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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

Reference: Operation E09/350

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 7 AUGUST, 2012

AT 10.11AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Mr Lloyd?

MR LLOYD: Thank you, Commissioner. Just one piece of clarification. We have now provided two computers this morning as requested by the Commission. One thing I forgot to mention yesterday but I should mention this morning, there will be seen on those computers one or other of the
10 correspondence between Mr Paul and either myself and Mr Hickey.

THE COMMISSIONER: Yes, those, those are privileged.

MR LLOYD: Indeed. So if something falls within the category of legal professional privilege, we would be claiming that privilege.

THE COMMISSIONER: And if it is, if it relates to the present inquiry the claim will be upheld.

20 MR LLOYD: Thank you.

THE COMMISSIONER: Mr Strickland, this computer, do we know how long we will need it for?

MR STRICKLAND: No, but I'll make some immediate inquiries.

THE COMMISSIONER: Yes. And there will be, and we're not interested in communications with Mr Hickey or Mr Lloyd.

30 MR STRICKLAND: Not at all.

THE COMMISSIONER: No. Yes, Ms Lonergan?

MS LONERGAN: Thank you, Commissioner. Mr Morris, yesterday I was asking you some questions about a letter that you received from Mr Paul offering to sponsor you to attend the ICS Conference in January 2009?
---Yes.

40 The conference taking place in March of that year?---Yes.

And I asked you some questions about whether you were aware that Mr Paul had invited Kings to sponsor you to attend that conference. Do you recall those questions?---I recall that.

Did Mr Paul inform you that Kings would be part of – or Kings staff would be part of the group attending the ICS Conference?---Not a part of our group, no.

Not a part of your group?---No.

That's your understanding?---That's right.

Did Mr Paul tell you, excuse me, who would be part of the group that you'd be travelling with to that conference?---He may have at the time, I do recall some names, but I wouldn't remember everyone.

10 Now, by this time some Kings staff had attended to some work at the Art Gallery . That's right, isn't it?---Yes.

We looked at some documents yesterday in November 2008?---Yes.

And do you recall who it was from Kings that attended to those works?
---I- - -

20 Who you met at least?---Well, I met Charlie Diekman at the Gallery but he didn't perform the work and I don't know, I don't remember the technicians' names that attended.

Are you sure that Mr Paul didn't email you or give you some information to the effect that Kings were also or staff from Kings were also going to attend the ICS Conference as part of the group that he was organising?---No, I'm, to my recollection Mr Diekman was attending with his own group in a separate party.

Can the witness be shown an email dated 30 January 2009 from Mr Paul to Mr Hingerty and others including Mr Morris?

30 Read that email to yourself and tell me when you've finished reading it, Mr Morris?---Yes, I've read it.

Now, I'm not trying to trick you but do you recall having looked at that document now, do you recall having received an email to that effect?---Parts of that document look familiar to me, yes.

40 All right. And are you able to say today whether you noticed that Charlie Diekman from Kings Security was one of the people who were copied in to the email?---No, I didn't.

Had that been drawn to your attention would that have caused you any concern as at 30 January, 2009?---Yes, it would have.

And why is that?---Well, because that was before the tender had been awarded.

Yes, well, 3 February was the date that the tender was actually, the tender specifications were handed to the various potential integrators?---Mmm.

But by 30 January as I understand the documents, please correct me if I'm wrong, a list of chosen potential integrators had been identified and Kings was one of those chosen potential integrators. Does that accord with your recollection?---That's right.

I tender that, sorry.

10 THE COMMISSIONER: Were there suppliers as well who'd been identified?

MS LONERGAN: I'm sorry, Commissioner?

THE COMMISSIONER: Had suppliers been identified because I notice - the reason that I ask that is that I noticed that copies were sent to Jonathan Nguyen, Paul Thompson and Terry Yallouris who were all suppliers, who were invited to be suppliers.

20 MS LONERGAN: Yes. Are you able to assist, Mr Morris, as to whether potential suppliers had also been identified for the Art Gallery, to attend the Art Gallery tender briefing?---I believe they were.

I beg your pardon?---I believe they were.

All right. And are you able to say whether that included Mr Yallouris from Pelco and Mr Thompson from Q Video?

30 THE COMMISSIONER: Well, the suppliers included Pelco and Q Video didn't they?---Correct. I can only assume that they were, yes.

And Jonathan Nguyen's company, that was called, what's the name?

MS LONERGAN: Austek.

THE COMMISSIONER: Austek, was Austek a supplier, invited to be a supplier I mean?---(No Audible Reply)

40 You can't remember?---I, I can't be sure, I'd have to check my records if any exist.

And Terry Yallouris was from Pelco?---Yes, that's right.

So it looks like a cosy group of potential suppliers and integrators who might be involved in the Art Gallery contract all being invited to go to Las Vegas?---Yes.

It rang no bells for you?---I don't recall making any particular note of the attendees, I'm sorry, sir.

No, I understand that. At that stage you might not have been acutely conscious of the identity of the people involved or conscious at all?
---Correct.

Yes, the email from Mr Paul to Mr Hingerty and others of 30 January, 2009, is Exhibit 116.

10 **#EXHIBIT 116 - EMAIL STREAM WITH FIRST EMAIL FROM MR PAUL TO MR HINGERTY & OTHERS RE ITINERARY AND COSTS FOR TRAVEL TO LOS ANGELES SENT AT 11:06PM ON 30 JANUARY 2009**

MS LONERGAN: Mr Morris, I understand that your wife accompanied you on this trip to Las Vegas in, later on in that year, in March?---That's right.

20 Did you make your superiors at the Art Gallery aware that you intended for your wife to accompany you?---No, I didn't.

And is there any reason why not?---I didn't think it was a crucial issue that I should raise.

And did Mr Paul organise flights or accommodation for you to go to Las Vegas in January or February 2009?---Yes.

30 And did he also organise your wife's flight?---Yes, he did.

Did you make an arrangement to pay back Mr Paul for the cost of your wife's flight?---Yes, I did.

You did that personally?---I did.

I'll show you a document which is an extract from Police Credit Union account dated 20 February, 2009. Have you had a look at that document?
---Yes, I have.

40 And you see that that shows a transfer of \$2,000 to Daniel Paul on 20 February?---Correct.

That was to cover your wife's airfare. Is that - - ?---Correct.

I tender that Police Credit Union bank record.

THE COMMISSIONER: Well, I think once - I mean it's - once it's put - once the fact is proved do we need it?

MS LONERGAN: No, I withdraw the tender. Mr Morris, I'm moving now onto the invitation to tender that was sent to the various integrators and distributors. Did you draft the form of the invitation to tender?---(No Audible Reply)

THE COMMISSIONER: Perhaps it could be showed to him?

10 MS LONERGAN: Yes. Exhibit 2 tab 3. Would you have a look at that document and in particular the integrators and suppliers who were copied into the email.

THE COMMISSIONER: Well, the question is, did you draft it or do you know who drafted it if you didn't?---Not, it doesn't appear to be my wording so I can only assume it's not my, my draft, it would have been provided to me by someone else.

20 MS LONERGAN: And are you able to say who identified the integrators who be listed on that email?---It would have been Daniel Paul.

And the suppliers who are identified on that email, again were they identified by Mr Paul or somebody else?---Ah, certainly there are a few that are familiar to me and I can probably say that one, at least one of them is know to me in any event for a particular product.

Who is that?---That would have been Theo Coles from Future IT.

30 Are you able to state whether there was any particular criteria applied for integrators for selection to be invited to tender?---Integrators? As I understood it, it was integrators that were- - -

THE COMMISSIONER: VAR's---?- - -qualified to install the products, the, the primary products we were wishing to install, the Lenel- - -

How qualified? What was the qualification?---Accredited VAR's.

VAR's?---Yes.

40 And does that apply to suppliers as well? I mean I just don't know – do you know whether this concept of VAR's does that apply - - -?---I'm not sure whether it applies to, to suppliers.

But the suppliers would have to be suppliers who were in a position to supply the products that the selected VAR's could use?---Correct.

And who identified those, that is the suppliers who had that qualification? ---Daniel Paul had that, that ability.

Anyone else?---Not that I would be aware, not on the panel, no.

MS LONERGAN: At that time Mr Morris were the identified equipment, the main equipment for the upgrade identified as Lenel and Verint?---Yes.

10 Prior to this email being distributed to the integrators and suppliers was there a discussion by the tender evaluation panel as to how any inquiries from any suppliers or integrators would be dealt with during the period the tender was open?---As I recall Anne Tregeagle nominated myself as the point of contact from all integrators and suppliers should they wish to ask any questions about the tender.

What about the technical aspects of the specifications, were you nominated as the point of contact for that or was Mr Paul?---I only have a recollection of me being the point of contact for the integrators. I can't be any more certain than that.

20 Was there discussion with Mr Paul in your presence where Mr Paul was advised as to what should happen with any technical questions that were directed to him in terms of his replies?---Can you repeat that, please?

Sorry, I'll put it another way. Was there any arrangements made between the tender evaluation panel group as to how Daniel Paul should answer any technical questions or questions put to him about the tender?---He should first come through the panel to do that.

And was there any requirements that any answers be in writing?---All answers should have been in writing.

30 Was it your understanding that Mr Paul should not have entertained any direct approaches by telephone for example, from any of the integrators? ---Correct.

What about suppliers, was it your understanding that any suppliers also to direct any inquiry through appropriate channels?---That same rule applied.

40 If you knew that Mr Paul had meetings in person with the sales manager of Q Video during the period the tender was open, that's between 3 and 23 February, what would you have thought of that conduct?---I thought that would – I would have thought that inappropriate.

Did Mr Paul tell you that he had any meetings with the head of, the national, sorry, the state sales manager of Q Video during the tender period?---Not that I recall.

Did Mr Paul tell you that he was having telephone contact with Mr Yallouris from Pelco during the period the tender was open?---Not that I, not that I recall.

Did Mr Paul tell you that he received any inquiries from Kings about technical aspects of the specifications during the tender period?---No.

Did Mr Paul tell you that he had attended a meeting at Kings where the Art Gallery project was discussed on or around 13 February?---No.

If he'd told you that what would have been your response to that conduct?
---That would have been highly inappropriate.

10

Excuse me, Commissioner. Would you have expected Mr Paul to tell you those things I've just asked you about?---Absolutely.

Did Kings make contact with you during the tender period on your recollection?---Not that I recall. If they did it would have been recorded.

20

Do you have any recollection of any meetings that were convened between the tender evaluation panel, that is you, Ms Tregeagle and Ms Flanagan during the period the tender was open, so between 3 and 23 February?---Can I have that question again, please?

Yes. Between 3 and 23 February, so once the tender had gone out to the various integrators and suppliers, I'm sorry, once the specifications had gone out, do you recall any meetings being convened for the Tender Evaluation Panel so you, Ms Tregeagle, Ms Flanagan, Mr Paul or any combination of the four of you?---I don't have a specific recollection but if there, if there was a meeting it would have been minuted.

30

Are you able to say at that point in the tender process a decision was made as to what weighting would be given to price?---No, I can't.

Did you have an opinion about what weighting should be given to price?
---No, I didn't.

Are you able to say whether you would have relied on somebody with some expertise in relation to what weighting should be given to price?---I would have relied on the advice of Anne Tregeagle.

40

All right. What about Mr Paul?---I'm not so sure about Daniel Paul.

And were you present for the tender opening?---Yes, I was.

And was there an immediate rating or analysis done of the tenders received on that date?---Either that day or very soon after, yes.

Could the witness be shown Exhibit 17 please and if you could turn to tab 7. Actually, before you go to that could you turn to F6 please.

THE COMMISSIONER: Sorry, F6?

MS LONERGAN: Exhibit 17, tab 6. Have you got that document, Mr Morris?---Yes, I have.

Tab 6. And in the top right-hand corner there's some pagination, if you could turn to page 477 please and you see halfway down the page there's an email from Daniel Paul to you and Ms Flanagan and can you read that email to yourself, in particular the second paragraph of that email?---Yes.

10

You see that second paragraph and does that prompt a recollection that you discussed in the days leading up to the tender being distributed with Mr Paul what products would be specified in the tender specifications?---I'm sorry, the question again?

Does that prompt any recollection as to whether in those days leading up to the release of the tender specifications to the tenderers, whether you had any discussions among the Tender Evaluation Panel or with Mr Paul specifically about what products would be specified for the contract?---Yes.

20

And what's your recollection as to what products were discussed at that point, particularly in relation to the CCTV aspect?---We had decided, based on the advice we were given, that the CCTV component would be Verint.

And based on the advice you were given, that's the advice of Mr Paul?
---Correct.

Was there any discussion at that stage about a potential alternative solution and, yes, I withdraw that. Was there any discussion at that point about potential alternatives being allowed to be put forward by the tenderers?
---I can't say for sure whether at that point we discussed it but we are aware of course that there were alternative options allowed providing the tenderers first tendered a complying bid.

30

All right. And could you turn to tab 7 of that exhibit please. And so you were present when the tenders were opened?---Yes, I was.

Right. And turn to tab 8. You see that's a table. And there's handwriting on the top of the document, "preliminary assessment prior to round 1 interviews"?---Yes.

40

Is that your handwriting?---No.

Are you familiar with the table?---(No Audible Reply)

As in have you seen that table before?---I don't have a recollection of seeing it but I, I assume I must have.

Do you know who prepared it?---No, I do not.

Could the witness be shown Exhibit 4, sorry, Exhibit 2, tab 4. And that document, Mr Morris, is the Kings tender response. And I assume that you received a number of voluminous tender responses at that point?---We did.

And did you read them all, you personally?---I wouldn't have read them in depth, no.

10 Did you rely on Mr Paul in terms of reading all the tender responses, particularly the technical aspects?---Yes.

Could you turn to page 721 of that document, it's in the top right-corner, the pagination. And you see that's a page where Kings have set out a Lenel/Pelco Endura solution. See that?---Yes.

And if you look about halfway down the page under 82 of Pelco 1X10 series 0.5, do you see that heading there?---Yes.

20 And do you see there's various functionalities listed there?---(No Audible Reply)

Do you see that?---Yes.

Did you have any technical knowledge yourself that would have allowed you to translate what all that information meant?---No.

And if you look up the page at paragraph 5 you'll see there's a statement, "The Pelco Endura option for the Art Gallery is based upon the Pelco
30 Endura VN2"?---Can you show me, where is that again?

If you, same page?---Yep.

And if you look up to the top half of the page- - ?---I see, yeah.

- - -the fifth paragraph commencing, "The Pelco option for the Art Gallery of New South Wales"?---Is that on page 721, is it?

40 THE COMMISSIONER: It's, "The Pelco Endura option."

THE WITNESS: Oh, I see. I see that.

MS LONERGAN: Has your attention been drawn to that before?---No.

Is that the first time that you have realised that within Kings' first tender response was mention of the solution being Pelco Endura version 2?
---Yes.

THE COMMISSIONER: Does this come as a surprise to you?---It does a little bit, yes.

A little bit?---Well, it does, yes.

MS LONERGAN: Why is it a surprise, Mr Morris?---With the passage of time, it is some time ago, but I always believed it was version 1.5 that was being offered in the original tender.

10 Is that based on something you were told by Mr Paul?---I can't be sure.

THE COMMISSIONER: Or Mr Diekman?---No, I can't be sure.

MS LONERGAN: But you certainly never have had that drawn to your attention before?---No.

And would you have expected Mr Paul to have noticed that, given he's the technical advisor on the contract?---Absolutely.

20 THE COMMISSIONER: But that's different to what you have testified to be the preferred or benchmark solution?---Well, the Pelco Endura, Endura 2 was always put forward by Mr Paul as being the product that we needed but was unavailable.

Yes. So you decided, you've said, to go on the Lenel/Verint solution?
---Correct, correct.

30 So if that be correct had you read this I take it you would have immediately realised that this is not a, this is not a tender that's likely to get approval because it doesn't, it's not based on Lenel/Verint?---Correct.

But I take it you didn't realise that?---Well, they, they - - -

Based on your evidence?---Kings must have submitted a tender, a complying tender for a Lenel/Verint system, that was, otherwise we could not consider any other non-complying bids.

40 But this is the tender they submitted. Now, I have to tell you that the impression I get is that you're a bit astonished at this?---I am. If I had known that Pelco Endura 2 was being offered at the time that they submitted the tender that would have caused me to ask certain questions about its availability.

MS LONERGAN: And if you can turn to page 597 of that document, can you see on that page that three options were presented by Kings and you see the second option is a Lenel/Pelco option?---Correct.

And you see that the pricing that's quoted for that option is 2,690 plus GST?---Yes.

Do you see that? And so reading that pricing together with what's specified in the technical aspect of the document I've just taken you to, page 721 - - -? ---Yes.

10 - - - it appears, doesn't it, that what Kings are submitting is a price of 2,690,000 which is based on at least partly the Lenel, I'm sorry, the Pelco Endura version 2?---I didn't make that connection.

I'm not suggesting you personally made the connection at the time but you can, do you agree with that that's what the document suggests when you read those two pages together?---Oh, yes.

And would you expect Mr Paul to have noticed that given he's the technical adviser on the contract?---Yes.

20 Are you surprised that he didn't notice that?

THE COMMISSIONER: Or you don't know, he didn't tell you about it? ---He didn't tell me about it.

MS LONERGAN: He didn't tell you.

THE COMMISSIONER: Are you surprised that he didn't tell you about it?---Yes.

30 MS LONERGAN: And you've given some evidence that leading up to this time the preferred solution for the, for the CCTV aspect of the tender was the Pelco Endura 2, is that a correct understanding?---That was the, that was the product that we were hoping to, to be able to specify in the tender, yes.

And when you say hoping to be able to specify was it the position that Mr Paul told you that that would be the idea product?---Correct.

THE COMMISSIONER: That was before the specification went out? ---Correct.

40 MS LONERGAN: Are you able to say whether Mr Paul - I withdraw that. Did Mr Paul tell you that he was remaining in regular contact with Mr Yallouris at Pelco to find out when or if the version 2, Endura version 2 would be available in time for the contract?---He had told me on a number of occasions that he was in contact with Pelco to see, to try and establish a release date for Endura 2.

Did he identify who at Pelco he was in contact with?---No.

THE COMMISSIONER: Was this before the specification went out or after?---Before.

And after, what did he tell you before any meeting, the formal meeting you had with him and others, did he tell you, say anything to you about the availability of Pelco Endura 2?---No.

MS LONERGAN: Did you expect Mr Paul to keep abreast with developments in cameras and software that would be relevant to the Art Gallery contract?---Yes.

That's because he was a consultant, he was advising you on those matters? ---Correct.

Once the tenders were opened, I'm sorry, once the tender submission were opened, do you recall having any meetings prior to the meetings with the tenderers amongst the Tender Evaluation Panel about how you would go forward in evaluating the tenders?---Yes.

20 Do you recall the content of the discussions, just broadly?---No, I, I - - -

Was there more than one meeting between when the tenders were open on 23 February and the meetings where the various tenderers were invited?---If there were meetings whether it be one or more then they would have been minuted by Anne Tregeagle.

The reason I'm asking that question is we don't have any minutes of any meetings between 23 February and the meetings on 27 February with the tenderers?---Well I can, as best I can be, there would have been a meeting, at least a meeting to discuss how the, the interviews would proceed.

THE COMMISSIONER: Do you have an independent recollection of such a meeting?---No, I don't.

MS LONERGAN: Do you still have Exhibit 17 in the witness box with you?---Yes.

40 Could you turn to tab 7A, please? And halfway down page, the first page of that exhibit - - -?---Did you say, did you say 7A?

7A, so it should have number 25 in the top right corner. Do you have that Mr Morris?---No.

Do you see halfway down the page is an email from Daniel Paul to you, Anne Tregeagle and Anne Flanagan?---Yes.

And you see that there's a discussion there about a question that Mr Paul was proposing be asked?---Yes.

Can you read that to yourself? Do you recall whether that point and the series of questions that are attached to the email were discussed between the tender evaluation panel prior to the interviews taking place?---Yes.

Do you see the series of questions on the page headed 24 in the top right corner?

10 THE COMMISSIONER: I don't think Mr Morris has got – nor have I.

MS LONERGAN: I'll come back to that, Commissioner. Now can you turn to F9 of Exhibit 17, I'm sorry, tab 9. And you see there's three pages of tender interview assessment sheets. Do you see that?---Yes.

And they all seem to be signed by the tender review panel?---Correct.

And dated 27 February, 2009, in the bottom right corner?---Correct.

20 Do you recall discussions between the tender review panel as to the 10 items that are included on that interview assessment sheet prior to the interviews taking place?---(No Audible Reply)

THE COMMISSIONER: Were there any such discussions prior to the interviews or you can't remember?---Yes, there were.

MS LONERGAN: Do you recall who designed these questions?---No.

Was it you?---No.

30 Was it Mr Paul?---(No Audible Reply)

Or are you just unable to say?---I can't be certain.

Could the witness be shown Exhibit D48, Exhibit 148.

THE COMMISSIONER: 148?

40 MS LONERGAN: 1, it's Exhibit 1, Mr Diekman's Exhibits, tab 48. If you could read that email that you've sent to Mr Diekman, to yourself, please, including the questions for interviews attached?---Yes.

And see question 7 on the list of questions on page 24 asks for a clarification of, "What version of software is being offered by you for the CCTV"?---Yes.

See that. Do you know who wanted that question asked?---No.

Was it you?---It may have been but I'm not sure.

But it may have been you?---It may have been me.

And you see that there's no question there in those 11 questions about price, price generally?---That's right.

And you see that your email, I'm sorry, I withdraw that. Now, do you have a recollection of the meeting with Kings on 27 February, 2009?---(No Audible Reply)

10

An independent recollection?---That was the first, the first interview?

The first, the first interview?---Yes.

And who attended for Kings?---Ah, Charlie Diekman, Peter Roche, Damien Dunphy and maybe Brian Madden.

20

Did Charlie Diekman say anything during that meeting regarding the price of their Pelco option?---The, the option that they threw on the table during that, that interview?

Well, first of all about the option in their tender response?---Not that I recall.

You say that there was a mention of price to do with an option he threw on the table?---Correct.

30

Is that right? Now, was that a document that he threw on the table?---It was an envelope.

I beg your pardon?---I believe it was an envelope containing- - -

Was the envelope opened during that interview?---Not, not that I recall.

And what did Mr Diekman say?---He ah, well, if I can paraphrase, that's the best I can do?

40

Yes?---He put it on the table, pushed it towards us and he said, "We believe this is the best option for you, it's the Lenel/Pelco Endura 2 and we'll do it for \$2 million."

And did you at that stage have any appreciation that the Pelco Endura 2 was already in their initial tender response?---No, I didn't.

And was it \$2 million or \$2 million plus GST, do you remember what he said?---Oh, I can't remember whether it was plus GST but- - -

THE COMMISSIONER: Did he explain- - -

THE WITNESS: - - -I remember the term \$2 million.

THE COMMISSIONER: Did he explain how he was able to reduce the price?---Not that I recall.

10 MS LONERGAN: Was anything said by the, anyone from the Tender Review Panel in response to him tabling that document and stating that new price?---Anne Tregeagle, who was the convenor of the panel, promptly called a halt to those proceedings and said, "We can't discuss that matter any further but we'll discuss your original tender and we'll leave it at that."

That was the end of discussion about the pricing Mr Diekman mentioned of \$2 million was it, in, in the context of that meeting?---In the, in the context of that meeting, yes.

20 THE COMMISSIONER: And did you go and discuss the original tender, did you go on to discuss that?---We, we would have asked questions in relation to the complying tender, yes.

Well, do you remember that you did?---Yes.

And did you, were these, did you ask questions - well, what questions did you ask about the CCTV, do you remember?---No, I don't, sir.

MS LONERGAN: Do you remember at what stage Mr Diekman tabled the document and stated the figure of two million?---(No Audible Reply)

30 For example, well, I'll withdraw that. Was it near the beginning of the meeting or towards the end of the meeting or are you unable to say?---I'm fairly confident it wasn't at the beginning of the meeting but I, I can't be more - - -

I'm sorry, I didn't hear?---I am fairly confident it wasn't at the beginning of the meeting but I can't be any more certain than that.

Did you take notes yourself at the meeting?---I don't recall taking notes, no.

40 THE COMMISSIONER: As I understand your evidence you went into that meeting believing that Kings CCTV tender was based on Lenel/Verint, is that right?---Correct.

So did you regard what Mr Diekman said as complying with his original tender or being in effect a new tender?---His original tender?

I beg your pardon?---Can you ask the question again, I'm sorry, sir?

Yes. You've said that you understood Kings' original tender, the tender that they submitted, to be based on the Lenel/Verint solution for CCTV cameras?---That's right.

You've said that at some point in the meeting Mr Diekman threw an envelope on the table and said we'll do the job for \$2 million based on a Lenel/Pelco solution?---Endura 2.

Endura 2?---Yes.

10

Did you then understand that this was in effect a new tender or did you think that this was part of the old tender, the original tender?---I assumed it was a new tender.

MS LONERGAN: Did you assume that because of the change in price or because of something you were told?---It was a change in product, a change in a version of product.

Who told you that in the context of the meeting on 27 February?

20

---Mr Diekman, Mr Diekman was offering a Lenel/Pelco Endura 2 solution in the envelope. I knew, well, I, I believed - - -

Let me just stop you there. He was offering, he was offering a Pelco Endura 2 version in the envelope you say?---Yes.

And you know that because why?---Because he told you.

He told you. So when he tabled the envelope he said what?---Well, we'll do the Lenel/Pelco Endura 2, \$2 million.

30

THE COMMISSIONER: Did he explain why he was now able to do Pelco Endura 2?---No.

MS LONERGAN: Did he explain why it was \$2 million?---No.

Because Anne Tregagle stopped - - -?---Correct.

- - - the conversation at that point?---Correct.

40

Did Mr Paul say anything in response to Mr Diekman making that statement about Pelco Endura 2 and the \$2 million offer?---Not that I recall.

THE COMMISSIONER: Was this statement by Mr Diekman received by everybody with equanimity and serenity or was there a modicum of surprise expressed?---Well, I was certainly surprised and I believe Daniel Paul was surprised.

And why do you say that?---Well, because our, we acknowledged each other briefly as I recall across the, across the table as if to say, just an inquisitive look and, because we both, I presumed we'd both formed the same view at the time, how can it be Lenel/Pelco Endura 2 when it's, when you've told me it's not available.

MS LONERGAN: Mr Paul had told you it wasn't available?---Correct.

10 And Mr Pelco - Mr Pelco - Mr Paul by his facial expression suggested to you he was surprised that Mr Diekman was able to table an offer that took, that comprised the Pelco Endura 2?---Ah hmm, yes.

Was there any other comments within the meeting while the Kings people were still there about the benefits or advantages of Pelco Endura 2 to your recollection?---Not that I recall.

Could the witness be shown Exhibit 17, tab 10, please. Can you just read that document to yourself?---Handwritten notes?

20 Yes, the handwritten notes with a 51 in the top right corner. On the left hand said it should have Kings Interview.

THE COMMISSIONER: This is - - -

MS LONERGAN: F10 may have two pages, Commissioner.

THE COMMISSIONER: I don't quite understand this, but my documents go from, in Exhibit 17 from tab 9 to tab 11. Is it the page, you want to go to page 54, the page marked 54.

30 MS LONERGAN: It's got 51 in the top right corner. Commissioner, I'll show your associate the document.

THE COMMISSIONER: Well that is part of, yes, that document is part -- well I have it in my documents as part of tab 9 and tab 9 runs from page 50 to this page which is I have as marked page 54.

MS LONERGAN: I'm sorry, Commissioner, I'll liaise with your associate and ensure that this problem is sorted out.

40 THE COMMISSIONER: Well just as long as everybody else - - -

MS LONERGAN: Yes, it's a one page document with Kings Interview on the left.

THE COMMISSIONER: Do you have it Mr Lloyd?

MR LLOYD: What we did from memory your Honour, there was some confusion because we didn't have the full set.

THE COMMISSIONER: No, this was the page that was, the wrong page had been inserted.

MR LLOYD: So I think what we did, we originally marked one page as F10, which was page 54 and then we found some other pages and we added them to make a complete set and F10 as I understand it is now a complete
10 set of the notes taken at this meeting on the 27th with the three - - -

THE COMMISSIONER: Well I don't have it.

MR LLOYD: - - - tenderers of now four pages.

THE COMMISSIONER: Yes, but I have no F10. Mr Lloyd says it comprises four pages. I have one page.

MS LONERGAN: Commissioner, we'll sort it out over the morning tea
20 adjournment and I'll come back to that document.

THE COMMISSIONER: All right. Well you want to ask about this document?

MS LONERGAN: I just want to ask one question about the - - -

THE COMMISSIONER: Yes, this is the document that, just so that we can identify it, that's the document where on the top left hand side says Kings Interview and someone has written a box around the word Kings.

30 MS LONERGAN: Correct.

THE COMMISSIONER: Yes.

MS LONERGAN: And at the bottom of that page Mr Morris, you see two nil?---Yes.

Does that assist you with at what stage of the interview the offer in relation to the Pelco Endura 2 was made?---Well if these notes are in sequential order then it was at the end of the meeting.
40

Thank you. If that document can be returned, please.

THE COMMISSIONER: Well this looks as it is an interview with Kings because at the top of the page there is the words Kings Interview and the offer of 2 million is at the bottom of the page, so to determine at what stage it was at any interview with Kings you only need the one page assuming, and I don't know whether it's the right assumption, that there are no other pages relating to the Kings interview. Do you follow what I'm saying?

---Yes, I do. But these aren't my notes, sir.

I see.

MS LONERGAN: Could that exhibit be returned, please. Could the witness be shown Exhibit 2, tab 6. And you see that document's a Kings Security revised schedule and you see under pricing Lenel/Pelco there's a figure of \$2 million plus GST. You see that?---Yes.

10 And down the bottom of the page there's a date, 23 February, 2009?---Yes.

Are you able to say whether you have seen that document before today?
---It appears to be a document that formed the basis of the Lenel/Pelco Endura 2 offer that Mr Diekman made.

Have you seen, have you seen the document before?---Yes.

When?---(No Audible Reply)

20 Was it during the tender evaluation period or after?---(No Audible Reply)

If you're not able to say, just say so?---The tender evaluation when the, the, the, the, the team met to discuss the merits of each of the, the offers?

Yeah, or during the meeting where Kings attended and tabled the envelope?
---I don't recall seeing it at the meeting because I think it was still in an envelope.

30 Are you able to say that the envelope was in fact opened?---No, I can't say that.

Are you able to say- - -

THE COMMISSIONER: Are you saying it wasn't opened?---I, I don't believe it was but I can't be sure.

MS LONERGAN: So you're unable to assist with, with when you've seen this document before, the Kings Security revised schedules?---Correct.

40 THE COMMISSIONER: Do you know whose handwriting it is at the top which says, "Kings Security revised schedule"?---No.

MS LONERGAN: Are you able to recollect discussions between the Tender Evaluation Panel immediately after the Kings interview on 27 February?---Yes.

And what, what matters were discussed?---The issue of whether Endura 2 was available.

And who led that discussion?---Anne Tregeagle.

THE COMMISSIONER: And what- - -

MS LONERGAN: Was she expressing surprise that the Endura 2 was available or what was the context of her- - -?---Well, I think, I, as I recall it was, it was myself and Daniel Paul, probably myself more so, that when I'd realised that they were offering Endura 2 that it was apparently available
10 and- - -

Do you recall what Daniel Paul said specifically about Endura 2 being available?---I recall asking Daniel Paul that, if I can paraphrase again, I said, "Daniel, you told me that Endura 2 wasn't available."

And what did he say?---And his response was, "Well, that was my advice." He, he looked as surprised as I did.

And do you recall whether that, whether your meeting with Kings occurred
20 before the meeting with ACG?---I'm not, I'm not aware of the order of, of interviews.

Do you have an independent recollection of what happened in the ACG tender interview on 27 February?---I have some recollection of it.

Do you recall whether there was any discussion about Pelco Endura 2 being available during the, during the meeting with ACG staff?---I don't recall us raising that issue with ACG.

30 All right. Do you recall when the availability of the Pelco Endura 2 was first raised with the ACG staff?---It was certainly after we had confirmed with Pelco that Endura 2 was now available.

THE COMMISSIONER: Who confirmed that?---Myself and Daniel Paul.

How did you do that?---We met with the Pelco representatives, it might have been the day after the interviews on the 27th or two days.

40 Who were they?---I couldn't be certain but it, it might have been Terry Yallouris.

MS LONERGAN: And was anyone from Q Video at that meeting? ---I don't recall.

Who, who organised the meeting?---Daniel Paul.

And was the purpose of the meeting explained to you by Mr Paul?

---Well, we, we were to go and confirm whether Endura 2 was available and, and just to touch base with the people that were providing it just to satisfy ourselves that we were not being led down the garden path in terms of, of supply.

At the meeting did Mr Paul in, in your presence make any comment to the Pelco people along the lines of I didn't know this was available, why didn't you tell me or anything of that nature?---No, I didn't hear that.

10 At what point was it decided by the Tender Evaluation Panel that ACG should have the opportunity to also quote on the Pelco Endura 2?---It was certainly after we were made aware that Endura 2 was available but I, I'm not sure of the date.

Was the decision made after you and Mr Paul attended and reviewed the camera to see, or the camera and associated system to see that it would work?---Yes.

20 Could the witness be shown Exhibit 17, tab 11 and that should be emails between yourself and Anne Tregagle dated 27 and 28 February?---Yes.

And you'll see the email halfway down the page of 27 February at 6.56pm from Anne Tregagle to you?---Yes.

And copied in to Daniel Paul and Mr Flanagan. Can you read that email to yourself and just dealing with the, the first paragraph of the 27 February email - - -?---Yes.

30 - - - there's a comment about ACG and Kings being less than four per cent apart, once Dan has completed adjusting the assessment scores to meet the interview committee's decision to weight price at 40 per cent. Now, do you recall during the process that the weighting of price was actually changed? ---I have a recollection of that, yes.

Whose idea was it to change the weighting of price?---I can't be sure.

Was it your idea?---No, no, certainly not mine.

40 THE COMMISSIONER: Well, do you know what the reason was?---No, I don't.

Have you been on evaluation panels before, Mr Morris?---No.

MS LONERGAN: Had Ms Flanagan to your knowledge been on evaluation panels before or are you unable to say?---I, I don't know.

I beg your pardon?---I don't know.

You don't know.

THE COMMISSIONER: You see, Mr Morris, there's something odd about this. The, the weighting was changed in the middle of the evaluation process, after the tenders were opened. The result of the change in the weighting was that Kings became number 1 and ACG became number 2?
---Yes.

So it was a fairly fundamental change, wasn't it?---Yes.

10

So I'm really interested to know what justified it, what caused it. Why would the panel, why did the panel decide to do this? Did it think it fair? I mean, these are all the questions that run through my mind. Can you help me on that?---No, I can't, sir.

MS LONERGAN: At that stage, Mr Morris, the position was that Anne Tregeagle had not allowed acceptance or entertainment of Kings \$2 million offer, that's correct, isn't it?---That's correct.

20

So at that stage, and I'll take you to the ACG documents if necessary, Kings' tender prices were higher than ACG's or, or I'll need to show you documents?---I, I accept that.

You accept that. Could the witness be shown an email dated 2 March, 2009, it's pages 59 and 60 and this is an email, Mr Morris, that you forwarded to Tony Grubisic of ACG on 2 March and if you can read that email to yourself please?--(No Audible Reply)

30

You're nodding, have you finished reading that now?---Yes, yes.

Mr Morris, at some time between 27 February, which you can take it from me was a Friday and the Monday, 2 March a decision was made according to this email that ACG be invited to provide an alternative cost for the Lenel/Pelco system. Do you see that?---Yes.

And that was because a context had been created that he was -- I'm sorry, that ACG was a dual preferred tenderer?---Yes.

40

Do you recall who introduced the idea of dual preferred tenderers?---Well it wasn't me. It may have been Anne Tregeagle. But I'm not - - -

And it may have been Mr Paul?--- - - - but I'm not sure.

You're not sure?---No.

Is it possible it was Mr Paul?---It could have been, yeah.

And this email suggests that ACG were invited to submit on the Lenel/Pelco system, do you recall whose idea it was for that opportunity to be extended?---No.

THE COMMISSIONER: Do you know why it was extended?---Well I presume on the basis that we wanted to offer a degree of fairness so that we could compare a price on the Lenel/Pelco Endura 2 system that was being offered.

10 Because I'm not sure – I mean I do understand that answer, but the Lenel/Pelco system was one of the alternatives offered by Kings in their original tender. Do you recall that?---As I said before I was assuming it was a Lenel/Pelco Endura 1.5.

Yes, I understand that too. But it was a Lenel/Pelco Endura system?---Yes.

20 So I might be asking you the obvious, but I'd like you to, just to give an answer to this so there's no misunderstanding, that being so what was it that triggered this invitation to provide alternative costs for a Lenel/Pelco system at this stage when the original tender of Kings had been based on a Lenel/Pelco system and it wasn't thought necessary to do it then?---Because Lenel/Pelco Endura 2 was now available. And that was the system we were hoping to achieve.

And it was the system that you now believed Kings were tendering?---In their offer on the table, yes.

30 By then, by the time you wrote this letter had you opened the envelope? ---Not that I recall. I think the envelope was returned to Kings.

And what, and they were asked to submit a new tender were they?---I'm not too sure what they were asked. I can only assume they placed the same offer on the table at their second interview where they were interviewed about it.

So did you have the second interview without seeing their second offer before?---Well I can't remember seeing their second offer before the second interview.

40 But how could – what's the point of having a second interview if you didn't have an opportunity to study the tender about which you were going to conduct the interview?---Because we knew they were offering the Lenel/Pelco Endura 2 system and Daniel Paul had already been familiar with the, the attributes of that system.

All right. Thank you.

MS LONERGAN: You see on page 2 of the email that we've just been looking at, which has got 60 on the top right corner, you have suggested that, "A response need to be provided by close of business Tuesday 3 March next week." See that?---Yes.

Does that suggest that this email was in fact drafted during the week before? See it's Monday, 2 March it's dated and it's requesting a response by Tuesday 3 March next week. Are you able to assist with whether this email was in fact drafted on the week before?---Well, the content of that email appears to be words that I would not use and I'm, I'm fairly confident that most of that email went to and fro between myself and Anne Tregagle to make sure that we were asking and putting into words the, the right way to frame the, the, the, the request.

Would you agree with me that the email suggests that first ACG is required to put in a response on the Lenel/Pelco solution?---(No Audible Reply)

And you're nodding?---Yes.

20 Yes. And second, that a meeting was organised for the Thursday of that week, 5 March. Do you see that?---5 March?

Yes.

THE COMMISSIONER: If you look at the email at the top of the page 59. ---Oh, I see.

MS LONERGAN: See that on page 60, the second paragraph?---Yes, I see that.

30 So you see as at Monday 2 March at 11.27am, it suggests that both those things had been decided by, if not you, the Tender Review Panel?---Yes.

Do you recall any discussions that led to that that involved Mr Paul? ---No.

What was the purpose of the second round interviews as you understood it at the time you sent this email?---To discuss with both the shortlisted companies the provision of the Lenel/Pelco Endura 2 solution.

40 And whose decision was it that the availability of the Lenel/Pelco Endura 2 system was so important that it needed a second meeting?---I can't be sure.

Are you able to say whether at the time you sent this email there had been a decision made that if the Pelco Endura 2 version was available that that would be the solution which the Art Gallery would proceed with?---Well that was the solution we, we were always hoping to achieve in any event, so

yes, if it was, if all the, all the planets aligned then yes we were going to accept the Lenel/Pelco Endura 2 system.

Was there discussion between the tender review panel prior to the second meeting which occurred on 5 March with the tenderers about how it would be – if both ACG and Kings were putting in a tender based on the Pelco Endura 2, how it would be decided which tenderer would be successful?
---Yes.

10 And what was decided? Was there criteria laid down?---There were, there were criteria, there was criteria based on price and, and non-priced criteria, yes.

And at that point was the weighting on price 40 per cent or did it revert back to the old weighting which had been 50 per cent, do you know?---I'm not too sure what the weighting was applied.

20 THE COMMISSIONER: And was there an issue of availability or was the availability the same to ACG and to Kings?---It was my understanding it was the same to both companies.

MS LONERGAN: I beg your pardon?---It was my understanding, no, no I'm not sure.

Did you have any – prior to the meeting on 5 March with the, with Kings did you have any discussion with staff of Kings about the availability of the Endura 2 or anything to do with the contract?---The question again, I'm sorry?

30 Did you personally have any discussion with anyone from Kings outside the ambit of the convened meetings?---No.

And do you know if Mr Paul had any discussion with people from Kings between the meeting on 27 February and the meeting on 5 March about the Art Gallery contract?---No.

Mr Paul didn't tell you if he had any such discussions?---No, he didn't.

40 Did you have any discussions with Mr Grubisic from ACG after the first meeting on 27 February and before the meeting on 5 March?---No.

You only corresponded with him via this email?---As I believe, yes.

Do you know whether there are any other emails you sent to Mr Grubisic prior to this one about ACG being required to submit a tender based on the Pelco system?---No.

Could the witness be shown Exhibit - - -

THE COMMISSIONER: Ms Lonergan, is this a convenient time?

MS LONERGAN: Yes, it is.

THE COMMISSIONER: The Commission will adjourn for 10 minutes.

SHORT ADJOURNMENT

[11.26am]

10

THE COMMISSIONER: Yes, Ms Lonergan.

MS LONERGAN: In February 2009, Mr Morris, did Mr Paul tell you that he was working on other jobs and other contracts with Kings?---No.

Is that something that you would have liked to have known?---Yes.

20 And, and do you see a problem potentially if Mr Paul was in regular contact with one of the integrators competing for the tender discussing other jobs? ---Can you ask that question again?

I put that badly, probably my intonation. Is the problem that Mr Paul is in regular contract with - - -

THE COMMISSIONER: Ms Lonergan, I think this is a matter for the Commission. I can see it going into unending questions from Mr Lloyd as well.

30 MS LONERGAN: Yes, yes, yes, all right.

THE COMMISSIONER: So I think this is a matter for argument rather than - - -

THE COMMISSIONER: Yes. Did Mr Paul tell you that he was in regular telephone contact with Mr Diekman from Kings during the period the tender was open, that is 3 to 23 February?---No, he didn't.

40 And did Mr Paul tell you that he was in regular contact with Mr Theissen at Q Video during that period as well?---No, he didn't.

Did Mr Paul tell you that in the latter stages of 2008 that Mr Theissen assisted him with preparing the budget for the Art Gallery?---No, he didn't.

Were you aware that Mr Paul had a telephone conversation with Mr Diekman from Kings in the evening of 27 February that lasted for almost 20 minutes?---I wasn't aware of that.

Would you consider that that was a proper or improper thing to do, to have a conversation with Mr Diekman at that stage?---Improper.

Were you aware - - -

THE COMMISSIONER: Well, I can only say that I will personally not take, I will have to decide this matter for myself and I will not regard this opinion evidence as being of any value to me.

10 MS LONERGAN: Thank you, Commissioner.

Could the witness be shown Exhibit 24 please. Just read that email to yourself, please?---Yes.

You'll see that's an email from Daniel Paul to you and Mr Yallouris?
---Yes.

And you see that the time is Tuesday, 3 March at 12.32am, you see that at the top, that it was sent?---Yes.

20

And it's lining up a meeting to take place on 5 March, 2009, do you see that?---Yes.

And it's to review and discuss the Pelco product, the latest versions of software et cetera, you see that?---Yes.

The timing of that email suggests, doesn't it, coming as it does after your message to ACG that they will need to come to a meeting on Thursday, that a decision had already been made to proceed with entertaining the Pelco

30

Endura 2 version?---Yes.

So in your evidence earlier you suggested that - well, your recollection was that it wasn't until it had been confirmed in person with the Pelco representative that the Endura 2 version was in fact available that ACG was invited to give a second, I'm sorry, to provide an alternative tender based on Endura version 2?---Correct.

Does that email assist you now along the lines of that that decision was made before the demonstration had occurred that you attended with Mr Paul and Mr Yallouris of Pelco?---That's right.

40

Could the witness be shown Exhibit 2, tab 7. And you'll see that's a document from Kings headed Tender Proposal Clarifications?---Yes.

Now, are you able to say, sorry, if you can turn to page 126 of that document and you see it's dated 3 March, 2009?---(No Audible Reply)

Have you got that?---I don't see a date on it I'm afraid.

Down the bottom left of page- - -?---Oh, yes.

- - -126?---Yeah, you're right.

Is that, are you able to assist with when you first reviewed the document?
---Would, it would have been around 3 March.

10 And you see on page 122 of the document there's a page titled Clarifications
as per Tony Morris, do you see that?---Yes.

Were these matters that you raised with Kings about which answers were
required for the second interview?---It would appear so.

And you see question 3 asks the, the question, percentage of Kings
electronic security turnover would this project represent?---Yes.

Do you see that question?---I see that question.

20 I'm sorry. And there's an answer given, the project would represent
approximately 20 per cent et cetera. Was that a question that you thought of
asking?---No, that wasn't my question.

Whose question was it?---I can't be sure.

Do you know whether the same question was posed to ACG?---I assumed it
was.

30 And you assumed it was because that would be fair, wouldn't it, that both
- - -?---Yes.

- - -final round tenderers would be asked the same questions?---Correct.

If it wasn't asked of ACG, have you got any explanation as to why it
wasn't?---I am aware now that it wasn't based on the documents I've seen
tendered. I can only assume that it was an error on my part.

40 If the witness could have a look at Exhibit 17, tab 12. Have you got tab 12
there, Mr Morris?---Yes.

And you see that's a, I don't know if you can see it on your copy down the
bottom or sorry, the middle of the page there's the letters ACG?---Yes.

But it's a tender response revision 2 Pelco option. See that?---Yes.

And you turn to page 63 of that document and you'll see it's an ACG
document?---Yes.

And on page 64 there's a letter directed to you, signed by Mr Collier, advising that ACG has appropriate certification for Pelco, and that's the second-last paragraph on that page?---Yes.

And you see there's a comment made, "The product we are proposing is Endura 2. Accreditation for Endura 2 is not yet available until April 2009. Do you see that?---Yes, I see that.

10 Did you have any discussion with Mr Paul about this document from ACG and that comment regarding the availability of Endura 2?---Not that I recall.

Do you recall whether there was any discussion in the context of the meeting that was held with ACG on 5 March about the availability of Endura 2?---No.

Commissioner, I should have tendered an exhibit before the morning tea adjournment. That's the two pages of email dated 2 March, 2009 by Mr Morris to Mr Grubisic.

20 THE COMMISSIONER: Yes. The email of 2 March, 2009 from Mr Morris to Mr Grubisic is Exhibit 117.

**#EXHIBIT 117 – EMAIL FROM MR MORRIS TO MR GRUBISIC
DATED 2 MARCH 2009**

30 MS LONERGAN: Thank you. And if you could turn to page 65, I'm sorry, they've (not transcribable), if you turn to page 65 of that document that we were just looking at which is tab 12 of that bundle you have.

THE COMMISSIONER: You're saying the tender response?

MS LONERGAN: It's the ACG tender, the tender response, yes. Can you see page 65, there's a schedule of pricing?---Yes.

And you see that the price is 1.948 million plus GST?---Yes.

40 And that is cheaper than the Kings response of 2 million plus GST?---It is, it is, yeah.

Are you able to say now whether you read that ACG document on 5 March?---Yes.

And did you understand on 5 March that ACG's tender price was actually less than Kings - - -?---Yes.

- - - for the same items?---Yes.

Are you able to say why it was that Kings were selected over ACG at that stage?---My recollection of it was among other things that one of the things that gave us a better opinion of Kings over ACG was that Kings had demonstrated or at least in my mind had demonstrated a very eager approach to the, to the job. They seemed to be very eager to put a system in for the Art Gallery of New South Wales.

10 THE COMMISSIONER: The system being the Endura 2?---Correct.

MS LONERGAN: And you now understand that the Endura 2 was the system they quoted at – sorry, was the system included in their initial tender response on 23 February?---Yes, it appears so.

And at that stage the price they put on that system was \$2.6 million plus GST?---Correct.

20 THE COMMISSIONER: And at that stage ACG was the preferred tenderer, when I say preferred tenderer it received the highest ratings? ---Yes.

MS LONERGAN: It appears doesn't it that the process that has been gone through and I'm not being critical of you here is between 23 February and 5 March Kings had in effect been permitted to undercut their own tender price for the same equipment?---Yes.

That is the Pelco Endura 2?---Yes.

30 And if you had known that at the time would you have allowed that process to occur? If you had in fact been aware that their first tender response was on Pelco Endura version 2 and they quoted 2.6 plus million and their supposedly revised tender response was exactly the same equipment but undercutting themselves by 600,000, would you have allowed that?---No, you wouldn't have.

That's because it's not a fair tender process. That's right isn't it?---That's right.

40 Did you write the tender evaluation report?---No.

No. Who wrote it?---Daniel Paul.

Could the witness be shown Exhibit 2, tab 8 please. Now, you'll see, Mr Morris, that the text of the report goes from page 150 to 156 and on page 156 there's a series of signatures?---There are no signatures on page 166.

I'm sorry, 156, I'm terribly sorry?---156?

156?---Yes.

And you see there's, everyone's dated 6 March, 2009 next to the signature?
---Yes.

And my question for you is if you can assist whether the appendices that appear after that page which run from page 157 to 182 were attached at the time you signed the document?---I can't be certain.

10 And if you could turn back to page 155 and read to yourself paragraphs 11 and 12 on that page?---Yes.

Just 11 and 12. Do you see anywhere in those paragraphs a statement to the effect that ACG had tendered on the Pelco Endura 2 and that their price was 1.93 million?---No.

What do you understand paragraph 12 to be referring to in relation to ACG?
---I'm not too sure I can answer that question.

20 Do you know who the Tender Evaluation Report was provided to at the Art Gallery apart from yourself, Anne Treggeagle and Ms Flanagan?---(No Audible Reply)

I withdraw that. Do you know whether the Tender Evaluation Report was provided to any upper management or the board?---It would have gone to the board, yes.

Now when you say would have do you know if it in fact went to the - - -?---
I don't, can't say for sure that it went to the board but I assume it did.

30 And you expect it went to the board because that was a process that was discussed before the tender?---Correct.

Could the witness be shown Exhibit 17, tab 6A and if you could turn to page 525 of that exhibit please. Exhibit 17, tab 6A.

THE COMMISSIONER: Did you say 6A?

40 MS LONERGAN: 6A. Do you see page 525, the second last paragraph under the heading "Summary"?---Yes.

And you see that there's a mention of a price bid of, sorry, there's mention that the tender panel concluded Kings was the preferred tenderer?---Yes.

And you see then there's a reference to the price bid of 1.803 million, do you see that?---Yes, I see that.

Do you know what the source of, of that information was?---No, I don't.

It does not accord, does it, with Kings' price bid of two million plus GST?
---No, it doesn't.

Could the witness be shown Exhibit 20. And you see that's a Premier's Department guideline for the engagement and use of consultants, I'm sorry engagement and use of consultants. Do you see that?---Yes.

Have you seen that document before?---No.

10

Did Ms Flanagan convey any information to you after the contract was awarded to Kings to the effect that she had received some information from a staff member at Westfield about Mr Paul?---Yes.

20

What was the information she conveyed to you?---As I recall, that information came to light after I had, or certainly after I had been notified to appear for, for an interview at ICAC and it was a very short meeting on, on the ground floor of the Art Gallery where I made mention that I'd been called to give evidence, to give a, to be interviewed by ICAC about the, the tender process.

So what year was this?---(No Audible Reply)

More than a year after the contract was completed?---Oh, yes, yes. I, I, it might have been 2010, 2011, but it was- - -

30

And what were you told?---She said that she knew that I, I'd be called and that it probably centres around Daniel Paul and that she had received information from Michael Julian about some suspicious activity with, revolving around Daniel Paul.

Was there any information conveyed to you by Ms Flanagan about Mr Paul that came from Mr Julian prior to that meeting that you've just referred to or was that the first thing you heard?---That was the first, yeah.

All right. Do you recall that Mr Grubisic from ACG made a complaint about being unsuccessful on the Art Gallery tender?---Yes, he was given a post interview, yes.

40

Right. Could the witness be shown an email from Mr Grubisic to Mr Morris dated 31 March, 2009, which I will hand up. If you could read that email to yourself, please?---Yes.

What action did you take if anything in relation to that email from Mr Grubisic?---I reported that matter to the, the tender panel.

And what, just focussing on Mr Paul, what did Mr Paul say about the complaint?---He, as I recall, he said it was just sour grapes on the part of Tony Grubisic.

Did you have any conversation yourself with Mr Grubisic about his complaint?---No.

10 Did you take part in the, you mentioned there was a tender debrief afterwards with people from ACG. Was Mr Grubisic there?---Yes, he was.

Did Mr Grubisic complain to you that in his opinion Paul favoured his mate?---No.

I tender that.

THE COMMISSIONER: You're tendering - - -

MS LONERGAN: Yes, I tender that email, Commissioner.

20 THE COMMISSIONER: The email from Mr Grubisic to Mr Morris of 31 March, 2009 is Exhibit 118.

#EXHIBIT 118 - EMAIL STREAM FORWARDED BY MR MORRIS ON 8/04/2009

30 MS LONERGAN: I'll just ask a few more questions about that exhibit if I may. Did you have a discussion with Mr Paul about this aspect of Mr Grubisic's email that referred to Pelco not complying with the requirements of the contract?---No.

And in terms of any response that was to be provided to Mr Grubisic, to your knowledge was anything provided in writing answering the issues raised by Mr Grubisic?---I don't recall anything being put in writing to Mr Grubisic.

Nothing from you?---Nothing from me, no.

40 I'm moving now to the, the trip to Las Vegas to the ICS conference. I tender a bundle of documents that evidence Mr Morris' travel arrangements application and the supporting material. Commissioner, if I could tender those styled bundle of overseas travel application documents and supporting material for Tony Morris.

THE COMMISSIONER: Well it's a bundle of documents with the letter from Capon to Ms Darwell of 9 March, 2009 is the top document and that will be Exhibit 119.

#EXHIBIT 119 - BUNDLE OF DOCUMENTS RELATING TO MR MORRIS' TRAVEL TO THE USA

MS LONERGAN: Mr Morris, you'll see the first page of that bundle is a letter dated 9 March from Mr Capon to Ms Darwell?---Yes.

10 Is Ms Darwell the person in charge of approving overseas travel?---I assume so.

Do you know why the application went through on 9 March rather than an earlier time? Is there any reason that you're aware of?---Not that I'm aware of, no.

I beg your pardon?---Not that I'm aware of.

All right.

20

THE COMMISSIONER: Well I mean one possibility is that it was only prepared, the application for approval was only made shortly before 9 March. Could that be right?---I can't recall when the application was made, but it's a possibility, yes.

Did anyone suggest to you that you ought not submit your application until after the tender was awarded?---No.

30 And you'll see on page 239 of that bundle, the last document in the bundle? ---Yes.

There's an invoice from SCI?---Yes.

And you see it sets out various costs there. Those costs are related to your expenses for the trip to ICS. Is that correct?---Yes.

And there's no aspect there that relates to your wife's expenses is there? ---No.

40 And your understanding is that Mr Paul was reimbursed in full by the Art Gallery for those expenses?---Yes.

Are you able to assist with who paid for incidental expenses on the trip such as food, day trips, matters of that nature?---I don't recall anyone actually paying for my food or my wife's food during that process or that trip to Las Vegas.

Who covered those for you?---I believe I did or my wife.

Right. There was a, do you recollect the trip in a helicopter over the Grand Canyon as part of that trip?---Yes, there was.

MS LONERGAN: And do you recall who paid for that or did you pay for it?---I can't recall.

10 Were you aware that there was a Gifts and Benefits Policy in place at the Art Gallery at the time you, I'm sorry, I withdraw that. Were you aware of the Gifts and Benefits Policy in place at the Art Gallery in 2008 and 2009?
---Yes.

And did you make declarations to your managers pursuant to that Gifts and Benefits Policy?---Yes, I have made some applications under the Gifts and Benefits, yes.

Do you think you've missed any as in you've been give some gifts that you haven't declared?---I have missed some.

20 And, and what, what are they?---I recall receiving a, a, a hamper, a Christmas hamper from Mr Paul. I can't remember what year.

If I suggest to you it was 2008 does that sound right?---It could be, yes.

And you didn't declare that one?---No.

30 And why not?---I can't give a reason other than the fact that it, it didn't appear to me to be a fairly expensive hamper and I thought that there was some benchmark of what you had to declare and what you didn't have to declare.

THE COMMISSIONER: Did you get a hamper in 2009?---Pardon me?

Did you get one in 2009?---I can only recall receiving one hamper.

In 2008?---I can't remember what year it was.

It was before the tender was awarded?

40 MS LONERGAN: Before the tender to Kings was awarded?---It could be, yes.

Well, well, it was?---Okay.

Because the tender was awarded to Kings in February 2009?---Oh, yes, yeah, okay.

THE COMMISSIONER: So the Christmas spirit departed once the tender had been awarded?---Pardon, pardon me?

Nothing.

MS LONERGAN: The tender - I withdraw that. And was about tickets to a concert, a Simon and Garfunkel concert?---Yes, I, I did, Daniel did arrange for tickets to a Simon and Garfunkel concert for myself and my wife - - -

10 Yes?--- - - - but I repaid that.

All right. You repaid that to Mr Paul how, in cash or - - -?---Electronic transfer.

All right. And the value of that concert was quite - - -?---\$460.

Are you sure it was \$460 not more?---No, it was, he told me it was \$460 and I, well - - -

20 If I suggested it was 745 does that surprise you?---That surprises me.

Your recollection is you only paid Mr Paul back \$460, is that right?
---Correct.

And the Christmas hamper, if I suggested it was worth \$450, does that surprise you?---Well, for the product that was in the hamper I'd find that surprising.

30 All right. And, and you didn't pay back Mr Paul for the Christmas hamper I assume?---No.

And did you go to an AC/DC concert with Mr Paul?---I did.

Did you pay for your ticket to that?---I have a recollection I did but I don't have a, I don't have a, I can't support that.

Could the witness be shown Exhibit 19 please.

40 THE COMMISSIONER: Al this being taken out by Mr Paul and getting Christmas hampers and being the recipient of gifts from him in various forms, that, that ceased after the tender was awarded did it?---I thought the, I thought the AC/D, AC/DC concert was after the tender had been awarded.

I see.

MS LONERGAN: It was in 2010, the AC/DC concert?---Yes.

I'm sorry, did you say you paid Mr Paul back for that or that was a gift?---I believed I had paid it back but I can't, I don't have any proof of that.

Right. And your understanding of the Gifts and Benefits Policy at the Art Gallery is that there's some sort of ceiling on what you need to declare, is there, or a threshold?---Yeah. I think, it used to be \$50 but - - -

All right. So a gift under \$50 you don't have to declare, is that the way it works?---Correct.

10

Are, are you sure about that?---I'm reasonably positive.

All right. And in the past you have declared some gifts and had them noted on the - - -?---Yes.

- - - register, haven't you? Is there any reason why you didn't mention the AC/DC ticket to your supervisors give that would have been a value of over \$50?---Oh, well, as I say I, I thought I had paid it back so in my view it wasn't a gift.

20

Right. Did you have any knowledge of rebates that are applicable, that were applicable in 2009 for some security equipment?---I do recall some mention of rebates, yeah.

THE COMMISSIONER: What did you understand by rebates?---My understanding was reimbursement of, of, of some of the costs.

By whom?---By the supplier.

30 To whom?---To the Art Gallery.

MS LONERGAN: And what's your source of that information?
---Daniel Paul.

What did Daniel Paul tell you about the availability of rebates to the Art Gallery on this particular contract?---It has, as I recall it, it centred around some products that might achieve a rebate at the end of the, the project but he didn't tell me what sort of rebate, what, how, what that calculation was - - -

40

Did he tell you he was---?- - -or on what products.

Did he tell you he was writing to various suppliers to find out what kind of rebates might be available?---No, I don't recall that.

Did he tell you that it was your, your obligation as the Art Gallery staff member to inquire and chase up rebates?---No, he didn't.

Did you get the impression from Mr Paul that he'd do that?---Yes.

Could the witness be shown Exhibit 65, please. And if you can turn to tab 11, I'm sorry, tab 7. If you turn to page 150 of that document, top right corner. And I should state this is Mr Paul's consultancy proposal document?---Okay.

And have you got page 150 there, Mr Morris?---yes.

10

If you can look at the second-last paragraph where involved it says, "Costs Savings Rebates"?---Yes.

And read that paragraph to yourself?--- Yes.

And you see that that says, "The rebates are issued directly from the manufacturer to the client." Do you see that?---Yes, I see that.

And the client's you in this circumstance, isn't it, the Art Gallery?
20 ---Correct.

And you see in bold ahead of the dot points in the middle of the page there's a statement, "Some of the additional benefits Daniel brings to his client includes", and this is one of the additional benefits. Do you see that?
---Correct, yep.

Are you able to say whether that statement in Mr Paul's proposal led you to believe that Mr Paul would chase up rebates related to the Art Gallery?
30 ---Yes.

Sorry, available for the Art Gallery?---Yes.

Could the witness be shown an email dated 25 February, 2009. I tender that email.

THE COMMISSIONER: Email from Paul Thompson to Daniel Paul of 25 February, 2009, is Exhibit 120.

40 **#EXHIBIT 120 - EMAIL FROM MR THOMPSON TO MR PAUL RE
NSW AG SUPPORT PACKAGE SENT AT 6:30PM ON 25
FEBRUARY 2009**

MS LONERGAN: And, Mr Morris, you'll see that that's an email from Mr Thompson who's with Q Video?---(No Audible Reply)

You're nodding?--- Yes, yes.

And if you can read that to yourself, it suggests, doesn't it, that Q Video actually told Mr Paul on 25 February, 2009, that rebates would be available--?---Yes.

--for the Art Gallery project?---Correct.

Did Mr Paul tell you that he had received information from Paul Thompson from Q Video that rebates would be available?---No.

10

And, Mr Morris, I'm returning to the gift register and the Art Gallery Gifts and Benefits Policy. Could the witness be shown the Art Gallery Gift Register which I will hand up. And you see, Mr Morris, it covers the period 21 March, 2007 in the top left to 13 July, 2011?---Yes.

And you're nodding yes?---Yes.

And you see that on 14 May, 2009, you've declared a gift that you received from Westfield?---Yes.

20

And that appears to be \$1,000. Is that right?---It was two \$500 Westfield gift vouchers.

And that was for a service you provided to Westfield as a guest speaker at a conference?---Correct.

And you were authorised by Ms Tregeagle, were you, to accept that gift?---Ms Flanagan.

30 Ms Flanagan, I'm sorry, thank you?---Yes.

So that suggests doesn't it that you're aware of the need to advise your supervisors about large gifts?---Yes.

Yes. And you see next to 24 December, 2012, you've noted that you received a \$160 bottle of scotch?---I can't see the, the entry. What date was it again?

40

24 December, 2010, so it's fourth from the bottom?---Yes, I see that.

What is the source of your understanding that you have to -- I withdraw that. What's your understanding of the threshold in terms of dollar amount that you have to report gifts?---I had a feeling it was anything less than \$50 you didn't have to declare.

All right. I tender that gift register.

THE COMMISSIONER: The Gift Register of the, the extract from the Gift Register of the Art Gallery is Exhibit 121.

#EXHIBIT 121 - EXTRACT FROM THE GIFTS AND BENEFITS REGISTER OF THE ART GALLERY OF NSW

10 MS LONERGAN: I also hand up some documents related to the hamper that Mr Morris has given evidence about and the Simon and Garfunkel tickets. The first document sees a, is a receipt related to a hamper and red wine and we see total cost \$450?---I see that.

And it's from Daniel Paul to you?---Yes.

He's there as the requestor and you're there as the recipient?---I beg your pardon, the last statement?

20 I beg your pardon?---What did you say for the last- - -

He's there as the requestor- - -?---Yes.

- - -on the left side and you're there as the recipient- - -?---Yes.

- - -on the left side. Okay. I tender that. An appropriate description, Commissioner, would be- - -

THE COMMISSIONER: Yes?

30 MS LONERGAN: - - -a, a booking receipt for hamper delivered on 17 December 2008 from Mr Paul to Mr Morris.

THE COMMISSIONER: It's a booking, well, I'll describe it as a booking receipt of Jones The Grocer for 17 December, 2008, and that's 122.

#EXHIBIT 122 - BOOKING RECEIPT OF JONES THE GROCER DATED 17 DECEMBER 2008

40

MS LONERGAN: 122?

THE COMMISSIONER: Yes.

MS LONERGAN: And tender an email with a booking receipt attached dated 20 April, 2009. And if you could - - -

THE COMMISSIONER: Well it's - emails isn't, there are emails on there.

MS LONERGAN: I'm sorry, Commissioner?

THE COMMISSIONER: There are, there's a string of emails.

MS LONERGAN: Yes. There's email 17 April and 20 April, 2009 relating to the Simon and Garfunkel ticket to a concert - - -

10 THE COMMISSIONER: Yes. Yes, thank you. Exhibit 123 is a string of emails the last of which is from Mr Morris apparently to himself of 20 April, 2009.

#EXHIBIT 123 - STRING OF EMAILS, THE LAST OF WHICH IS FROM MR MORRIS TO HIMSELF DATED 20 APRIL 2009

20 MS LONERGAN: Thank you, Commissioner. And I, I tender a document headed Role Profile, Head of Security and Gallery Services. If you wouldn't mind Mr Morris having a look at this document. Can you confirm that that's the role profile with which you were provided for the Art Gallery?---It appears to be, it appears to be.

I tender that.

THE COMMISSIONER: The role profile for the head of security and Gallery services is Exhibit 124.

30 **#EXHIBIT 124- ROLE PROFILE FOR THE HEAD OF SECURITY & GALLERY SERVICES**

MS LONERGAN: Excuse me, Commissioner. Those are my questions, Commissioner.

THE COMMISSIONER: Mr Smith, do you have any questions?

40 MR SMITH: No, Commissioner.

THE COMMISSIONER: No. Mr Lloyd, do you have questions? I just need to inquire at this stage.

MR LLOYD: I do.

THE COMMISSIONER: Yes. Other than, Mr O'Mahoney, you will want to - you may want to re-examine.

MR O'MAHONEY: If I, if I do Mr Commissioner, it'll be (not transcribable) the questions.

THE COMMISSIONER: Be short. Anybody else wishing to ask questions?

MR MAHER: I may your Honour, depending on what questions are asked before.

10 THE COMMISSIONER: All right. Mr Lloyd.

MR LLOYD: I'm always taking up the (not transcribable) Mr Morris, you were a police officer for many years weren't you?---Yes, I was.

How many years were you a police officer?---25, 26 years.

Over those 25 years you gave evidence in court on numerous occasions didn't you?---Yes.

20 As part of your training in the police you were told about the importance of keeping notes of important conversations weren't you?---Yes.

And you were told of the importance of keeping notes just so that there could no doubt as to what was said in that important conversation. Correct?---Yes.

Because without the ability to refer to notes you really can't be certain looking back over the years as to what exactly was said in an important conversation?---Correct

30

And in any of your meetings with Daniel Paul you appeared to have kept no notes?---Correct.

The only notes we have of the meetings of the Tender Evaluation Committee would be the minutes kept at the meetings. Correct?---Yes.

They were kept by Anne Tregagle as I understand it?---Correct.

40 The purpose of those minutes was to record everything of importance said in those meetings?---Yes.

And they were circulated to members of the Tender Evaluation Committee after Anne Tregagle had typed them up?---Yes.

And you had the opportunity to accept or reject what they said as an accurate record of the meeting?---Yes.

The only notes we have of the meetings of the Tender Evaluation Committee of 27 February, '09 and 5 March, '09 are handwritten notes of Anne Tregeagle?---Yes.

She was the chairwoman of the TEC?---She was.

And she appeared to you to be a professional person who as the chairwoman would go about her tasks assiduously?---Yes.

- 10 So if anything of import was said in a meeting where she kept notes you would have expected her to know that?---Yes.

You kept no notes of those two meetings?---I don't recall keeping notes, no.

If you did keep notes where they be now?---They would either be in my office which I can say now there are no notes in my office, or if it was relating to the interview, if I made notes they would formed part of the, the tender or the tender evaluation.

- 20 You've been in this hearing room to my observation every minute of each day that this hearing has been conducted, correct?---Yes.

You heard the evidence of my client, Mr Paul, that his recollection was that at those meetings notes were kept by each of you and then handed to Anne Tregeagle. Would you agree or disagree with that or you're just not sure? ---I'm not sure.

So that may have been the case?---It may have been the case.

- 30 And if they had been the case that you kept notes we would have expected you to keep a note of important things as well?---Yes.

You said in your evidence in response to one question from Counsel Assisting that prior to you sitting on this Tender Evaluation Committee considering the proposals of Kings and others, you'd never sat on a tender evaluation committee before, do you recall saying that?---I do recall saying that.

- 40 Do you want to reconsider that answer?---I can't recall any other tender evaluation committee I have sat on.

Well, what about the tender evaluation committee you sat upon to select Mr Paul as the security consultant?---I stand corrected.

It's easy to make mistakes isn't it?---Yes.

And just to show you a document, and I'm going to try and keep the documents to a minimum, I'd like to show you notes that were kept when

you were sitting on that selection committee, they form part of Exhibit 17, they are F1 and they clearly show, particularly the last four pages, three of those four pages being handwritten scoresheets.

THE COMMISSIONER: What do you of Mr Morris; notes, Mr Lloyd?

MR LLOYD: I'm about to put the question to him.

10 You can see, and these pages are numbered in the top right-hand corner - - -
?---Yes.

- - - pages 227 through to 229 inclusive appear to be the score sheets of yourself, Anne Tregeagle and Jason de Bruin, is it - - -?---That's correct.

- - - that sat on that TEC?---Correct.

And you each prepared a separate scoresheet?---Yes, we did.

20 And it would make sense to me, correct me if I'm wrong, that each of you independently scored the abilities of each of those tenderers in the interview process?---Yes.

And I want to suggest to you, just as you did that on that Tender Selection Committee, so it was on the main one in February/March of '09 when you were called upon to select between the various integrators bidding there, you kept separate scoresheets?---I have no recollection of doing so but it is possible.

30 Well, let's, what is the purpose of the scoresheet?---To rate the different candidates for a tender.

And there were four of you sitting on the TEC. Correct?---Yes.

And it would be remarkable if each of you gave the same score on every item to a particular bidder?---Yes.

40 So wouldn't it make sense that if you were fair dinkum about the process you'd each use a separate sheet and then provide them to the chairwoman at the end of the meeting?---Well, that's one, that's one option, yes.

You heard Mr Paul's evidence that his recollection of the process was that each of you at the meetings on the 27th completed a scoresheet such as these and then at the end of the interviews, handed them to Anne Tregeagle so that she could in effect work out who came first on individual items?
---I've heard that evidence, yes.

Well, do you agree or disagree with it or you just don't remember?

---I don't recall, I don't recall making an independent assessment, filling out the assessment report and handing it to Anne Tregeagle. It is possible I did but I can't recall doing it.

Well, you weren't on the meeting merely to sit as a puppet, were you?

---No.

You were there to give your input into the process. Correct?---Yes.

10 You wanted to have a say?---Yes.

All of you, to your observation, wanted to have a say?---Yes.

So I want to suggest to you it's most likely that each of you completed a scoresheet and then handed them to Anne Tregeagle?---It is possible but I don't recall doing it.

Because you don't have the ability to refer to written notes you made at the time, do you?---No.

20

THE COMMISSIONER: He has actually replied to that many times, Mr Lloyd, the answer is no.

MR LLOYD: Now, I want to take you back, and I'll try and do this re-examination by Exhibits late shown to you through your evidence yesterday. You were shown an email, Exhibit 120, and perhaps you could be shown that again. And I want to show you together with that a new document which you may not have seen. It's an email from Mr Paul, copy to you.

30 THE COMMISSIONER: I take it this has been shown to Counsel Assisting?

MR LLOYD: Yes, it was in a small bundle we provided.

THE COMMISSIONER: In the bundle.

MR LLOYD: It was either 4 or 5 in that series. And you're probably ahead of me, Mr Morris, but when you look at it, there's an email from Daniel Paul of the 24th of February, '09, to suppliers of the products, copy to yourself and Anne Tregeagle- -?---Yes.

40

- - - seeking confirmation of guarantees, warranties rebates. Correct?---Yes.

Let's look at items 102. Warranties, please confirm in writing the period of warranty offered by your organisation applied to systems. Rebates, please confirm in writing any product rebates being offered by your organisation. Rebates will be claimed directly by the Art Gallery of New South Wales. This should not be applied by way of discounts. It was copied to you?

---Yes.

And it says, "Dear all, as previously discussed prior to the tender"?---Yes.

And I want to suggest to you on looking at that email, refreshing your memory that you will recall that Mr Paul clearly and openly was asking and telling you and Anne Tregeagle he was asking suppliers for warranties and rebates. Correct?---Yes.

10 And I want to suggest to you on looking at that it will refresh your memory, that he'd earlier told you he was going to do that?---I can't recall that. Clearly, clearly he sent the email, clearly I received it, but I don't recall it.

You're not denying it could have occurred, that he had conversations with you saying, look I am going to ask the suppliers if they can provide details of their warranties and any rebates that might be on there?---I recall that we were successful in getting extended warranties, yes.

20 Okay. Let me take that issue up with you. How did you gain the information that you were successful in gaining extended warranties?
---Because the suppliers had provided documentation to that effect, that they were prepared on certain products to extend the warranty periods.

And I want to suggest to you, looking at Exhibit 120 that confirms that Paul Thompson, and we all know he's from Q Video was saying as far as the products they were supplying they were going to extend a full three year warranty. Correct?---Yes.

30 But I want to suggest to you that Daniel Paul told you that?---He may have told us that, yes.

Well you were keen to know?---To be fair I think it didn't enter our minds about extended warranties until Mr Paul had suggested that there might be a possibility we could get extended warranties.

THE COMMISSIONER: And when was that?---I can't be sure.

Before or after the tender?---(No Audible Reply)

40 If you're not sure - - -?---No, I'm not sure.

And who supplied the warranties to you the manufacturers or suppliers or somebody else? How did you actually get it into your hands is what I'm asking? Obviously the warranty was - - -?---They either, they either came to me via email or via normal mail.

From whom?---From some of the suppliers. I can't remember which ones.

All right. That's all I wanted to know. Thank you.

MR LLOYD: Well I want to suggest to you that there's no mystery about this Mr Morris. I want to suggest to you that Daniel Paul told you from the time he was engaged that - - -?---I lost that, Commissioner.

THE COMMISSIONER: I'm sorry, I thought you'd finished the question. So I was asking what had he told you when you were about to say so, so I'm sorry for interrupting.

10

MR LLOYD: I was, I thought you were chopping me off at the gate but I'll do it by way of a document. Can I just take you back to a document you were most recently shown and it's tab 7 as part of Exhibit 65. Do you recall just being shown that?---Yes.

Now, it's a massive document, if you want to look at it please do so, Counsel Assisting took you to one page but let's go to the beginning. You probably should look at page 139?---That is the first page.

20 The first page, it's a letter to the Art Gallery from Mr Paul dated 12 August the previous year, that is '08, okay?---Yes.

The next page 140, it's the proposal of Mr Paul for the security systems upgrade consultancy, are you with me?---Yes.

And he's telling you what he can do in the document, what his proposal would be and let me just take you to two items at page 150?---Yes.

30 Where the last two bullet points, I should go back to put it in context, halfway down the page he states some of the additional benefits Daniel brings to his clients include but not limited to and it's the last two bullet points on that page I'm concerned with, cost saving rebates and then extended warranties?---Yes.

So you read this, didn't you, this document when it was provided?---Well, I believed I did, yes.

Well, well, you were on the selection committee weren't you?---Yes.

40 And it would have been important to you to know the content of what Mr Paul could do for the Art Gallery?---Yes.

It was your first tender selection committee you'd ever sat on, right?---Yes.

So you were keen to do a good job?---Hoping to do a good job, yes.

Yes. Well, you would have read this, correct?---One would assume so.

And looking at page 150 you would have seen that he was saying to you that one of his benefits was he could be involved in trying to get cost saving rebates and extended warranties?---It clearly states that.

It clearly states that, no mystery?---No.

And when we look at the, the email which we haven't tendered yet dated 24 February, '09 from Daniel Paul to the suppliers - are you with me?
---Yes.

10

That's exactly what he's trying to do in effect?---Yes.

We have it in an earlier version - - -

THE COMMISSIONER: It's not suggested, Mr Lloyd, that he wasn't trying to do it.

MR LLOYD: No. I'm just confirming it, Commissioner, its Exhibit 91 apparently.

20

THE COMMISSIONER: There's no doubt that Mr Lloyd, I'm sorry, I beg your pardon, Mr Paul, attempted to negotiate rebates.

MR LLOYD: Commissioner, you, you asked questions about from when did he know that.

THE COMMISSIONER: Yes, because that goes to a different issue.

MR LLOYD: Well, I'm clarifying the timing, he's been aware of that since August of 2008.

30

THE COMMISSIONER: Yes, you've clarified that.

MR LLOYD: Thank you, I'll move on.

But just going to that one page, it was suggested to you as a result of reading this, this is the rebate bullet point - - -?---Yes.

It's the same email but just take me back to the big document, Mr Morris, you see the bullet point "rebate"?---Cost saving rebates, yes.

40

Yes, successfully negotiating a substantial dollar rebate which is issued back to the client. Now, it was suggested to you that you interpreted that to mean that Daniel Paul would chase the rebate, he would collect it?---Yes.

Well, I suggest it says nothing of the kind. It says he would negotiate a rebate which would be issued back to the client, the Art Gallery.

THE COMMISSIONER: Mr Lloyd, you're quite right to ask these questions, I should stopped them by Counsel Assisting. These, what this clause means is for me to decide and I don't, I'm not interested in what Mr Morris thinks is the - - -

MR LLOYD: Well, this is the problem with leading questions which come eternally from Counsel Assisting. I'm not being picky, they put words into people's mouths?

10 THE COMMISSIONER: I prefaced my remark by saying you're entitled to ask the question and I should have stopped, but I'm just telling you that in case it helps.

MR LLOYD: I'll purely suggest you, I'll finish, Mr Morris, I suggest there's nothing in here that says Mr Paul will chase up the rebate?
---It doesn't say that, no.

Thank you. And looking at the email at 120, Exhibit 120- - -?---Yes.

20 - - -the second sentence, "Actually extends a three-year full warranty." Are you with me?---It does.

Now, done deal, you have a three-year warranty?---Yes.

But the, but the next paragraph says in relation to rebates, "We will be able to offer rebates on some or possibly all products being proposed. These rebates are anticipated to be between one and five per cent, depending on the brand et cetera. Nothing's certain about it?---No.

30 Fair?---Fair all, yeah.

Do you know whether they were ever negotiated or not?---Were they, if they were ever negotiated or did we receive them?

Well, either. Did, was any clarification ever sought by you?---No.

THE COMMISSIONER: Have you ever seen this before, this email?
---Not that email, no.

40 Are you tendering the email, Mr Lloyd?

MS LONERGAN: It's already been tendered.

MR LLOYD: It was already tendered, it was- - -

THE COMMISSIONER: Sorry, I beg your pardon.

MR LLOYD: It was a duplicate of 92, Commissioner.

THE COMMISSIONER: Yes. I'm actually thinking of the other one, the one of 24 February, the question.

MR LLOYD: That's, that's already been Exhibit 91. I'd forgotten that.

THE COMMISSIONER: Oh. Is this a convenient time?

10 **LUNCHEON ADJOURNMENT**

[12.57pm]