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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 6 OCTOBER, 2011

AT 10.10AM

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THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Commissioner, we may have got a little behind schedule yesterday. I am confident that I can catch up today and that all the people we have listed to take today can be - can give their evidence in full but on that basis, for the benefit of other practitioners, I was going to ask whether it would be convenient to take a short adjournment at 11.30.

10 THE COMMISSIONER: Yes. Mr Campbell, perhaps 11.15 so that's in the middle of the day, is that all right?

MR CAMPBELL: Of course, Commissioner.

THE COMMISSIONER: Yes. So all right, well, the practice will be that from now on we'll adjourn between 11.15 and 11.30 every day.

MR CAMPBELL: Thank you, Commissioner, and I - - -

20 THE COMMISSIONER: I should also say that on Monday we'll stop at 12.45 and start at 2.15.

MR CAMPBELL: Thank you, Commissioner. I'll make a note of it. I think Mr Ramachandran is in court. I beg your pardon, Commissioner, Mr - - -

MR CLAY: May it please your Honour, Commissioner, Clay is my name. I also seek leave to appear for Orange City Council.

30 THE COMMISSIONER: For Orange?

MR CLAY: Orange City Council, yes.

THE COMMISSIONER: Yes. Is that one of the 15?

MR CLAY: It is one of the 15.

MR CAMPBELL: It is.

40 MR CLAY: I'm instructed also by Mr Crennan, I'll fill in a form.

THE COMMISSIONER: I beg your pardon?

MR CLAY: I'm also instructed in that matter by Mr Crennan, he's the instructing solicitor in the other two. I'll fill in a form.

THE COMMISSIONER: Yes, then you have leave.

MS McGLINCHEY: Commissioner, Karen McGlinchey, solicitor. I seek your leave to appear for Mr Bob (not transcribable)

THE COMMISSIONER: And who is he, Ms McGlinchey?

MS McGLINCHEY:

THE COMMISSIONER: Sorry?

10 MR NAYLOR: A Sydney City Council employee, Commissioner.

MS McGLINCHEY: Sydney City Council.

THE COMMISSIONER: Yes, you have leave. Yes, Mr Ramachandran, will you take a seat.

THE COMMISSIONER: Mr Ramachandran, the oath that you took yesterday still applies and the section 38 order that was made yesterday to you still applies?---I understand, sir.

Yes.

10 MR CAMPBELL: Thank you, Commissioner.

Mr Ramachandran, when we adjourned at the conclusion of yesterday's hearing I think I was asking you about whether there had been some confusion in your earlier evidence about the capacity of the individual buyer to split an order. Do you remember that discussion?---I certainly do, Mr Campbell.

20 And I think that, I think that after some earlier confusion about that it is your evidence now, is it not, that the buyer is entitled to split his orders to his own advantage, that's correct, is it not?---Based on his budget and what he wants to do he can, yes, that's right.

Well, his budget isn't any of your concern I suppose, is it?---Saying they're splitting the order is never my concern, Mr Campbell.

All right.

30 THE COMMISSIONER: I think the point is if he wants to split the orders he can?---He certainly can.

MR CAMPBELL: Well, can I just go back to what I was asking you about in relation to tab 46 of folder 9 and page 295 that you conveniently reminded me of, for which I'm grateful?---Thank you.

THE COMMISSIONER: I'm sorry, Mr Campbell, I was thinking of other things. Do you mind repeating the page?

40 MR CAMPBELL: Not at all, Commissioner. It's volume 46 of folder 9 and it's page 295 and it's the last - - -

THE COMMISSIONER: Tab 46.

MR CAMPBELL: Tab 46 and it's the - thank you, it's the last two entries, Commissioner, I've asked some questions about it already.

THE COMMISSIONER: On page?

MR CAMPBELL: Page 295.

THE COMMISSIONER: Thank you.

MR CAMPBELL: Have you got it, Mr Ramachandran?---I certainly do, Mr Campbell.

All right. Now, firstly can I ask you this: do you recognise this page and this document that I've asked you questions about as a document produced in the office of NCH. Can you say or not?---It is.

10

It is, thank you. And now this is 7-1-7-8 and 7-1-7-9 are orders made on the same day as we've established where it does appear, does it not, that Mr (not transcribable) has split - I withdraw that, I withdraw that name, Commissioner, where the person has split an order, is that correct? I'm just asking just by way of example?---That's exactly right.

Yes. And now you've told me yesterday that you don't discuss the promotions until you've got the order?---That's exactly right.

20

Well, that, that might be your usual practice, sir, but you would agree with me, wouldn't you, that in a case where there is a split order, so that the buyer becomes eligible for two promotions, there has to be a discussion about what promotions are on at that time before he makes that decision?---In all honesty, not necessarily, Mr Campbell. If I can explain a bit about it I- - -

Before you explain it, and I'll let you explain, but, but not necessarily, that means that I must be partly right at least. Would you agree with that? ---No, I don't, Mr Campbell.

30

Okay. Well, you explain to me why I'm wrong?---Okay. Usually a council supervisor or a manager who can make an order allocates a job number to a particular, let's say he's ordering two different products, one is for plumbing and another is for building maintenance, plumbing goes under a different job number and a different purchase order and, you know, building goes under a different job number and different purchase order. So he allocates it under two different budgets that he's got and I don't go there beyond it. This is my understanding, Mr Campbell.

40

Well, that's an assumption you make, is it, when that happens sometimes? ---That's what I've understood from a few of the other- - -

THE COMMISSIONER: But you have said, Mr Ramachandran, that the buyer can split the order?---I do, Mr Commissioner.

And is the, is this order, are these two orders at page 295 split orders? ---They're for different products, Mr Commissioner.

How do you know that?---I'm pretty sure about it.

Well, how do you know?---Because I- - -

Do you remember it?---Yes.

Well, what are the products?---From my memory they're products called Yield- - -

10 Which one was for, sorry, it was for Yield, did you say?---Yield and- - -

Is that Y-I-E-L-D?---Y-I-E-L-D, Malice and Tuf Scrub and Exaderm.

Say that again, please. I didn't hear?---Yield, Exaderm, Tuf Scrub and Malice from- - -

So four products?---Yes.

20 So you're saying these two orders are for four products?---Yes. That's why my understanding, from memory that's what I understand.

And so one order is for two of the products and the other order is for the other two of the products?---That's what I can recall, Mr Commissioner.

Well, what I don't understand, Mr Ramachandran, perhaps you can explain that- - -?---Sure.

30 - - -is if it is appropriate to put two products on one order, as you say happened, why isn't it appropriate to put four products on one order?
---Can I explain a bit further, Mr Commissioner?

Yes?---Sometime the, sometime the council manager or the authority requests for a bill in 30 days, another one in 60 days time so that he can manage his budget well. Probably one of those bills were for 30 days and another one was for 60 days, so they were on two purchaser orders.

40 Are you, are you speculating or do you, or do you remember this?---In this particular case I don't remember why it was split but I remember it was an order for four products if I can recall rightly.

So you don't believe it was an order for four products? I'm sorry, I didn't hear you?---From what I can recall, Mr Commissioner, sorry, I didn't prepare for this so I'm not 100 per cent sure, but as I can recall it was for four products.

MR CAMPBELL: You say then, do you, I'll withdraw that. There's nothing on this record to indicate that any special instruction was given by

you to NCH about staggering the issuing of invoices, is there?---There was a separate permission for that. I don't know why it's not mentioned here.

And you say, do you, that it's just a coincidence that splitting these orders made the buyer eligible for two promotional items. Is that correct?---Mr Campbell, I don't want to speculate on because it was entirely the buyer's discretion.

10 THE COMMISSIONER: But that's the point. It's up to the buyer to choose how many orders he wishes to make for his products and you just go along with that if that's what he wants?---Yes, Mr Commissioner.

MR CAMPBELL: But looking at what I've been asking you about, about the fact that splitting it in this individual case made the buyer eligible for two products, he'd only know that if he had some experience with how NCH's promotional programs operated or if you'd told them something about how they operated. That's so, isn't it?---Mr Campbell, it was my obligation to explain how the promotional program works and whatever I have been told by my company to explain to him I have explained. The fact is that Mr (not transcribable) has dealt with the company even before I have dealt with them so- - -

I take it then you're agreeing with me, he either got it from you or from other salesman. Is that correct?---Probably.

Thank you.

THE COMMISSIONER: He got what?

30 MR CAMPBELL: The knowledge that, he got the knowledge that if he, that he was entitled to split his orders in order to qualify for more than one promotion?---That's right, Mr Commissioner.

Thank you. Thank you, Commissioner. Can I just take you back to 298 and Lithgow City Council and Mr Lee Warner.

40 Now I think it's fair to say isn't it that in the middle of that we have, I beg your pardon, Commissioner, two order numbers 7-2-3 and 7-2-3-1. Do you see that?---I certainly do, Mr Campbell.

And they are orders that where placed by Mr Warner on the same day are they not?---Yes, that's right.

So that's what we could, that's what we could safely call do you agree a split order?---Mr Campbell, one was for Peter Bradford.

Oh, was it?---Yeah.

So he split it so that Peter Bradford could get one and he could get one. Is that what you're telling me?---Just to refresh your memory on what we discussed yesterday, Mr Campbell, Mr Peter Bradford orders what he wants and Lee Warner does the ordering for me.

Because you understand Lee Warner has the delegation to order the goods - - - ?---That's perfectly right.

- - - for the three men?---That's right.

10

But there would have been no reason why given that all of these goods were to be in truth, supplied to the Lithgow City Council, there would have been no reason why a single order could not have been placed, if you'll pardon my double negative. That's so isn't it?---I really couldn't comment on that, Mr Campbell.

20

Well from your point of view you could have accepted a single order for all of those products couldn't you?---Peter Bradford is from the (not transcribable) Treatment Plant even though it comes under the Lithgow City Council. Steve McMurtrie is from the Portland Treatment Plant so Lee Warner budgets for the Wallerawang Treatment Plant.

Could you please answer my question, from your point of view for administrative purposes, you could have accepted a single order could you not?---For administrative purposes certainly I could have, yes.

30

And you could have accepted a single order with, with directions as to delivery of the various products that had to go to different sections. That's so isn't it?---Not really, no.

Not really?---That's out of the (not transcribable) system that the company works. If it's a different shipping address, we've got to put it as a separate order.

It's all Lithgow City Council isn't it?---As I just told you, Mr Campbell, when you said a bit earlier, one goes to the stores there and sometimes the other products go to the actual treatment plant where Mr Bradford is sitting.

40

Sometimes?---Yes.

In any event if all the products have been ordered on a single order then only one promotional item would have been earned. That's correct isn't it? ---Yes, Mr Campbell.

The 20th is another like situation, Mr Campbell.

MR CAMPBELL: Thank you very much, Commissioner. And if we go to, if we go to 20 January, 2011, we have, we have orders do we not 7-2-2-4 and 7-2-2-5. Is that right?---That's right.

That's a split order is it not?---That's right.

And it's a split order which entitled Mr Warner as buyer in this case to qualify for two promotional items. That's right isn't it?---Yes, that's right.

10 THE COMMISSIONER: And 7-1-9-6 and 7-1-9-7 I think is another one.

MR CAMPBELL: Yes, thank you, Commissioner. Do you see that, sir?
---Yes.

That's for 15 December?---Yes, Mr Campbell, I can see that.

Although in that case as you described before, one of the promotional items went to Mr McMurtrie and the other went to Mr Warner. Is that right?
---That's right.

20

Okay. Now - - -

THE COMMISSIONER: To be shipped to.

MR CAMPBELL: Shipped to, yes, yes, your Honour.

THE COMMISSIONER: But that's not the - is the issue - the issue is not to whom the promotional item goes, is it, Mr Ramachandran, the issue is to whom the product goes? The product purchased?---Okay.

30

Isn't that right?---Yes, that's right, Mr Commissioner.

And in that order the product went to the same department, did it?---Not really, Mr Commissioner.

Why is that? How do you know that?---I'm just recalling from my memory. One lot of products went to Lee Warner, the other lot of products went to Steve McMurtrie.

40 MR CAMPBELL: Well, where does Steve McMurtrie work?---Portland Treatment Works which comes under the Lithgow City Council.

THE COMMISSIONER: I'm sorry, I can't hear?---Portland City, Portland Treatment Works - - -

Yes?--- - - - which comes under the Lithgow City Council.

And, and Mr Warner, where does he work?---He's, he's based at Lithgow City Council Mort Street depot.

But where do the products, where are the products delivered?---The products are delivered at the Mort Street depot stores.

Both orders?---Yes.

10 Both orders are sent to the same address?---Yes, but they are sealed, one will have the name attention Steve McMurtrie, another will have attention Lee Warner on it, one set of products and another set of products.

MR CAMPBELL: You could do all of that with one purchase order and a single delivery, couldn't you?---That's not how the company operates, Mr Campbell.

Not how your company operates?---That's right.

20 Because your company operates on the basis that you, you build a relationship with each of the individual buyers, that's correct, isn't it?
---(NO AUDIBLE REPLY)

And - that's correct, is it not?---That's correct, Mr Campbell.

And in this case of Lithgow City Council there are three people who are classed as individual buyers although only Mr Warner has the delegation of the council to place the orders, is that correct?---That's correct.

30 THE COMMISSIONER: Mr Ramachandran, you obviously are aware that when an order is placed that is capable of being split it is to the buyer's advantage if it is split?---It's the buyer's discretion to split it if they want to.

But you are - my question - - -?---Yes, I understand.

Will you please answer the question?---I understand, yes.

40 You, you are obviously aware when you discuss an order with a buyer once the order is of a high enough amount it becomes to the buyer's advantage to have the order split.

MR McLACHLAN: Commissioner, can I just - - -

THE COMMISSIONER: I really don't like being interrupted. Have you got an objection to my question?

MR McLACHLAN: Yes, I do, I do.

THE COMMISSIONER: What is the objection?

MR McLACHLAN: It hasn't been established that by splitting somehow the buyer is in a better position than if they purchased in one order for double the amount.

THE COMMISSIONER: I haven't put that yet. I've asked him he obviously knows that an order can be split.

MR McLACHLAN: Yes.

10

THE COMMISSIONER: Have you any objection to that question? Right. Mr Ramachandran, when an order is high enough you obviously will know that it can be split in such a way depending on the amount involved that promotional, that two sets of promotional items will be received by the buyer and not one?---Yes, I know.

That is correct, isn't it?---That is so.

20

And in the light of the company policy to establish a good relationship with the buyer and to reward the buyer is it not part of your practice to tell the buyer that it is in his interests to split the order, once the order's been made. I'm not - once he's told you that he's, he's going to make an order of a certain amount that's capable of being split, don't you tell him that?---No, I don't recall telling him that, Mr Commissioner.

Never?---Never ever told him, no.

30

So even when you know that the order can be split so that the buyer will get two sets of promotional benefits and not one, you never tell the buyer? ---No, I don't.

And you never have told the buyer?---No.

So how did it come about that these orders, that these number of orders, just looking at one or two pages here, have been split so that the buyer gets two sets of promotional benefits and not one?---You are telling me, Mr Commissioner?

40

Well we can see it?---Yeah, Mr Commissioner.

How did it come about is my question?---Mr Commissioner, as I was just explaining, when I enter an order it is for the main shipping address, even though the buyer's name is Lee Warner there, the shipping address is different, so I had to split the order.

In every case?---Yes.

MR CAMPBELL: There will be further evidence about this topic, Commissioner from other witnesses.

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Okay. Mr Ramachandran, you'd agree wouldn't you that once an individual buyer has dealt with an NCH salesman, whether it's you or another person for a certain period of time, if he had half a brain he'd work out what the system was wouldn't he?---That's right, Mr Campbell.

10

And it's quite clear isn't it that the system is if you, if you place one order you qualify for one promotional item. That's correct isn't it?---That's correct.

But subject to the amount of separate orders, if you place more than one order you may qualify for a promotional item in respect of each order. That's correct isn't it?---That's correct, Mr Campbell.

20 And these promotional items are not discretionary are they?---I'm sorry I didn't understand you.

All right. I'll withdraw that question. When I use the word you become eligible earlier on for the promotional item, the way it works is once you place the requisite order, you get the promotional item don't you?---That's right, Mr Campbell.

It's not up to you to grant it as a favour or not is it under that old system? ---My understanding is the promotional item is not a compulsory item, no.

30 I didn't hear you, I'm sorry?---It is not a compulsory item.

I see. You can, you can withhold it can you?---Yeah, if the customer doesn't want it, I can withhold it, that's right.

THE COMMISSIONER: No.

40 MR CAMPBELL: No, that's not the question. The question is that, that the customer is entitled to it once he places a requisite order whether he accepts it or not is a different matter. That's two questions there I'm sorry. He's entitled to it once he places the requisite order?---He's entitled to it, yes.

Whether he accepts it or not is a different matter is it not?

THE COMMISSIONER: It's a matter for him?---That's right, yes, Mr Campbell. Sorry, it took me a while to understand, yep.

MR CAMPBELL: And I'll take you through some documents in a moment, but let me just ask you this, the simple fact of the matter is that the

promotion that we're talking about is the promotion of further sales of NCH's products. That's correct isn't it? That's what's being promoted?
---Sorry, Mr Campbell, the promotion was for that particular sale.

Well it's for that particular sale and it's to encourage further sales is it not?
---The promotion is not to encourage further sales.

10 You see you want, in your type of business where you're selling industrial consumables, what you want is an ongoing business relationship with the buyer isn't it?---That's right.

Because there's no point selling one pallet full of material to Lithgow City Council, you want to sell a pallet load of material every other month to them. That's correct isn't it?---That's not correct, Mr Campbell.

Isn't it?---That's not correct, Mr Campbell.

20 You don't want an ongoing relationship with Lithgow City Council?---I would want an ongoing relationship, but I don't want to sell anything that they don't want.

Well that may be so, but that's a different question. You want them to buy the next pallet load from you and not from one of your competitors. That's correct isn't it?---That's correct.

That's what NCH want. That's correct isn't it?---That's correct, yeah.

30 So it's not, I'll withdraw that. It's just wrong to say isn't it that you're only giving the promotion for this order and you're not hoping that it will encourage them to place the next one. I'm right aren't I?---I really can't comment on that, Mr Campbell.

Why can't you comment on it?---The reason is they want to reorder the products based on the performance of the products and the service that I provide, not based on the promotional equipment, Mr Campbell.

40 I'm not asking what they think of your products, I'm asking what you think when you take an order and tell them they're eligible for the promotional item. That's what I'm asking about. I'm asking you when you take an order and you tell them they're eligible for a promotional item, you're not just rewarding them for the current order, you're hoping that that will encourage them to place the next order with you as well. That's correct isn't it?---Not to my understanding, Mr Campbell.

THE COMMISSIONER: Mr Ramachandran, why is it called a promotional item?---I don't know.

Do you know what a promotional item means?---In NCH definition?

Yes?---My understanding is that a promotional item is an item that can be used by the buyer, in your language, when he places an order for a particular value.

Why is it a promotional item? What is it promoting?---It promotes goodwill.

Goodwill?---That's right, Mr Commissioner.

10 Not goodwill as a matter of history, but goodwill for the future?---I'm sorry, Mr Commissioner, I'm not given this so much thought.

Well just try now and give it some thought. The promotional, the goodwill that you're seeking to establish is (not transcribable) your business isn't it? ---That would be right, Mr Commissioner.

So you give a promotional order, sorry, you give a promotional benefit once an order has been placed in the hope that that will create goodwill for future orders?---Very partially, yes.

20

MR CAMPBELL: So the answer to the question that I've been asking you for so long now, Mr Ramachandran, as you've just told the Commissioner, is that part of the reason you give the promotional item is to encourage the buyer to place his future orders with you?--- Yes, Mr Campbell.

Thank you. It's taken a long time, Mr Ramachandran hasn't it. I'll withdraw that comment, Commissioner.

THE COMMISSIONER: Yes.

30

MR CAMPBELL: Now in fact it's the case isn't it that your superiors have told you when these things are available to use the promotional goods to boost business. That's right isn't it?---Mr Campbell, yes.

And they don't want you to boost past business do they? It's an impossibility is it not?

40 MR WIGNEY: Well I object to that question. Firstly, it's put on the basis of superiors without identifying who the superiors are, number 1. And number 2, this witness can't answer what is in the mind of the superiors. He can be asked about what they've said to him and what he understands, but he can't say what's in the mind of his superiors (not transcribable)

THE COMMISSIONER: All right.

MR CAMPBELL: May it please the Commissioner. Your understanding of what you were told in relation to using promotional items to boost business

is to encourage future business. That's correct isn't it?---Mr Campbell, the promotional items are used as a tool to promote goodwill.

Mr Ramachandran, is there some difficulty with the simple question I've asked you about your understanding of things? Is there?---No.

Well would you please favour us with an answer? Your understanding of the idea of boosting business is of boosting future business?---That's right, Mr Campbell

10

Thank you, sir. Now, pardon me, Commissioner, promotional items therefore on your understanding of what you have been told are used as an inducement or an incentive to obtain future orders are they not?---I'm just getting a bit confused here, Mr Campbell.

THE COMMISSIONER: Take your time. Do you want Mr Campbell to repeat the question?---No, I think I got the question.

20

I beg your pardon?---I think I got the question, I got the question.

You got the question?---Yes.

Well, think about it?---Well, like any other business he would want to do future business and I think the promotion helps.

MR CAMPBELL: Is the answer to my question yes?---Yes.

30

Thank you, sir. And that's rather contrary, is it not, to the policy which is expressed in the Gears of Selling – it's volume 9, Commissioner, tab 44,. Page 72. Could you turn it up, please. I asked you about it yesterday? Yes, I've got it.

Got it?---Yep.

You see, you see the part in the box that's outlined in red and has red printing in it? See that?---Yes, I do see that now, yes.

40

See, it says apparently your company's policy strictly prohibits the use of advertising novelties as an inducement for the purchase of the company's products. Do you see that?---Ah hmm. Yes.

And that's, that's business ethics, isn't it?---Yes, Mr Campbell.

But apparently, according to your understanding of the instructions you've been given, the business ethics of NCH doesn't stop you giving a gift of substantial value as an inducement for the purchase of the company's products in the future, does it?---Promotional items, Mr Campbell, yes.

Thank you. Now, could I just, may I just, I hope I don't fall on my learned friend, Ms Traill, Commissioner. May I go to the end of the bar table for a moment? Now, can you see this pile of goods on the floor of the hearing room that I'm indicating with my left hand and to your right?---Yeah, I can see, Mr Campbell.

You recognise each and every one of those as promotional items that have been provided to people at Lithgow City Council. You recognise them as that. Do you want to come out of the witness box and have a look?

10 ---Physically I have not seen them. This is the first time I've seen them. Oh, yesterday probably, Mr Campbell.

Yesterday. But you can, you, you recognise them from the brochures, don't you? I asked you about the Dyson Air Multiplier?---I certainly do, Mr Campbell.

Yeah. And with your permission, Commissioner, can I ask Mr Ramachandran to come forward?

20 THE COMMISSIONER: Yes.

MR CAMPBELL: I won't ask you any questions, I won't ask you any questions but I'd like you to have a look at it. Return to the witness box, please. Now, they're all goods that you recognise from the brochures that have been provided to Mr Lee Warner at Lithgow City Council. Would you agree with that?---That's right.

30 Could I, with the Commissioner's permission, approach you to hand you one of those items. I want you to sit down there and just have a look at that box. Now, I appreciate from what you've told me already that you haven't seen these goods previously, but you recognise that item, do you not, as the laptop, you recognise it from the brochure as the laptop that we had so much discussion about yesterday. Is that correct?---Yeah, that's correct.

And you told me that for Mr Warner to qualify for that laptop he had to place an order of \$2,000 or more. That's so, isn't it?---For a laptop?

I beg your pardon, \$10,000 or more?---That's right.

40 A very large, a very large order?---(NO AUDIBLE REPLY)

Not in your experience?---Not in my experience.

All right.

THE COMMISSIONER: Sorry, what's not in your experience?

MR CAMPBELL: \$10,000 is not a very large- - -

THE COMMISSIONER: I see.

MR CAMPBELL: - - -order in his experience. Right. But still- - -

THE COMMISSIONER: Is that right, Mr Ramachandran?---That's right, Mr Commissioner.

10 MR CAMPBELL: Still, a \$10,000 order might sound like a lot of money to some people. But \$10,000, and you told us yesterday by references to the Paula M Promotions documents we looked at that the price of that laptop was \$895?---That's right, Mr- - -

And I said to you, "That's just short of 9 per cent of the total value of the order."?---That's right.

9 per cent of it going to the buyer, not the customer. That's correct, isn't it? ---Going to the buyer, yes.

20 Because we all know that the customer is the Lithgow City Council, don't we?---I do, yes.

Now, do you recall, Mr Ramachandran, and please, perhaps before I go any further, Commissioner, I tender, and we have a, and I- - -

THE COMMISSIONER: Yes. I have two documents here, property, property listing.

30 MR CAMPBELL: Yes. I tender the, the one that I, I tender all of those goods which, which are in that pile there, Commissioner, which- - -

THE COMMISSIONER: They need to be identified, Mr Campbell.

MR CAMPBELL: I will.

THE COMMISSIONER: Are they all identified in these documents?

40 MR CAMPBELL: It's, it's, it's, it's the total of the goods identified in the two pages that you've got in front of you, Commissioner.

THE COMMISSIONER: Yes. Well, the, the goods which are identified in the documents which will be Exhibits 32A and 32 respectively are admitted as exhibits in this hearing, in this inquiry.

#EXHIBIT 32A - LIST OF PROPERTY SENT FROM NCH TO MR WARNER OF LITHGOW COUNCIL

#EXHIBIT 32B - LIST OF PROPERTY SENT FROM NCH TO LITHGOW COUNCIL

MR CAMPBELL: May it please the Commission. Commissioner, could I ask your associate to return the laptop to the pile. And could I ask you, Mr Ramachandran, to go to tab 46- -?---Sure.

- - -page 298. Pardon me?---296 you mean?

10

298 I'm sorry. And if you look at order, it's the last order on that page. It's 7-2-8-6 and it's dated 23 February, 2011. Now, do you remember yesterday there was some discussion about the particular entry that's made adjacent to the name Lee Warner, I mean to the right of it, in respect of that purchase, and in particular do you remember that there was discussion about the notation, "Do not include promo on product invoice." Do you remember that?---Yeah, I do remember.

20

And you remember this is, I'll remind you, 23 February, 2011. Was there a particular reason why that notation was made in respect of that promotional item?---I don't recall it exactly, Mr Campbell, but I'm, from memory it was on Lee Warner's request.

Well, why did he have to make that request on that occasion and not on any other occasion, is there a reason for that?---I don't remember. Sorry, Mr Campbell.

30

You don't remember. I see. See, there was a change of policy around that time in your company, wasn't there?---Yes.

Well, did that notation have anything to do with that change in policy? ---I don't think so, Mr Campbell.

I see. Oh, well, pardon me for just one moment.

Could I ask you to turn to tab 46 page 291. You see this, do you see that? ---291, yes.

40

That's an email from Mr La-Vite or La-Vite to certain other people, is that right?---That's right.

Firstly, who is Mr La-Vite?---Mr Peter La-Vite is our country manager. He's, he holds the highest position in the company.

All right.

THE COMMISSIONER: Sorry, I can't hear?---He's the country manager for NCH in Australia.

Thank you.

MR CAMPBELL: The general manager or some such thing?---You could, you could say that, yes.

And it's to a number of people, Robert Epps, who's he?---Robert Epps is the national division manager for Chemsearch.

10 And he's somebody you've referred to earlier on, is that correct?---He was my, he is my boss, yes.

You report to him?---That's right, yes.

David Wong?---Yes.

And who's he?---He's the national division manager for Mantek.

An associated company?---Yes.

20

And George Hajittofi, who's he?--- George Hajittofi at that time was a business development manager with Mantek.

And Jacqui Verdeyen, who's she?---She's a business development manager for Chemsearch.

Now read that document o yourself please, sir.

THE COMMISSIONER: That's the document at 292?

30

MR CAMPBELL: 291, I'm sorry, Commissioner, to start with. Let me know when you've finished reading it to yourself?---Sure.

Now was, firstly, have you ever seen that email before or a copy of it before?---I don't remember seeing this email exactly.

Well, when you say you don't remember seeing it exactly, are you saying you're not sure whether you've seen it?---I'm not, I'm not sure.

40 Now you've read it was the information contained in it relayed to you by any person?---Not that I can recall, no.

You see the date of it don't you, 9 February, 2011?---That's right.

That's about two week before that order I was asking you about, that's so, isn't it?---Sure.

Go to the page 292. Have you - read the document to yourself and let me know whether you've seen that document or a copy of it before?---Yes, Mr Campbell, I don't remember it word by word but I, my understanding is I operated based on the gist of this.

So is it - just so I can make clear what it is you're saying to me, sir, are you saying to me that the contents of that document are familiar to you, is that correct?---That's right.

10 And you, you acquired that familiarity either because you've seen this document before or because somebody passed its contents on to you, is that correct?---Mr Campbell, I think I've seen this document.

Thank you, thank you. And did you see it because it was given to you by your superior or a copy of it?---It was sent as an email, yes, that's right.

And that's - and we're talking about the document 292, are we not?---Yes, yes.

20 And does it accord with your recollection that - - -

THE COMMISSIONER: When was it sent?

MR CAMPBELL: Thank you, Commissioner?---Around February, February, yes.

30 Given, given what we know to be the date of the email at 291 and given the - and if we accept - if we assume for a moment the instruction "please ensure this email is sent to all sales people today, you probably saw it around about 9 February, would you agree?---Yes, yes, Mr Campbell.

And from your understanding of the promotional policy you have been applying in your job before that date you understood that this, this directive was bringing in a radical change in the way business was done, that's so, wasn't it?---Sorry, can you repeat that question.

Yes, this directive brought in a radical change in the way business was done, didn't it?---Not really, Mr Campbell.

40 I see. Well, it brought in the change, you'd agree with that much wouldn't you?---Yes, certainly.

And it, it, it brought in one of the changes if we look it brought in was a change in your understanding about who the customer was, was it not? Can I direct your attention to the second paragraph?---I can see it now but I don't recall seeing it at that stage.

Well, you certainly, you certainly remember getting it and you got it as a directive from your superior so a customer is the person or entity that pays our bill, that's, that's certainly a change in your previous understanding is it not?---Yes.

It's certainly a change in the previous understanding you'd been taught when you started as a sales rep at this company, is it not?---Yes, Mr Campbell.

10 And before this email was received by you the promotional item did not appear on the invoice sent to the entity who pays the bill, did it?---That's right.

And before - and the, and the change was it had to be there, that's correct, isn't it?---That's exactly right, Mr Campbell.

Can you think of why that might be so?---I don't know, Mr Campbell.

20 No disrespect, you're just a salesman, correct?---Yes, I am.

You don't make the policy, correct?---That's correct, yes.

You're bound to apply the policy, that's right?---Absolutely.

But if we look at delivery we can also see, can't we, that there's a change in the way you deliver these things because formerly you told us that delivery was at the option of the individual buyer, that was always your understanding wasn't it?---That's right.

30 And, and a very - I withdraw that. Now of course we see that we will deliver promotional items only to the customer's place of business, that's right, isn't it?---That's correct.

And when we mean the customer these days we mean the entity that pays our bill. That's correct, is it not?---From, from what I understand from here, yeah, that's right.

40 And normally the transporter will be, will deliver our promotional item along with the products, that's right?---Sorry, can you repeat that question?

Look at delivery entry number 2?---Yeah.

That's a change, isn't it?---Yes, it is a change, yes.

No - apparently no longer any concern that promotional items might somehow go astray if they're delivered with the product. Is that a fair comment by me?---Sure is, Mr Campbell.

And there's a requirement that the customer sign a delivery receipt, that's so, isn't it?---Certainly.

And, and again bearing in mind who is the customer?---From the document it's the authority (not transcribable)

Who pays the bill?---Yes.

10 Now - and can we, can we go back to 291. Now, I appreciate that you may not have seen this before but you'll see that although it's all news to you if one looks at the second line of the text of that email apparently this directive was set up on January 17, 2003. Do you see that?---I can see that now, yes, Mr Campbell.

Was that information ever relayed to you by anyone in a position of superiority over you?---Sorry, I didn't understand the question, Mr Campbell.

20 That's okay, I didn't quite understand it myself, Mr Ramachandran, but did any of your superiors ever tell you that, that this was a policy that had been instituted back in January 2003?---No.

And as such now needs to be re-established without exceptions, did anyone ever tell you that? Did anyone ever tell you that?---Yes, certainly.

They did?---(NO AUDIBLE REPLY)

30 All right. Now who told you that?---I discuss the promotions with my national service manager, national division manager.

THE COMMISSIONER: Who is that? Mr Epps?---Mr Epps, yes.

MR CAMPBELL: Now with respect that I've refreshed your memory about those details, could we go back to the last entry on page 298 of that tab 46? ---Yes.

40 Now let me ask you again, was there a reason why the special instruction, please send separate invoice for promo equipment. Do not include promo on product invoice was written?---Because it was issued on the directive that if the previous document that we were just looking at, it was very clear that if we wanted to put the promo and keep it as a separate invoice we could. And that was a directive from the company. So I just applied it, Mr Campbell.

The directive was there should be no exceptions wasn't it? That was the directive. And what it said to you was we will deliver promotional items only to the customers place of business?---Point number 3 on the documentation, Mr Campbell.

If for any reason, I see, thank you, the promotional items appears on a separate invoice, the separate invoice will be sent to the customer. Is that correct?---That's correct, Mr Campbell.

I see. So that was your understanding, so, now did you have a discussion with Mr Warner about these new directives before you put in that request? ---I didn't bog down into too much details, Mr Campbell. But I remember telling him the promotional items would only be shipped to the business address. I certainly do remember telling him that.

And well – hold on for a moment Mr Ramachandran?---Sure.

Now the particular promotional item that we are speaking about in relation to that last item is the laptop, which is now in evidence. Is that correct? ---That's, that's correct.

Did Mr Warner say why he wouldn't want, I'll withdraw that. Did Mr Warner say why he was making that special request given the new regime that there be a separate invoice for the laptop?---Not really, Mr Campbell.

THE COMMISSIONER: Did he request it? I'm not sure that that's the evidence. Did Mr Warner request that a separate invoice be sent or was it your idea that a separate invoice be sent?---It was Mr Warner's request because I've told him two issues, one is that I certainly did tell him that it should be sent to the place of business and that the promotional item would be on the invoice.

And he said don't put it on the invoice, send it separately?---He didn't say don't send it on the invoice, I think he said can we make a separate invoice for it.

And to whom was the invoice, the separate invoice addressed?---All the invoices are addressed to Mr Lee Warner, Mr Commissioner.

MR CAMPBELL: Well what happened to the directive of 9 February, 2011 that invoices were to be made out only to the customer, ie, the entity that pays the bill? What happened to that?---So who in the council, the council - -

No, no, no, what happened to that directive in the course of your ordinary performance of your job?---I don't really understand, Mr Campbell.

Well we've just been through it. No exceptions, the invoice will be sent to the customer. The customer is the entity who pays the bill. You're telling the Commissioner that the invoices went to Mr Warner. What happened to the no exceptions directive?

MR WIGNEY: I think to be fair, Commissioner, he said that it was made out to Mr Warner not sent to Mr Warner, I think his evidence was to be fair.

THE COMMISSIONER: Well I'm not sure whether he said that, you may be right, Mr Wigney.

MR WIGNEY: I stand to be corrected, but I'm pretty sure he said they were made out to - - -

10 THE COMMISSIONER: I'm sure we can, I'm sure Mr Campbell can cope with that.

MR CAMPBELL: I think as a distinction (not transcribable) difference there, Commissioner, but anyway - - -

THE COMMISSIONER: I'm not sure. But put it the way Mr Wigney suggests.

20 MR CAMPBELL: All right. I will, I will. And I'm grateful to my learned friend. Well you said that the, that the invoice is always made out to Mr Warner or words to that affect. Is that correct?---That's correct.

And by giving that answer you are telling us that the invoice both for the order and the separate invoice for the promotional item would be made out to Mr Warner in accordance with that practice. Is that correct?---Yes.

All I wanted to know was what happened to the non exceptions new directive that all invoices would be made payable to the customer, ie the entity who pays the bills.

30 MR WIGNEY: I object to that. It says it would be sent to the customer, Commissioner. That's what it says, point 3, a separate invoice will be sent to the customer.

THE COMMISSIONER: Mr Ramachandran, if the order is made out to Mr Warner, does that mean that the invoice is sent to Mr Warner?---In this case, yes, Mr Commissioner.

40 So when this, according to this notation on page 298, which records the request to you by Mr Warner to send a separate invoice for the promotion, that means send him the invoice, because it's made out to him?---That's correct.

So the question that Mr Campbell has been asking you is if you agreed to that, what happened to the instruction that had been given to you to send the invoice for the promotional item to the customer, namely the council?---Mr Commissioner, without getting into a very argumentative mode, if I can tell my, my understanding to, I came to the private hearing for the customer and

the buyer are the same. My only contact was Mr Lee Warner, who makes a decision with the council. I don't know anybody else there.

MR CAMPBELL: You don't actually send out the invoices Mr Ramachandran do you?---I don't, the company send. Mr Campbell, if I can just add on to it, can I just add on to it, Mr Commissioner?

THE COMMISSIONER: You don't do it?---Can I just add on something?

10 Yes?---If I have internal order and it said please send the invoice to Lee Warner, if there was an issue and it was against the interest of the company, the company would have called me and said no, we couldn't send it to the buyer.

MR CAMPBELL: And that didn't happen?---That didn't happen, no.

Now can I take you to page, it will be a matter for submissions, but if you send an invoice to somebody, Commissioner, you send it to the customer, ie Lithgow City Council, directed to them. But I'll make that argument later.

20

THE COMMISSIONER: Well I think the evidence is clear as to what happened, Mr Campbell.

MR CAMPBELL: May it please the Commission. Mr Ramachandran, could you please turn up - - -

THE COMMISSIONER: Sorry, Mr Campbell, if I just draw some, you've finished with that topic?

30 MR CAMPBELL: Nearly.

THE COMMISSIONER: Nearly. All right.

MR CAMPBELL: It's a similar topic.

THE COMMISSIONER: I just want to, I just want to clarify now that we're still on page, are you on page 298? I just want to understand, sorry Mr Campbell - - -

40 MR CAMPBELL: No.

THE COMMISSIONER: - - - that the, in the middle of the page there, Mr Ramachandran, the orders 7-2-2-4 and 7-2-2-5, they were both addressed to Mr Warner. Is that right?---That's correct.

So that's, unlike the other orders that were issued on the same day where one was sent to Mr Warner and another was sent to someone else like Mr McMurtrie?---That's right.

So this was an order that was split at Mr Warner's request?---I've got an explanation for that, Mr Commissioner.

And what is the explanation?---Mr Lee Warner, apart from those two people who he manages, he manages a few other treatment plants as well. From memory one of those orders went to a plant called Oakley Treatment Plant and another one went to a treatment plant in Lithgow Council.

10 Yes, thank you.

MR CAMPBELL: You've got a good memory, Mr Ramachandran, for the details of all these orders you place every year. Can you sincerely tell the Commissioner you remember that detail?---I can.

And again it was just a coincidence that he qualified for two promotional items. Is that correct?---It was two different orders and it was two different promotional items.

20 No, no. The question is, I'm sorry for talking over you, the question is, it was just a coincidence that he qualified for two?---Certainly.

THE COMMISSIONER: Yes. It was not because you explained to him that if the order was split he'd get two benefits?---No.

MR CAMPBELL: Are you sure about that?---I'm pretty sure actually.

30 You see, you would, for a man to know that he'd get two promotional items if he placed separate orders you'd have to discuss those details with him at some stage, or somebody would. Don't you agree?---I remember showing him the catalogue, Mr Commissioner, or Mr Campbell, sorry.

THE COMMISSIONER: I beg your pardon?---I remember showing the catalogue to him.

You remember showing. Is that, is that what you said?---Yes.

You remember showing him the catalogue?---Catalogue, yes.

40 For the, for what?---For the promotional items.

Relating to these two orders?---Yeah, in general the promotional items catalogue so he known that he can claim something.

I see. You mean, do you mean before these orders were placed you had already shown him the catalogue?---Oh, because he's dealt with me before.

I understand that, yes. That's what you're saying?---Yes.

MR CAMPBELL: We'll go to the catalogues in a moment. But that's, so he would have known that from the course of his dealing with you that he could do that. Is that what you're saying?---Yes, Mr Campbell.

Because you'd shown him the catalogue. Is that what you're saying?---Yes, Mr Campbell.

10 And just to finish the saga of the laptop, could we go to page, tab 45, page 252. I think my learned friends are anxious I should draw this to your attention, Commissioner. Have you got it?---Yeah.

Now, I don't suppose you've seen this document before, have you?---No, I have not seen it.

No. Because you don't have anything to do with delivery of any products or promotional item?---That's right.

20 All right. But the, we can see that it's got the name City of Lithgow Council and Lee Warner's name and your name on the top of it?---Yes.

Yes. And we can see that it's addressed to the Lithgow Treatment Works. That's so, isn't it?---That's right.

Yeah. Care of the City of Lithgow, Mort Street, Lithgow?---That's right, Mr Campbell.

30 And the council chambers are in Mort Street, are they not?---The council chambers are in Mort Street and the depot's in Mort Street as well.

Where are the treatment works, are they there too?---The treatment works are on Geordie Street.

And- -?---One of the treatment works.

40 All right. So that, the discussion about the new directive explains why this particular item was delivered as it was. Is that correct? Do you agree with that or not?---Well, according to the directive, Mr Campbell, the promotional item was supposed to be delivered with the goods but this item didn't go with the goods, it was delivered separately.

No, it went, it went separately. And, and the, I don't suppose, you don't know what happened to this, you've never seen it before?---As a part of my service, Mr Campbell, I called him to find out if he received it and he said yes and the conversation- - -

THE COMMISSIONER: How do you know it didn't go with the goods, Mr Ramachandran?---Sorry?

How do you know that it didn't go with the goods?---I can see the date here, it's 8^h of, 9 March.

And how do you know, do you know what date the goods were delivered?
---The goods probably would have been delivered two days after the, I entered the order on 23 February.

I see. And do you know why there's been a delay in sending the laptop?
10 ---I don't know.

MR CAMPBELL: And, well, you said you spoke to Mr Warner and he told you he received it. Is that right?---Yes, that's right.

And did he tell you he'd taken it home?---The discussion I don't remember going any further. He said he received it and I said, all right, fine.

I missed what you said?---He said he did receive it and I didn't take it any further, Mr Campbell.
20

I should announce that there will be evidence about this, Commissioner, which will form the basis of the question I asked Mr Ramachandran. I'm sorry I've taken longer than I thought. Would that be a convenient time?

THE COMMISSIONER: Yes. We will adjourn till 11.30.

SHORT ADJOURNMENT

[11.15am]

30 THE COMMISSIONER: Mr Campbell.

MR CAMPBELL: Thank you, Commissioner .

Now, Mr Ramachandran, you did - sorry. You mentioned that the brochure - could you got to tab 46, page 351, 351?---Yes, Mr Campbell.

Now just, just a question, do you remember whether the brochure which was the subject of the promotion which entitled Mr Warner to the laptop is
40 the one which is shown at 351 and 352?---That's right, Mr Campbell.

Now, normally when a new brochure for promotions is issued there is a buyer version and a - I'm sorry, a sales version, is that right?---That's right.

And if we look at, if we look at the - and it's hard to see on the screen but if you look at the endorsement in the blue box at the foot of page 351 this seems to be the, the buyers - I'm sorry, the salesman's version, is that correct?

THE COMMISSIONER: Is that because it says “your buyer”?

MR CAMPBELL: Yes, your Honour, Commissioner.

THE WITNESS: That’s correct.

MR CAMPBELL: Yes. And now if we, if we go over the, over to page 352
- - -?---Yes, Mr Campbell.

10

The - we see that there is a laptop - I might withdraw that. I’m just trying to find the laptop.

THE COMMISSIONER: Yes, the laptop’s the top right.

MR CAMPBELL: Thank you, thank you, Commissioner.

Now it’s - that’s, that’s, that’s the entry for the laptop as the Commissioner points out to me?---Yes, Mr Campbell.

20

Now down, down to the foot of the page to the right of the main blue box there’s some other material there, “All promotion items are subject to availability”?---That’s right.

So Chemsearch reserves the right to replace discontinued or out of stock items with similar items of the same value without notification, is that correct?---That’s right.

30

And it’s - so it’s not necessarily the Lenovo that you’d be getting if you qualified?---That’s correct.

And the one that I’ve shown you as - you’ve identified as the laptop that went to Mr Warner wasn’t in fact a Lenovo, is that correct?---That’s correct.

Now, the information that’s in the, in the main blue box “Your buyer is entitled to one reward item”, that’s material which is not reproduced in the buyer’s copy, is that correct?---That’s correct.

40

So that for a buyer to know that he could split sales and obtain two items that way he’d have to be told that by a salesman, wouldn’t he?---That’s correct. Mr Campbell, I don’t recollect having a buyer’s copy for this promotion flyer, for this particular promotion.

You don’t?---No, I don’t, no.

All right. Okay. But it’s normally the case that there is one. Is that- - -?
---Only that it used to be, I do agree with that.

All right. Okay. And could you look at page 349. On the top of the page is an email dated 1 June, 2010. Do you see that?---Yes, I do see that.

Are you able to tell me whether the brochure I've been asking you about is, is, is referable to that email of 1 June, 2010?---My understanding is the brochure was prepared for winter 2010.

And 1 June 2010 sounds like wintertime, doesn't it?---1 June, 2010, yes.

10 That's the start of it?---Yep. Sorry.

So, and these, and you can see, can't you, that this was an email that was sent to you, it's your full name, Sridhar Ramachandran, appears there?
---That's right.

Yeah. And the, this is an instruction to you from Mr Epps, your superior. Is that correct?---Yes, it's an email from Mr Epps, yes.

20 Yeah. And you regarded that as a direction from him, did you?---Yes.

Yeah. And it says, "Treat your customers to some great new promotions."
Do you see that?---Yes, I can see that.

Yeah. I mean, your customers wouldn't know that there were great new promotions unless the sales rep, in this case you, told them. That's correct, isn't it?---Yes, Mr Campbell, I agree.

30 Now, I just want to, I should check this with you before I come to my final topic, which is things have changed now, haven't they, in terms of how you do business as a sales rep for NCH?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Perhaps you could- - -

MR CAMPBELL: I'll spell it out. This whole idea of these promotion items has gone by the board, has it not?---That's right, Mr Campbell.

And, and, and that's gone by the board really effective from February of this year. Is that correct?---(NO AUDIBLE REPLY)

40 From the time that you first saw the document at page 292?---Yes.

Mr Warner's laptop must have been about the last of them. Is that correct?
---Correction, Mr Campbell.

Yeah?---The promotion was still valid then.

Well, I'm not saying you, thank you. So from the end of February. Is that correct? When did it finish, you tell me?---I don't remember. Honestly I don't remember when it was finished but I, it is not in place any more.

All right. Well, could I, could I take you, pardon me, to page 382 of that same bundle?---Yes.

And there's an email to you from Mr Epps. Do you agree?---Yes, that's right.

10

And what happens currently is that you now have this annual budget for, for want of a better word, entertainment. Is that correct?---That's correct.

And that's, and that's entirely discretionary as to how you'll spend it? ---There is a restriction on it.

Oh, you've got a, you've got a, you've got a budget?---Not a budget restriction, on what we could do with it.

20

Oh, right. Well, what are, what are those restrictions?---From the top of the head what I can remember straightaway is there's no whitegoods any more.

No. You're not supposed to give them anything. Is that right? No, no, no, no, no consumer items?---That's right.

Yeah. No, nothing in the nature of a gift or anything?---You could say that.

30

Yeah. And what, what you're supposed to, or what are you supposed to do with it now?---Well, we're allowed to take customers for lunches, breakfasts, dinners, entertainment passes, movie tickets.

THE COMMISSIONER: Football games?---Football games.

MR CAMPBELL: I'll come to that in just a moment, Commissioner, there's an entry here for that. And the, can you tell me this, is there any distinction made between public sector and private sector people these days?---There is.

40

And what's, what's the distinction made between those two?---To the best of my understanding the budget is not good enough for public sectors any more.

Who told you that?

THE COMMISSIONER: Not good enough?---Oh, it doesn't hold well. It's not valid for public sector.

It's not valid?---Yeah.

MR CAMPBELL: You're not allowed to spend your money on public service people?---Yep, government, government sector.

Who told you that?---From memory we received another directive on that.

And do you- -?---All the salespeople received a memo or a directive.

All right. But after 17 August, 2011?---(NO AUDIBLE REPLY)

10

After that date?---Yes.

You don't have it with you I suppose?---No, not at the current moment.

If you go, go to page 290?---Yes, Mr Campbell.

The, you'll, you'll, this is, you'll, you'll, you'll recall that the Commissioner asked you questions about football matches and things?---Yes.

20

And this is a promotion, this is a promotion that relates to your entertainment budget. Is that right?---That's right.

THE COMMISSIONER: But does this apply to public service customers as well?---At that stage it was.

MR CAMPBELL: At what stage?---But this was billed prior to 17 August, 2011 I'm pretty sure. I think it was posted on 1 May, 2011. It was available for public as well, public sector.

30

THE COMMISSIONER: So when did it stop, when did, when did you get the directive, do you recall when you, when you were directed that you could not apply any kind of promotional item to the public service sector? ---1 August or 1 September, either of these dates.

MR CAMPBELL: Right. The only reason why I ask you the question is because your budget was allocated on 17 August, 2011, and the, it says in the second paragraph of this document, "Your manager will shortly be advising you of your annual entertainment budget which, and procedures on claiming the allowance." And then it goes on to say what you can do with your budget. Do you see that?---Yes.

40

So is this current for non-government sector, is my question?---I think there's been a change even after this one.

All right. When, when you, when there was a final change to, I'm sorry, Commissioner. When there was a change on 1 September or thereabouts to say that you were not allowed to spend your budget on government sector

employees, who, who gave you that directive?---Should, should have been from Mr La-Vite or Mr Epps.

You can't remember whether- - -?---No, I can't remember, no.

Do you remember the substance of what was said?---For anything more than a \$500 spend at a time for a customer, the, it should have Mr La-Vite's approval from what I understand and any golf day or events that we're going to should have the manager involved in it, just not the rep alone.

10

But what does it say about the, is that what it said about the government sector?---No, I didn't give it too much thought about government sector because I stopped doing that for the government sector anyway.

What, off your own bat?---Sorry?

You stopped off your own bat?---Yes.

20 And about when did you stop off your own bat?---Positively from April I don't remember giving any, any customer promotions to anyone in the public sector.

You're a very senior salesman with NCH I think. Is that fair?---Reasonably, yes.

You've been with the company for a long time and you have a lot of clients?---I certainly do.

30 And a lot of them are government clients?---I used to.

You used to. Dropped off a bit has it?---Obviously.

Well, during the time when you had a lot of government clients before it dropped off, did you - did any of them ever say to you look, thanks for offering the promotional item but we're just not allowed to take it?---Some of them have said it.

Many?---I don't recall many but I'd say some of them have said it, yeah.

40 THE COMMISSIONER: About how many?---In the last eight years I've been doing this about, at least about 10 or 15 would have told me.

From different entities?---From, from different entities and I'm, I'm sorry, Mr Campbell, I'm not able to differentiate between how much of them they're from public sector and how much were from private sector.

MR CAMPBELL: So even some private sector people said that to you?
---Yes.

Oh, right. And how many - well, 10 or 15 people over that period of time, I mean how many people do you deal with every year?---I still deal with most of them every year.

No, no, but what I'm asking is - - -

THE COMMISSIONER: Generally.

10 MR CAMPBELL: Generally what's your total client base?---About 100.

Now when they've said, when people from the public or the private sector have said no, sorry, we're not allowed to do that, does that, has that affected your behaviour? Do you continue to offer the promotional - - -?---I, I respect their position and I just don't talk about it any more.

Can I ask you this question, I mean, supposedly we'll get a \$10,000 which might entitle someone to an \$895 laptop, when they say no thanks, we can't do it, do you give their boss a discount on the price?---Not really,
20 Mr Campbell.

No. And when you've gone to, to places like Lithgow City Council and you've got three contacts there, have you found it readily easy - I'm sorry, have you found it relatively easy for you to get access to the treatment works to talk to one of these men?---Usually they are available at the depot, I don't, I make my appointments earlier in the week and tell them that I'm around, sometimes they are not there by nature of their work but most of the time they are there.

30 And you make your appointment directly with, say Mr Warner for example?
---That's exactly right.

You don't have to go through the switch or the engineer's department or anything like that?---No.

Now, finally, Mr Ramachandran, if I could just take you to a couple of things in relation to the list. I think that one of your clients has been the Yass Valley Council?---Yes, Mr Campbell.

40 And we've certainly been talking about the Lithgow City Council?---Sorry, what was that?

THE COMMISSIONER: Lithgow as well.

MR CAMPBELL: Lithgow is another one?---Lithgow is another one, yes.

Yes, all right. Now, looking at the document that I've asked you a lot of questions about at page 298, does that page of that document accurately

record all of the promotional items that you have caused to be given or delivered to employees of the Lithgow City Council during the period January - I'm sorry, during the period January 2007 and August 2011?
---I think it's got most of it.

There might be others (not transcribable) question?---I made a few so I don't recall exactly what it, it's got most of it here, yes, I can't recall all of them that has been supplied.

10 When did you, when did you - okay, so that's most of them. When did you start doing business with Lithgow?---(NO AUDIBLE REPLY)

Do you remember?---October last year.

All right. Now, can I take you to page 341 of the bundle, I'm sorry, 340 and 341 of the bundle and the same general question?---Sure.

20 Does that seem to record the promotional items you have caused to be delivered to employees of the Yass Valley Council over the period shown?
---Yes, I can, Mr Campbell.

Now, you, you took over - I'll withdraw that. You started on that particular customer on 18 July, 2007, does that - that looks right?---Probably a bit more earlier but he wouldn't have ordered any promotion till probably 18 July, 2007.

30 Okay, all right. It took you that long to get an order out of him?---No, he would have ordered but promotion items he would have ordered only from July.

All right. Thank you. And Mr Kerry Smith is a name there. Now, did Mr Kerry Smith ever suggest any other sort of business arrangement to you apart from just buying goods from your employer?---Not at all.

That's, that's the evidence now, Commissioner.

THE COMMISSIONER: Yes, thank you.

40 MR CLAY: I have some questions.

THE COMMISSIONER: Yes. Can I just - can counsel who wish to ask questions just let me know so we can work out the order.

MR NAYLOR: Yes, Commissioner.

MR WIGNEY: I have some brief questions as well, Commissioner.

THE COMMISSIONER: Yes. Well, I - you will go last, Mr McLachlan.

MR McLACHLAN: Yes, thank you, Commissioner.

THE COMMISSIONER: Yes. I think I'll start with Mr Naylor if you don't mind.

MR NAYLOR: Thank you, Commissioner.

10 THE COMMISSIONER: We'll work up into degrees of relevant importance - not to suggest that you are not relevantly important, Mr Naylor.

MR NAYLOR: Thank you, Commissioner.

Mr Ramachandran, you gave some evidence this morning in relation to what the purpose of these promotional items were and your evidence was that they were used to boost future business, that's correct?---Part of it is true, yes.

20 Yes.

THE COMMISSIONER: Shall we try not to go into that again, it sheds no light.

MR NAYLOR: Yes. And you've just given some evidence to Mr Campbell in response to a question rather from Mr Campbell to the effect that there were occasions where persons to whom you had offered promotional items had declined them and I think your evidence was that there were about 10 to 15 people who had declined offers of promotional items?---(not transcribable) yes.

Yes?---Nobody on the list here though.

And did, did it concern you that those offers were rejected in terms of the possibility that you might not get future business from those people?---Not really, no.

40 If I could just go back a step, Mr Ramachandran, I, I appear for number of local council employees including Lee Warner?---Sure.

Kerry Smith and Robert Nies?---Sorry?

Robert Nies?---Okay.

Are you familiar with Mr Nies?---I've dealt with him about five or six years ago.

All right. There, there was an occasion with, was there not, where you offered Mr Nies a television set as a promotional item as part of the selling process?---I don't know even five years ago if a television set was available as a promotion in all honesty.

You, you don't remember offering Mr Nies a television set and he declining your offer?---No, I don't remember that obviously.

Thank you, Commissioner.

10

THE COMMISSIONER: Yes. Mr Clay.

MR CLAY: Mr Ramachandran, I, I appear for Bathurst Council, Yass Council and Orange Council?---Sure.

You mentioned yesterday there was one sale that you recall to Bathurst Council?---That's right.

Do you recall the time period when that was?---May 2011.

20

All right. Was there an entitlement when that sale was made to a promotional item?---No.

Thank you. When you converse with the buyers of product, of the products your company sells you would use language such as reference to promotional items, that's the sort of language you use to them?---Correct.

And you would also use language such as they are entitled to the promotional item if they'd hit the particular level of acquisition?---He would be eligible as well, yes.

30

And you also make it known to customers, I suggest that it wasn't a unique offer to a particular customer, but it was the practice of the company to offer it to all customers?

THE COMMISSIONER: What do you mean by customers? You better just, if you wouldn't mind being precise on the question. A customer, I regard as the entity paying the bill.

40

MR CLAY: Yes.

THE COMMISSIONER: The person placing the order is the buyer.

MR CLAY: I'm happy for that question to be intended that way and I'll ask a second question, Commissioner. Can you just assume – let me ask it again, assume the customer means the entity that is being supplied with the product - - -

THE COMMISSIONER: And that's paying for it.

MR CLAY: - - - and you made it known to the person, persons that you were dealing with that the promotional items were available to all entities with whom the company you represented was doing business?---Ah hmm. Yes.

THE COMMISSIONER: Sorry Mr Clay, I don't understand, I'm not sure if I heard properly, Mr Clay, do you mind repeating that question.

10

MR CLAY: Certainly. Mr Ramachandran, you made it know to the people with whom you were dealing that any - - -

THE COMMISSIONER: The buyers. The buyers?

MR CLAY: Well the people with whom he's dealing, the buyers, yes, that the promotional items were available to all of either the people you are dealing with or the entities to whom you are selling products, not just one individual entity or buyer. Do you understand (not transcribable)

20

THE COMMISSIONER: It's too vague.

MR CLAY: Let me put it a different way.

THE COMMISSIONER: Why, why it's too vague is that it is, are you saying that this happened every time Mr Ramachandran affected an order that he would say that promotional items are not only available to you personally, but they are available to other buyers in other councils. Is that what you're saying?

30

MR CLAY: That is the effect of what I'm saying. I asked a different question, with respect, but - - -

THE COMMISSIONER: Well I'm not, I don't, there is no evidence that promotional items were ever made available to councils.

MR CLAY: Well we'll come to that and it's a different question, with respect.

40

THE COMMISSIONER: Well then if you want to ask a question in that way you better establish that.

MR CLAY: I'll ask this question, Mr Ramachandran, you never said to any individual that you were dealing with that the promotional item was only available to that individual, pausing there, correct? The promotions generally were only available to that individual?---No, he could order the promotional item and use it for what he wants.

THE COMMISSIONER: You're being asked what you said to individual buyers Mr Ramachandran. I think you're being asked whether you said to them to each individual that you dealt with - - -?---Yes, pretty much yes, Mr Commissioner.

- - - that this promotional item is only available to. Is that right Mr Clay? Is that what you're asking?

10 MR CLAY: It's a different question, but I'm happy for it to be answered.

THE COMMISSIONER: I'm sorry, I don't understand the questions you're asking.

MR CLAY: Well Commissioner, with respect you're asking a different question.

THE COMMISSIONER: Well I might asking a different question yes, because I don't understand the question you're asking.

20 MR CLAY: Thank you, Commissioner. Mr Ramachandran, you said – do you remember Mr Baker at Yass Council?---Mr Baker, yes, certainly.

And can I suggest to you that in a conversation with Mr Baker –

MR CAMPBELL: I do beg your pardon, Commissioner.

THE COMMISSIONER: Is that a disbarring offence?

30 MR CAMPBELL: I believe it is, Commissioner.

MR CLAY: You said to Mr Baker words to the affect that these promotional items are available to all your customers?---I'm not sure if I answer your question exactly, but if I, if I understood your question correct, yes, I told to the buyer that he is eligible for a promotion, not he only is eligible, anybody who, who can order so much value of goods, according to the company's policy, is eligible.

40 Might the witness be shown volume, folder 12. I think you have, leave folder 9 there, Mr Ramachandran. Do you have 12 as well or you only have 9? Just if I could ask you to hang on to 9, hang on to that one. We'll come back to that. No I'll just ask you to go to tab 60, page 88.

THE COMMISSIONER: No tabs, I don't have a page 88, tab 60.

MR CLAY: I'm only working from electronic, so, what I worked out from the index, so - - -

MR CAMPBELL: Page 1, it's page 1.

THE COMMISSIONER: Page 1.

MR CLAY: It's page 1. Thank you. Do you have a document headed Schedule 2 NCH Promotional Items Summary 4/11/09 to 18/2/11?---Yes, I do.

Thank you. And there's three dates and three mentions of Yass Valley Council, Mr Baker, you and some promotional items. Have you got that page?---Yes, I do.

You see the delivery address there 209 Comur Street, Yass?---Yes.

Within your organisation - - -

THE COMMISSIONER: I'm sorry Mr Clay, I just, I must have a different document. This is not the document that I've got.

MR CLAY: I'm relying upon Mr Campbell - - -

MR CAMPBELL: It's tab 63, page 8.

THE COMMISSIONER: You've given me the wrong tab number.

MR CLAY: With respect, your Honour, it's a little difficult when we get 800 megabytes of documents on Friday without an index and it's paginated minus page 88, so, I'm sorry.

MR CAMPBELL: It's tab 63, Commissioner, it's page 88.

THE COMMISSIONER: Yes, very well.

MR CLAY: I'm told by others from DVD it's the same, so I apologise, your Honour.

THE COMMISSIONER: No, that's all right, I'm just trying to keep up. I can't keep up if I've got the wrong page.

MR CLAY: No, your Honour, I accept, I'm sorry, Commissioner - - -

THE COMMISSIONER: No, no. I understand it's a bit - - -

MR CLAY: - - - but don't blame me.

THE COMMISSIONER: Proceed Mr Clay.

MR CLAY: Thank you. A delivery address, 209 Comur Street, Yass. (not transcribable)?---Yep.

When the buyer is Adam Baker is there an address entered in your company's system as the address for the delivery of promotional items?
---This was the council address anyway.

I appreciate that, but where you have Mr Baker as the buyer - - -?---Yes.

10 - - - does your system have, does it record that his buyer's address or shipping address is the address 209 Comur Street, Yass or does that have to be entered each time there is another delivery of a promotional item?---
Usually it is on the system, there's the customer name, billing and shipping address.

All right. Thank you. Can I ask you now to go back to volume 9 and with some trepidation I say page 340.

MR CAMPBELL: Tab 46, tab 46.

20 MR CLAY: Sorry.

MR CAMPBELL: Tab 46.

MR CLAY: Thank you, Mr Campbell?---Yes.

That's schedule point 8 orders where promotional items requested January 2007, August 2011. Is that the heading on the page you're looking at?
---Yes.

30 And it's the entries for Yass Valley Council?---That's right.

As a matter of interest do you know whether this schedule was prepared in the ordinary course of your employers business or prepared for the purpose of provision of information to the Commission?---This document?

MR CLAY: Yes?---We prepared for this.

40 And are you sufficiently familiar with these, sorry, you've seen these schedules before giving evidence today and yesterday?---I remember seeing it vaguely during, just before my private hearing.

But I just ask you to go down to Mr Baker's entry halfway through the page 2582 is, sorry, the postal code, 5-0-1-9 is the order number?---Yeah.

13 May, 2008?---Yeah.

Cooper Jacket one large size on promo?---Yep.

No indication of a delivery address. Would one, in your understanding of what occurred, would one assume that the delivery address was the address that we had in the system for the document I showed you a few moments ago?---Just to add to it, if, if there is no particular address mentioned it was usually the customer's business address.

Yeah. The third-last entry, it doesn't concern Mr Baker, but under the comments column are the letters MSDS. Do you know what that stands for?---Material safety data sheet.

10

And what's that?---(NO AUDIBLE REPLY)

Is it simple?---It's going to be complicated.

Okay.

THE COMMISSIONER: I beg your pardon? Sorry?---Material safety data sheet is just an explanation of what the actual chemical contains, the hazardous ingredients and all that sort of thing.

20

I see. I see.

MR CLAY: Thank you. And then over the page at 341, the fourth entry down is one to Mr Baker?---Ah hmm.

It says, "MSDS with shipment. Please combine", is that two orders, 6-3-1-8 and 6-3-1-9?---(NO AUDIBLE REPLY)

30

Is that what that means?---Yes.

(not transcribable) And Adam Baker shipping address is the address that we spoke of a moment ago- -?---209 Comur Street.

- - -Comur Street, Yass?---Yeah.

And it occurs in the next column so that we assume is the same, the next, the next line.

40

THE COMMISSIONER: Well, he said that, Mr Clay. He said that when a specific address is not given the business address is the address.

MR CLAY: The next one's the shipping address, that's- - -

THE COMMISSIONER: I beg your pardon?

MR CLAY: The next one is a shipping address, not no address.

THE COMMISSIONER: Well, I take it the shipping address is the usual business address, the address that, that appears elsewhere?---That the goods go to, the original products go to when I mention the shipping address, that's right.

MR CLAY: Mr Ramachandran, do you know Mr Gary Blackford, a former employee of- - -?---I do.

10 Yes. He left the employ of the company on 29 October, 2010. Is that in accord with your recollection?---That would be right.

Do you have any knowledge of the circumstances under which his employment with NCH ended?---Can you explain to me what you're asking about in particular?

Do you know whether he, he left of his own accord or in other circumstances?---To the best of my understanding, that, that is what I understand, yeah

20 Thank you. Can I just ask you to go to tab 46, page 324?---Yes.

If you can assist us with something. You're not concerned with any of these orders, these are orders arranged by Mr Blackford for Orange City Council. Do you understand that?---Yes, I do understand that.

In the comments column on a number of occasions there is a reference, well, the first one, "Deliver to Gary Blackford at 45 Old Bucca Road, Moonee 2450." Was there a practice as you understood it within the company that promotional items would be sent to the personal address of the salesperson?
30 --- (NO AUDIBLE REPLY)

THE COMMISSIONER: We've dealt with all that, Mr Clay. It's been the subject of considerable evidence.

MR CLAY: The salesperson, the salesperson? Mr Buckford is, sorry.

THE COMMISSIONER: Mr Blackford.

40 MR CLAY: Mr Blackford is having them sent to his home.

THE COMMISSIONER: Oh, I beg your pardon.

THE WITNESS: At one stage, yes.

MR CLAY: What was that stage?---Probably two or three years ago.

THE COMMISSIONER: This is Mr Blackford of NCH is having the promotional items sent to Mr Blackford's home?

MR CLAY: That's right.

THE COMMISSIONER: I see.

MR CLAY: Blackford lived in Moonee, which is somewhere near Lake Macquarie as I understand. Did you know, do you know that or not?

---I know he lived around Coffs Harbour. I don't know exactly where.

I see.

10 THE COMMISSIONER: Did you know this was happening?---What was happening, Mr Commissioner?

That the promotional items, the promotional items were sent to Mr Blackford at his home?---I don't know that these promotional items were sent to his home.

Well, that any promotional items were sent to his home?---No, not to Mr Blackford, no, but there was a company directive at that stage that it could be sent to any salesperson's home if required.

20

For what purpose?

MR CLAY: So how long did that- -

THE COMMISSIONER: For what purpose?---At that stage my understanding for, for, so that the salesperson can go and personally hand it over to the client.

I see.

30

MR CLAY: For how long was that directive in place?---I don't know how long it was in place but it was called off in November 2009.

Yeah. Do you know the reason it was called off?---I don't.

Was there some concern, and I don't now if this was the case and I'm asking you, that some promotional items did not end up in the hands of the buyer if they were sent to salespersons' homes first?---There was some speculation on those basis, yes.

40

Thank you, Commissioner.

THE COMMISSIONER: Thankyou, Mr Clay. Mr Wigney?

MR WIGNEY: Thank you, thank you, Commissioner. Just very briefly, Mr Ramachandran, my name is Wigney and I appear for NCH Australia. Can I just clarify one or two matters that were the subject of your evidence this morning. Firstly, do you recall being asked some questions by learned

Counsel Assisting in relation to the Lenovo computer promotional item that related to an order that was placed by Mr Warner on 23 February, 2011?
---Yes.

And you were directed to an entry in the records of NCH Australia which indicated an instruction to send a separate invoice for that promo equipment. Do you recall that?---Yes.

10 And your evidence this morning was that that separate invoice was made out to and sent to Mr Warner. Is that right?---Yes.

Do you recall to what address that separate invoice was sent?---To the, to his, his business address.

And his business address was?---I think it was a PO box Lithgow number.

20 Okay. Well, let me perhaps approach it this way. If you could go, please, in your volume 9 to page 35, sorry, 252, which is also a document that you were taken to this morning. I'm sorry, I don't know the tab number.

THE COMMISSIONER: No, I think we can find it.

MR CAMPBELL: 45.

MR WIGNEY: 45. And I think you indicated that that was the consignment note that was perhaps attached to the consignment, being the computer that was delivered, the computer that was delivered. Is that right?
---(NO AUDIBLE REPLY)

30 Top of page 352, 252?---I assume so because it was sent directly by the promotion company.

Yes. And you'll see that it's addressed to Lithgow Treatment Works, care of City of Lithgow Council at Mort Street, Lithgow. Is that right?---That's right.

Do you recall whether that was the address to which the separate invoice was sent?---It would be, it very well could be, yes.

40 Okay. And when you say that the separate invoice was made out to or sent to Mr Warner, what do you mean or what did you mean by, by made out to or sent to?---It was just, it was just a separate invoice.

THE COMMISSIONER: But what do you mean by made out, what is the, what did you intend to mean when you said it was made out to?---I didn't use the term, "made out", I only requested the invoice to be a separate invoice to be sent to Mr Warner, Mr Wigney.

MR WIGNEY: Can I make a suggestion, was it addressed to Lithgow City Council to the attention of Mr Warner, is that- - -

THE COMMISSIONER: But you don't know?---I don't know.

You can't answer that question because you don't know, because you said that you didn't do it?---That's what I requested to do.

10 Well, how did you request that?---On the, it was just a document, I don't know, I lost the page number but there was a page number and it said please make, please send a separate invoice to Mr Lee Warner for the promotional
- - -

Does it show - - -

MR WIGNEY: I think the document you're referring to, Mr Ramachandran, is the document at page 298 of the - volume 9, is that right? If that can perhaps be put on the screen?---Yes, the last one, yes.

20 THE COMMISSIONER: Yes.

MR WIGNEY: I think what the Commissioner is directing your attention to, sir, is that whilst that directs you to send a separate invoice for promo equipment it doesn't contain any instruction about the particular address or to whom it was to be made out to, do you agree?---In all these cases the invoices has gone to Lee Warner's attention.

30 THE COMMISSIONER: Sorry, I can't hear?---In all the cases the invoices have gone to Lee Warner's attention, Lithgow Council, attention Lee Warner.

How do you know?---Because that's the billing address that has been entered there, in the system.

How do you know?---I was the one who entered the system because I took the customer over from somebody else and that was what it (not transcribable)

40 You've sent material to Lee Warner's residence?---That was given ah, yes.

Is that on the billing, is that entered in the system as well?---No, the billing address was only the company's, the business address.

The billing address is entered in the system, is it?---Yes.

No other address?---Billing address and the product shipping address is entered in the system.

But not the promotional item address?---If it is referred to the business address then I make a special note of the home address or registered home address that the buyer gave me.

And is that entered in the system?---Yes, it is entered in the system.

10 So when you look at the last item what, how can you tell which one it was sent to? One of, which one of those three?---Mr Commissioner, as a practice for the - the company practice is to send any invoices only to the customer's billing address by default, not any invoices to home address, the company wouldn't have sent it to home address.

This is not for the company, it's for Lee Warner?---Lee Warner works for Lithgow Council.

20 Yes, but he's got his own address and he also works at the company so how do you know to which address it was sent without seeing it, without seeing the actual, the actual delivery docket?---That's right, Mr Commissioner, I've not seen the document but I assume it would have been where he sent to.

So it's an assumption?---By default invoices are sent to the billing address, the business billing address.

By default meaning?---When we say please send an invoice it is always sent only to the buyer's or in your term customer's billing address.

To the customer's billing address?---The customer's billing address.

30 But this is - I take it so that where, where you're sending an invoice for example to the Lithgow Council - - -?---Yes.

- - - then by default it would - and you don't put any address, by default it would go to the billing address of Lithgow Council?---Yes. From memory it was a PO box address, yes.

40 But when you say send it to Mr Warner how do you know that it's going to the billing address of Lithgow City Council?---If I'm not repeating myself too much, Mr Commissioner, my understanding is all the invoices by default only go to the business billing address not to the personal address of any buyer.

I see. All right. Yes, Mr Wigney?

MR WIGNEY: And, sir, is that the case even when it's a, a separate invoice that relates to the promotional item, is that right?---Even that invoice, yes, Mr Wigney.

Thank you. Just moving on briefly to another topic. You were shown this morning, and it can be brought up on the screen if necessary, a page of the winter 2010 catalogue, it's at page 352 I hope and you were directed to some writing in a blue square on the bottom of the page, I just want to remind you of one matter and ask you some questions about it. In that blue box - have you got that before you, sir, page 352, winter 2010 catalogue?
---Yeah.

10 In the writing on the blue box at the bottom of the page there includes, includes the words "all items will be delivered to the buyer's workplace or home via registered mail." Do you see that?---Yes.

And I think it's the case yesterday that you indicated that as to whether it went to the buyer's workplace or home it, it was up to the buyer to - buyer's discretion I think were your words?---Yes.

Is that right?---Yes.

20 And you indicated also yesterday in your evidence that on occasion the buyer in his or her discretion elected for it to go to a home address, is that right?---Yes.

But were there any occasions where the buyer directed the item to be sent to the workplace address?---What items? Promotional items?

The promotional items, yes?---In a lot of cases there has been, yes.

30 Right. And if that happened you, you accepted that instruction and - - -?
---Absolutely.

- - - acted accordingly by putting it in the computer?---Absolutely, it's well within the company's policy so yes.

And in terms of your personal involvement with, with buyers did that - what sort of frequency did that happen, that is it was delivered to the workplace address at the discretion of the buyer?---Difference occur from buyer to buyer, Mr Wigney, but a lot of cases for example the Yass Valley Council most of the item - - -

40 THE COMMISSIONER: Well, I think you're being asked what proportion, what, more or less, you don't have to be accurate but it will give us an idea I think, can you or is too difficulty?---50, 50 per cent.

Pardon?---50 per cent.

MR WIGNEY: But in any event what, what you've personally did would be to enter that instruction into NCH's computer system, is that right?
---That's exactly right, Mr Wigney.

And that record was retained and would be able to be ascertained in any event from the system, is that right?---Sure.

Thank you. Just finally one final brief topic, you were asked this morning, again by the learned Counsel Assisting, about occasions where the buyer said to you in relation to a promotional item thank you but we're not allowed to take that item, do you recall those questions?---Yes, I do remember, yes.

10

And I don't want to go back over it but as I recall your evidence, your evidence was that if, if that occurred you respected that and you said you didn't talk about that promotion any more with that particular buyer, is that right?---Absolutely.

And may we take it that in terms of respecting that instruction you also would not have gone ahead and actually sent the promotion item to that buyer?---Of course.

20

Was there ever any occasion where you sent a promotional item to a buyer who had said to you that he, he or she either was not able to or did not want the item?---Never.

Thank you. Thank you, sir, thank you, Commissioner.

THE COMMISSIONER: Mr McLachlan.

MR McLACHLAN: Yes, thank you, thank you, Commissioner.

30

MR McLACHLAN: Sir, you were asked about the splitting of orders? ---Yes.

And you were asked about that in the context of whether or not that was to the buyer's advantage, all right, do you recall those questions (not transcribable)?---Yes.

Can we, can we go to please page 351, it's at tab 46?---Yeah, the promotion (not transcribable)

40

Do I understand that, that essentially what happens is that the more that is spent in terms of the order that is made the greater the value of the promotional item that's offered?

THE COMMISSIONER: Well, that's obvious. That speaks for itself on the document.

MR McLACHLAN: All right. You (not transcribable) that?---Yes.

All right. So that for instance if you made a \$4,000 order you end up with an item of greater value than if you made an order or that if you put an order in for \$2,000 in terms of the promotion, the value of the promotional items that you get?---Yes.

All right. So you could put an order in for \$4,000 and get a promotional item of a particular value?---Yes.

10 Or you could put in two orders for \$2,000 each and get two items, is that correct? Two promotional items?---If the customer wants it that way, yes.

THE COMMISSIONER: If he likes wine?---Sorry, Commissioner?

If he likes wine for example and he prefers two cases of wine to a DVD player?---If it, it depends on what he's ordering. If it's one single drum which costs about \$4,000 then I wouldn't be able to do two promotion items.

20 No, I understand?---Thank you, Mr Commissioner.

MR McLACHLAN: But the promotional item that's offered for a \$2,000 order is of less value than the promotional item that's offered for a \$4,000 order?---Absolutely, Mr McLachlan.

But by for instance making two lots of orders for the value of \$2,000 you get two lots of that item. That's correct?---That's correct.

30 As distinct from making a \$4,000 order where you only get one item?
---That's correct.

And depending on your tastes or interests or desires, the, receiving the two items may or may not necessarily be more advantageous to you as a buyer as distinct from receiving one item for a \$4,000 purchase. Is that correct?
---As a buyer?

Yes. I need to clarify that.

THE COMMISSIONER: I accept that, so can we move on.

40 MR McLACHLAN: Yes. All right. Well with respect, Commissioner, when I (not transcribable)

THE COMMISSIONER: No, no, no, I'm just trying to save time, Mr McLachlan.

MR McLACHLAN: All right. Well - - -

THE COMMISSIONER: You've made your point.

MR McLACHLAN: All right. Thank you. No further questions, Commissioner. Thank you.

THE COMMISSIONER: All right.

MR CAMPBELL: No re-examination, Commissioner.

10 THE COMMISSIONER: Yes, thank you for your evidence Mr Ramachandran. You may leave now?---Thank you, Mr Commissioner.

THE WITNESS EXCUSED

[12.31pm]

MR CAMPBELL: I call Mr Gary Blackford.

MR McLACHLAN: Might I be excused, Commissioner?

20 THE COMMISSIONER: Yes, certainly.

MR McLACHLAN: Thank you.

THE COMMISSIONER: Ms Moody you appear for Mr Blackford?

MS MOODY: I do, your Honour. I seek leave to appear.

THE COMMISSIONER: I've give you leave I think.

30 MS MOODY: Yes, I think you have, your Honour. And yes, I do.

THE COMMISSIONER: And you asked for a section 38 order. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Blackford and all documents and 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.

40

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

THE COMMISSIONER: Now Mr Blackford, you're 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.

MR BLACKFORD: Yes, I do.

10

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

MR BLACKFORD: I'll affirm the truth.

THE COMMISSIONER: Yes, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner. Mr Blackford, would you please state your full name?---Gary Charles Blackford.

And what's your current occupation?---I'm a minister.

10

With which church?---Which church, part of the Australian Christian Churches.

All right. And at one stage in your career were you employed by NCH Australia Pty Limited?---Yes, I was.

And during what period were you employed by that company?---For 14 years, finishing in October last year.

20 That's October 2010?---Yes.

All right. Why did you leave the company?---There were multiple reasons, really from, from the time I moved from Sydney up to Coffs Harbour, my work, I was, my ability to, to juggle the, working for NCH and being a minister was becoming increasingly difficult, as my church continued to grow. And around that time last year I decided that I can't juggle it any more and, and I was driving huge distances, like 10 hour drives to see customers and so it was, yeah, I just decided that I had really, couldn't give NCH, I couldn't live that sort of way any more, you know, if that makes sense. Sorry if I'm stumbling over my words a bit.

30

THE COMMISSIONER: No, that's quite all right. I think your answer is personal reasons?---Yeah. Okay. Thanks. I should have just said that. Yeah.

MR CAMPBELL: I'd like to ask you that question though, Mr Blackford, because, and I'm not criticising my learned friend, Mr Clay, but the question was asked of Mr Ramachandran, were you in court when it was asked? Have you been in the hearing - - -?---Yes, yes, yes.

40

Do you remember the question about whether you might have left under a cloud or anything?---Ah hmm.

Now was there anything like that in the circumstances of you leaving the company?---No. Not at all.

Now, all right, now you were the for 14 years?---Yes.

And, and during that 14 years you worked in sales?---Yes.

And it's fair to say that the business of NCH Australia Pty Limited is the supply of industrial consumables?---Yes.

And that has clients in the public and private sectors?---Yes.

All right. Now as a sales representative, did you have an area that you were required to operate in?---As?

10

Was there a geographical area?---Yes, yes.

And what was your geographical area?---Oh, that changed over the years.

All right. When you left what was it?---When I left I was just looking after a few customers who were out in western New South Wales.

Who were they?---Oh - - -

20 I'll ask you some specific ones?---Yeah.

Did you do work with the Orange City Council?---Yes, yes that was one of them.

All right?---Yep.

And who was your, who did you deal with there?---Peter Lewis and, yeah, someone else.

30 Yes. What was Mr Lewis' job?---He headed up the sewerage treatment plant for the council.

All right. And is Mr Peter Evans another name?---Peter Evans, Peter Evans, yes.

And do you remember what Mr Evans' job was?---Maintenance of buildings I think. Yeah, sorry, I can't remember his exact title.

40 That's quite all right. And at one time were you doing the Yass Valley - - - ?---No.

No. I beg your pardon. Pardon me, Commissioner. All right. I think those are the only councils of direct concern, that one council of direct concern to us, Commissioner that Mr Blackford used to go to. Now could I just ask you to - is that volume of the exhibits still there, folder 9?---I have nothing here.

All right. Could the witness again be shown folder 9? Commissioner, I'll be going to tab 46. I'll take you to, if you could open it up at page 324, behind tab 46. Have you got that Mr Blackford?---324?

Yes?---Yes.

And do you recognise that document? Have you seen that type of thing before?---I saw it while I was sitting at the back of the - - -

10 Up on the screen?--- - - - on the screen, yeah, on the screen.

All right?---I'm not sure if I've actually seen this before.

All right. You would have heard evidence that this was a document that was created from NCH Australia's records - - -?---Yes.

- - - for the purpose of the inquiry?---Yeah, I'm aware of that.

20 Okay. And if you look at the entries on the whole of that page, which relate to promotional items as they been called so far in evidence, does that record seem to be an accurate record of, of items that you processed in respect of sales made to Orange City Council where either Mr Lewis or Mr, I'm sorry, or Mr Evans was the person you dealt with?---At a glance I would say yes, but - - -

It's very hard to remember?---Oh, absolutely.

THE COMMISSIONER: There could be more?---Sorry.

30 There could be more?---Yes, if this was produced over the set time period - - -

I'm just asking about your memory, Mr Blackford, if you can't remember just say?---No, well I can't really.

It may be right, it's more or less right is it?---I would say if it was produced from the records at NCH it would be right.

40 All right?---But I, yeah, to remember every incident - - -

That answers my question?---Thank you.

MR CAMPBELL: And if you just go to page 298?---Yes.

At the top of the page there's an entry that has your name beside it?---Yes.

And you may not have a precise recollection of the event, but does that look a transaction that you handled on behalf of NCH with an officer of the Lithgow City Council?---I would say so.

Okay. And it may be that when we study the whole of this document that your name might appear from time to time in respect of entities that you didn't ordinarily deal with but the two whom you may have made a sale every now and then. Is that correct? Do you understand my question?---No, sorry, sorry.

10

Okay. I'll withdraw it. Lithgow City Council, on page 298, only one entry with your name on it?---Yeah.

Did you, did that used to be your client?---It was my client and then I handed it over, well, it would have obviously been after that.

All right. And, and was it the case that you normally only sold to a customer that you had established a contact with?---Um- - -

20

But you'd have your own, own customers, is that the case?---Yes.

Occasionally might you make a one-off sale to somebody else's customer? ---Generally, no.

That was a no-no, was it?---Generally no.

Yeah?---Yeah.

30

Yeah. Okay. Now, so far as, when you started there 15 years ago, had you, did you have experience as a sales rep?---Oh, very little.

Right?---Yeah.

And did you undergo the training that you hear Mr Ramachandran- - -? ---Yes.

- - -talk about in relation to the Gears of Selling?---Yes, I did.

40

And did you, and do you agree basically with what he said about that methodology?---I can't recall exactly what, what he said, but I do agree with that methodology, yeah.

That's the methodology you were taught?---Yes.

Yeah?---Yeah.

And you were, and it consisted of building up a relationship with not so much an entity but with a buyer within that entity?---Yes.

Yeah?---Yes.

And you went through various, as it was put, gears where, whereby that relationship became an ongoing on?---Yes.

Is that right?---Yeah.

10 And I think that having been there for a long, with the company for a long time you did some work as a trainer for NCH. Is that correct?---I did, yes.

Yeah. So you are very familiar with the system, if I can put it that way. Is that correct?---Yes.

All right. And could I just take you to, it's tab 44, page 72 of volume 9? ---Yes.

20 All right. And you'll see that there are five bullet points at the top of page 72. You agree that the method of selling encapsulated in Gears of Selling was to inter alia achieve the last purpose, and I said five but there are six- - - ?---Ah hmm.

- - -which is, "Create psychological indebtedness to cause a need for reciprocity." Is that right?---I've actually always struggled with that term, by the way, so to create goodwill I would agree with 100 per cent.

All right?---Yeah.

30 But, but there's no denying the fact that in black and white in the manual that was used to train NCH Australia's salespersons, appears, appears that entry- - -?---Mmm.

- - -of a purpose of the training- - -?---Yeah.

- - -an the purpose of the sales technique?---Yeah.

40 Yeah. All right?---Now, this, this document did change a number of times during that, so I'm not sure which actual version this is, but that, it did change, yeah.

Well, I can tell you, sir, would you assume from me that that's the version that was given to the Commission by- - -?---Mmm.

- - -NCH Australia Pty Limited?---Yeah, that's all right.

Yeah. And, all right. Now, the creation of goodwill involves the idea that you would encourage people to continue to do business with you. Is that correct?---Yes.

Yeah. I mean- - -

THE COMMISSIONER: In the future, I mean, on a long-term basis?
---I think that, that was the nature of the business, that it was a long-term relationship, yeah.

MR CAMPBELL: I mean, you're dealing with, with as we've said, industrial consumables?---Ah hmm.

10

You don't want one sale, you want a whole series of sales to the one customer?---Yes.

You were going to say absolutely I think, weren't you?---Yeah, I think I was, yeah.

And the, and, and, and part of, you understood, did you not, that part of that, the technique of establishing that long-term relationship was the promotions scheme?---Yes.

20

Yeah. And the promotions schemes took different forms over the years, they changed?---Yes.

Yeah. And perhaps if I could ask you to turn up tab 46 and if we could go right to the back of it, and in particular to page 395, perhaps I'll go further back?---Ah hmm.

It's 391 I'd really like you to go to. And were you familiar with this Certilab rewards scheme when you worked there at one time?---Yes.

30

Yeah. And, and this, this, this scheme, and the name Certilab, what does it refer to?---Ah, that was another division of NCH.

Thank you. And this, as we can see from page 392, the essence of this scheme was getting rewards for continuing to do business on a points basis?---Yes.

Yeah. And, and, and then if you go over the page, 393, we can see the type of goods that would be provided on redemption of your points?---Yes.

40

Is that correct?---Yep.

The, all right. Now, could you, could you turn, were you familiar when you worked there with, with the process of registering people to become members of the rewards program that was then in place?---Yes.

And if you look at page 389, that's a registration form, is it not?---Yes.

And it's filled out in the company name, department, division and a contact person?---Ah hmm.

Together with a delivery address. Do you see that?---(NO AUDIBLE REPLY)

And could you go to page 390. And if we look, these are the terms and conditions of the rewards program. Do you see that?---Yes.

10 And if you look at the first part of it which is definitions, you see that there's a, there's a definition right at the top of agent, it means the customer's authorised representative. Do you see that?---Yes, I do.

And then 4, customer means the trading entity that purchases the goods from Certilab. Do you see that?---Yes.

Now, all right. Now, over the years as the promotions scheme developed, that appreciation of who the customer was for the purpose of the promotion schemes changed a bit, didn't it?---Um- - -

20

Do you agree with that or not?---I don't quite understand what you mean, sorry.

THE COMMISSIONER: Well, in terms and conditions, page 390- - - ?---Ah hmm.

- - -suggests to me that only the customer can earn points?---Yes.

30 And the customer is the entity that actually purchases the goods and pays for it?---Yes.

Later that changed?---No.

Well, the customer would get the benefit of the rewards program under the system reflected on page 390?---Ah hmm.

And later the customer didn't get the, any benefit, the agent got the benefit. ---Not necessarily.

40 Oh?---And, and- - -

MR CAMPBELL: Well, let me put, I beg your pardon. You finish what you want to say to the Commissioner.

THE WITNESS: No, I, I- - -

THE COMMISSIONER: Well, when did the, when did the council ever get a benefit from NCH for purchases?---As in, as in a benefit from a reward?

Yes?---Yeah. Okay. Just a couple of instances off the top of my head is one customer in particular I'm thinking of and the buyer who I would go through the process with, then they would, they received a reward and then I would- - -

Who, the buyer or the customer?---The customer. Okay.

10 Are you talking about a council?---Yeah. And, and they would perhaps use that in their operations as a council. Now, that could be anything from a spraying unit, like a handheld pump sprayer for spraying insecticides or - because they were promotions as well so yeah, the customer can draw a direct benefit from - I hope I'm explaining myself well, sir.

Are you saying that the agent earns the - the agent is given the promotional item and the item can use it in the course of the business of the customer?
---Yeah, they can, yes.

20 Is that what you're saying?---I believe that is, yes.

Because the customer is never actually given the promotional item direct, it was given to the agent, wasn't it?---Well, the agent was (not transcribable)

30 Answer the question, please, Mr Blackford. The promotional item was never actually given as a present or as a gift or whatever you want to call it to the council itself was it? It was given to the man who bought or the woman who bought the item?---No, sorry, no. It was, it was given to the, to the council. It would have had, and they had the, the council's name on it, right, and it was - perhaps it was, it would have been delivered and handed to the, to the, to the buyer who was our representative.

Well, that was exactly at the time that the terms and conditions, that the scheme reflected in the terms and conditions at page 390 was in force?
---Mmm.

That was the situation?---Yeah.

But that changed?---How do you mean?

40 Well, the promotional item was given to the agent?---As in the buyer from the council?

Yes, yes?---I think they, they always delivered in that way and then it was up to them where, how they used them - - -

I see?--- - - - and I've seen them used in the actual operation of, of the council's business so - - -

That's not the question that I asked?---I'm sorry if I'm missing it, I really am. I just - - -

Well, Mr Campbell, I'm sure you're much better at this than I.

MR CAMPBELL: (not transcribable) Commissioner.

Page 249 please, if you would go to that, at tab 46?---I'm sorry, what was that two - - -

10

No, no, it's 349, tab 46 so it's where you, it's in the same section of the - - - ?---Yeah, 349.

Where you are?---Yes.

That's, that's an email from Mr Epps?---Yes.

He was your boss when you worked there?---Yes.

20 It's dated 1 June, 2010, you were still there?---Yes.

Your name appears in the, in the third last line of addressees - - -?---It does.

- - - at, at the start of the line, Gary Blackford?---Yes.

And, and what he's sending to the team is the - the new revised promotion programme effective from 1 June, 2010?---Ah hmm.

Do you see that?---Yes.

30

Could you please go over the page to - over a couple of pages indeed, to 351?---Yes.

Now, 351 is, is the new promotional brochure, do you agree?---Yes.

And indeed, you can see at a glance, can you not, that the nature of the goods have changed. Back in the old days of a, of a, the Certilab rewards programme, the rewards tend to have on the whole an industrial flavour, that's correct, isn't it?---Yes.

40

Yeah. If you look at these rewards the, you - what - they have a more generic consumer flavour, do they not?---(NO AUDIBLE REPLY)

Let me give you the best example, the top left-hand corner of the display on the screen which is the bottom left-hand corner - - -?---Yeah.

- - - 351, we've got 12 bottles of premium red or white wine?---Yes.

Well, that's the sort of thing which, which you, you would say, Mr Blackford, didn't really have an intrinsically industrial flavour to it depending on the quality of the wine. Do you agree?---I agree.

All right. And indeed intrinsically that's the sort of thing which you might expect somebody would take home for the cellar, would you agree?
---Unless, unless - - -

(not transcribable)?---Oh, sorry.

10

Intrinsically is my question, there might be other uses you can put it to and I'll ask you about those but intrinsically that's the type of thing you'd, that you'd normally expect somebody would take home and put in the cellar, would you agree with that?---Not necessarily.

Okay.

20 THE COMMISSIONER: Do you say you're going to give it to the staff, are you?---I'm saying that that's what they do. Once we, once the promotion was delivered then they did what, with it what they wanted to do with it.

MR CAMPBELL: That's my point?---You know, they, they could have done that, right, but I'm not saying that that was what always happened because a lot of these things would go into things like Christmas raffles and raising, raising money, things like that so what did and what didn't I'm not sure because once it was delivered that was it. We really didn't even ask.

30 Well, this is an important change isn't it? I mean as the, as the Commissioner asked you about in the old rewards programme you were, it was, the agent was, was, was the individual but he was the agent of the customer and it was the customer who was entitled to on acquiring sufficient points redeem those points for goods of an industrial nature, that's so, isn't it? That's, that's, that's the old scheme?---Yeah.

This new scheme is that we now have, look at, look at the blue box at the bottom of the display?---Mmm.

40 It's the right-hand side of the page and, and it says you're a buyer, that's a big change, isn't it, because the buyer became, the buyer was the individual, not the customer. That's correct, isn't it?---The buyer was the representative for the customer and that was really our only point of contact with the actual customer.

Well, you say, you say so, that was your usual point of contact, that's correct, isn't it?---Yeah.

Going to the, going to the person you regarded as the buyer?---Yeah.

Yes, and you heard Mr Ramachandran's evidence yesterday that, that, that -
- -?---Excuse me, I wasn't here yesterday, sorry.

I beg your pardon. We heard evidence yesterday that the, the way that the
Gears of Selling system worked, there was no real distinction in this
methodology between the buyer and the customer, do you agree with that?
---Well, the, the buyer was definitely our representative as the, I mean, was
the customer to us, yeah.

10 That's my - that's what I was asking you about. So the emphasis becomes
now on the buyer, he's, he is, he's the man who is, or woman, as the case
may be, who is entitled to the reward, that's so, isn't it?---The customer is
entitled to the reward.

Turn it around, you read it. Have you got it? Turn it around so it's in a
landscape format, read the, read the first line of the word in the left-hand
side of the blue box, it says does it not "your buyer is entitled to one reward
item for sale equal to or exceeding the category." Do you see that?---Yeah,
I, I can see that.

20

Yes, yes?---In, in my view that meant the customer.

THE COMMISSIONER: Well, that's nonsense. I mean, how could it
possibly be the customer when you actually gave it to the buyer?---Well,
the, the customer was, the buyer was our point of contact for the customer.

That, that's not - all right. Yes, Mr Campbell.

MR CAMPBELL: Thank you, Commissioner.

30

THE WITNESS: Sorry, I don't mean to be - but I'm just trying to be as
open as I can.

MR CAMPBELL: Well, I'm just trying to ask my questions, sir?---Yeah.

But the simple fact of the matter is that - and I'll ask you about, in the case
of Mr Lewis - - -?---Yes.

40 - - - at Orange City Council for instance he was, he was, he was one of your
buyers, was he not?---Yes.

And in the, in the, in the space of a seven month period you delivered to him
three mobile phones?---Yes.

Apple iPhones?---Ah hmm.

That's right. And if we, if we, if we go to - just go back into the, the entry in respect of that which is a bit further one, it's at page 324?---Did you say 324?

324. You'll see, you'll see for instance at the, at the last three items, they all relate to three different orders, do they not?---They do.

They relate to - and they relate to three different rewards that were delivered to Mr Lewis, don't they?---The do.

10

The first one was delivered care of your address at - that is, you, Mr Blackford's - - -?---Yes.

- - - address at , , , , , ?---Yes, that's right.

Now, that, that was a permissible system at the time, is that right?---Yes.

And when that system was in you delivered personally to, to Mr Lewis the next time you called upon him?---Yes, that's right.

20

And that sort of enhanced the personal relationship I suppose. Is that right? ---Yes.

Now you'd probably see them at work. Is that right?---Yes.

But when you deliver that first iPhone to him - - -?---Yes.

- - - it was, it was for him and he was entitled to do with it as he wished. That's correct isn't it?---Yeah. That was, that's the assumption, yes.

30

Yes, that's right. He could either take it home and use it as his personal iPhone. Yes?---Yes, if he wanted to.

If he wanted to. Or if he, if he wanted to he could raffle it amongst the, his colleagues at work?---Yes.

THE COMMISSIONER: Or hand it to the Mayor?---If he, once it's delivered we didn't even ask, so - - -

40

MR CAMPBELL: That's all right. But you agree with the Commissioner, hand it to the Mayor if he chose?---Yes.

It was entirely his to dispose of as he thought fit. That's so isn't it?---Yes.

That was the intention of the scheme. That's so isn't it?---Well that was where the, our involvement in it finished, once it was delivered.

THE COMMISSIONER: It became his property?---Basically, he - - -

MR CAMPBELL: Would you answer the Commissioner's question, it became his property, so far as you were concerned. That's right isn't it?---It became the property of the customer. And then - - -

THE COMMISSIONER: No, the property of the person to whom you gave it. Because you said it was for him to deal with as he wished?---And it was, it became the property of the customer because they were the ones who were paying the bill and therefore, but however, however, but when it was
10 delivered to him personally 'cause he was our representative, and then he could really do with it what he, what he wanted after, we just, basically once that, that was where we finished. They received their reward and then they did with it, you know, some of them raffled, some of them used it for work. I don't know.

Did you tell the council, did you tell the council that you have given these iPods to Mr Lewis?---Did I?

Yes?---Oh no, no.
20

Why not?---It was never really something we did, we just , it was just - - -

You're saying it's the customers, it belongs to the customer. You say it's the customers?---But it was - - -

But you don't even tell the customer that you'd given this, you've given it, it the iPod, the iPhone do you?---Yeah. To us, sorry, to us - - -

Do you tell the customer that you've given it the iPhone?---The - - -
30

MR CAMPBELL: Mr Blackford, would you please answer the Commissioner's question?---I'm trying, I am trying to. I'm trying to answer it.

THE COMMISSIONER: It's either a yes or a no.

MS MOODY: Your Honour, with all due respect, with all due respect, your Honour, I fear that Mr Blackford is getting confused in so far as the council is not a person, so he's getting confused because the, the item has to be
40 delivered to somebody and clearly it's the buyer.

THE COMMISSIONER: I'm not asking about delivery, I'm asking about telling it. You can actually tell a company, the appropriate person in the company - - -

MS MOODY: Yes.

THE COMMISSIONER: - - - whatever you want the company to know.

MS MOODY: Well, the appropriate - - -

THE COMMISSIONER: You know that very well, and I'm sure he does too.

MS MOODY: But the appropriate person on may indeed be the buyer.

THE COMMISSIONER: Why don't you - - -

10

MS MOODY: I'll just - - -

THE COMMISSIONER: - - - Ms Moody, you might as well - - -

MS MOODY: I just feel that he's getting confused, your Honour in relation to your question.

THE COMMISSIONER: Well after you have explained to him that he could have told the buyer, I'm sure he won't be confused.

20

MS MOODY: It was my impression, your Honour, that he was trying to explain that the face of the council is the buyer. I'm sorry your Honour, I don't mean to be rude, I'm just - - -

THE COMMISSIONER: No, you weren't rude at all Ms Moody. I think we should adjourn until 2.00pm.

MR CAMPBELL: May it please the Commission.

30

LUNCHEON ADJOURNMENT

[1:04pm]