But that's the fact these items are always available or were always available. That's so isn't it?---They were always available for the last few years.

So that anybody who'd done business with you, even once would know what the system was. That's correct isn't it?---Not just once, no.

I see. Well twice?---A bit more than that I would imagine.

I see. It might take a while to learn what's in the catalogue. Is that what you're telling me?---I don't know what (not transcribable)

10 I see. Now these gifts are offered as an incentive to further business dealings aren't they?---Sorry, Mr Campbell, this reward program or the customer promotion is offered on the order not for future orders.

I see. But the idea is that having built up the relationship and having rewarded the buyer for placing an order you hope he'll come back. That's right isn't it?---As a salesperson I would definitely wish my customer orders from me again and again.

20 So that is an inducement for further purchases is it not?---Mr Campbell, no that's not my understanding.

THE COMMISSIONER: You mean that wouldn't induce the man to come back again and place further orders in the future?---I have not had any instance where a person has ordered from me because there's a promotion item.

Well how do you know?---Well they've not asked me what is the promotion before we've done a sale or anything.

30 But they would know that there's a promotional order if they've purchased from you two or three times before wouldn't they?---They probably know but they wouldn't order it for the sake of promotions. A council like Lithgow Council ordered whatever they required. And Lee Warner had - - -

But how do you know that they wouldn't order from you simply because of the promotional order? How do you know that?---Well I know as a matter of fact the buyer has told me a few times he loves our products and he certainly believes they are much quality product, one of the best qualify products that are available on the market.

40

MR CAMPBELL: The, the Commissioner asked you about those two dozen bottles of wine offered on the same day. There was two orders placed in similar amounts on the same day was it not? You were asked about that. Do you remember that one? It's at 298.

THE COMMISSIONER: What, what tab was that again?

MR CAMPBELL: It's tab, I beg your pardon - - -

THE COMMISSIONER: 45 isn't it?

MR CAMPBELL: Tab 46, Commissioner, page 298. And - - -?---It's not there on page 298, as I can see.

I beg your pardon, sir?---I don't see it on page 298, Mr Campbell.

10 Oh, I think I've lost it, sorry. It wasn't on that page. In any event, pardon me, I'm sorry Commissioner, I've lost my place?---It's page 295, Mr Campbell.

Thank you, Mr Ramachandran, you're very helpful. Now we can get out of here. It's the last two entries on page 295, order number 7-1-7-8, 7-1-7-9 and it's Mr Burnie's who's had, ordered two dozen bottles of red wine. You, you said to the Commissioner that every product has to be a separate order. Why would that be so?---Sorry, Mr Campbell, I think my answer has been misinterpreted. I never said every product has to be on a separate
20 order. It's entirely the customer's discretion to give five products on one order or one product on one order, as far as I am concerned a sale is a sale.

Oh, well, a sale is a sale so if, if the customer wants to then the customer can elect to split the order?---Yes. I'll give you an example of - - -

THE COMMISSIONER: Did you say yes?---Yes.

MR CAMPBELL: That's a little different from the, the answer you gave to the Commissioner earlier isn't it, Mr Ramachandran?---(not transcribable) I want to (not transcribable) directly, Mr Campbell, what was the question
30 again?

The question, my question was - - -?---Yeah.

- - - that, that the answer you've now given about the facility for splitting - - -
-?---Yeah.

- - - orders is different from the answer you gave the Commissioner, the Commissioner when he was asked you about whether it was possible to split orders. That's right, isn't it?---It's entirely the customer's discretion if he
40 wants to order two products over two different - - -

THE COMMISSIONER: I thought you said, I thought you said - perhaps I misheard you or my memory is faulty but I thought you said that you couldn't split an order for the same product. If you were ordering one product - - -?---That's right.

- - - you had to make on order?---That's right.

You couldn't split the order?---Yes.

You did say that?---Yeah, I did say that and I still stick by it but you could order two different products on two different orders.

Yes, I - - -

10 MR CAMPBELL: Well, if you want 10 drums of some chemical it all goes on one order, is that right? Is that what you're saying?---If the customer wants ten drums of a particular product or the same product you mean?

Yes?---He could order if there were five drums on one order or five drums on another order or six drums on one order and six drums - four drums on another order.

So if he wants 10 drums he could put in ten orders on the one day for one drum if he thought that was to his advantage, is that correct?---(NO AUDIBLE REPLY)

20 Is that what you're saying?---I've, I've not had that experience, Mr Campbell.

THE COMMISSIONER: But could he do that if he wanted to?---If he wanted to he could do it.

MR CAMPBELL: So, so what, so however you want to put it you can split orders, is that correct?---Yeah.

30 Yes?---Yeah.

Well, sir, I see the time, Commissioner. I'd ask that we adjourn now and I'll, I won't be very long with Mr Ramachandran in the morning and I'll - - -

THE COMMISSIONER: Yes.

MR CAMPBELL: - - - intend to catch up with the other witnesses tomorrow morning, Commissioner.

40 THE COMMISSIONER: Yes. Mr Campbell, I have received a message about Ms Verdeyen.

MR CAMPBELL: Yes.

THE COMMISSIONER: I'm afraid she's under summons and she has to be here tomorrow.

MR CAMPBELL: Yes. I did, I did speak to, to her counsel where she was on the list, Commissioner, and I said I would be calling her in accordance with where she was on the list.

THE COMMISSIONER: Yes. We will adjourn until tomorrow at 10.00am.

AT 4.01 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.01PM]

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