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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 THURSDAY 9 AUGUST, 2012

AT 2.08PM

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

THE COMMISSIONER: Ms Lonergan.

MS LONERGAN: Mr Theissen, we were just before the lunch adjournment looking at a document, Exhibit 65 at tab 12?---Correct.

10 And on page 251 through to the, to page 254 we were just looking at a group of camera descriptions?---Correct.

And your evidence was that you prepared this, this document?---Correct.

And you prepared it based on Verint products?---Correct.

20 And did you understand at that time from anything Mr Paul told you that he intended to use Verint as the benchmark product for the CCTV aspect of the Art Gallery contract?---He was looking at, at the Verint solution for the Gallery, whether it was going to be specified as a benchmark product I, I can't recall that conversation.

Your understanding of the purpose of identifying a benchmark product in a tender specification is what?---To be the baseline, that the tenderer can offer an alternate product as long as it meets or exceeds the, the performance criteria of that particular product.

And did Mr Paul seek any advice from you as to what he should benchmark in the tender spec for the CCTV aspect of the contract?---No, he didn't.

30 Could the witness be shown Exhibit - I withdraw that. I'll show you a document which is two pages of emails dated 13, sorry, 10 to 13 October, 2008. You'll see that commences on page 257 with an email from Michael Siccita to Daniel Paul and you?---Correct.

You see that?---Yes.

Now, Michael Siccita's another technical person from your Melbourne office, is that correct?---Yes, he is.

40 And are you able to assist with what Michael Siccita is referring to under the heading "Tender information" in that email?---Yeah.

Is it, is to do with the Art Gallery job or potentially to do with the Art Gallery job or is it a different project altogether?---As Michael's listed if you look in line 3 he's got building A for 32 cameras and then line 5 for building 5, building B for 21 cameras, yeah, I would say that that wasn't in relation to the Art Gallery.

Was not?---No, no.

And then you see the next email is from Daniel Paul to Michael Siccita, "Far out, just in time, I'm writing the tender as we speak," do you see that?
---I do, yes.

Are you able to assist with what tender was being assisted with by your office at that time, October 2008?---I, I don't recall.

10 All right. And you see at the top of page 256 there's an email from Paul Thompson to you, you see where he says, "No doubt they'll think the Art Gallery was all their work." Are you able to assist with what was being referred to by Mr Thompson in that email?---I think you might classify that as a bit of competition between the, the states, between Victoria and New South Wales because Michael was based in the Victorian office and if, with some of the information that was provided from Melbourne regarding the, the Art Gallery project, you know, Paul's comment there, "No doubt they'll think that the Art Gallery was all their work," not knowing the amount that we'd put into to, to promoting our products for the, for the Gallery tender.

20 All right. Well, what I'm having trouble connecting is the subject matter of the earlier parts of the email thread to Mr Thompson's comment?---Yeah.

You said that, that your understanding is the email of 10 October from Mr Siccita to Mr Paul copying you in isn't anything to do with the Art Gallery, is that right?---The, the quantity of cameras doesn't, to me it doesn't relate back to the Art Gallery.

30 I'm not suggesting that it is in fact anything to do with the Art Gallery I'm just trying to understand the relevance of Mr Thompson's comment, if anything, to the cameras that are being discussed in that email?---Yeah, I, yeah, I really can't comment.

You can't see any relevance?---No.

Thank you. Could the witness be shown Exhibit 65, tab 14, tab 14 of 65. And you see this is an email trail that starts on page 260 with one from, with an email from you to Michael Siccita and Mr Dingemans on page 260?
---Oh, yes, yeah.

40 And so you've copied Mr Paul in to that email?---Yes, I have.

All right. And the subject is the Art Gallery project?---Correct.

And in that email you refer to a conversation with Daniel this afternoon?
---Correct.

You see that, and there are a couple of options we'd like to explore based upon the surveillance requirements for the Art Gallery?---Correct.

Now who's the we you're referring to there?---Probably the, the group, would be Daniel Paul, Paul Thompson and myself and there may have actually been some input from, from Tony and Michael in Melbourne as well.

10 All right. So that's Tony Colicchia and Michael Siccita is it?---Correct.

And what types of cameras are we talking about in terms of the plan A, plan B and plan C that are set out in the following part of the email?---Okay. I'll just have a read through that.

20 And by type I mean what brand?---Brands, okay. The, the brands would have been from an analogue camera mix. The – it would have just been like a generic brand, say Samsung for example. For the, and for the megapixel cameras it may have been the Verint product and also the Arecont product as well.

Now at that stage was there any discussion about Pelco Endura and associated megapixel cameras as an option that would meet this surveillance requirements of the Art Gallery?---Not to my memory at that stage.

All right. And by discussions I mean discussions between you and Mr Paul?---No.

30 Now by this stage, that is 10 October, I'm sorry, 31 October, thank you, had you visited the Art Gallery and assessed its CCTV requirements?---I can't recall the actual dates that we actually entered the Gallery. It may have been around that time, but I can't confirm.

On the days that you did go to the Gallery and assessed CCTV requirements were there other distributors present when you did so?---No, they were not.

And when you did that was it in the company of Daniel Paul always or not always?---It was with Mr Paul and I think on one or two occasions with Mr Morris as well.

40 Could you tell to tab - - -

THE COMMISSIONER: Did you ever go without Mr Morris? Were you there with Mr Paul without Mr Morris?---I can't recall, Commissioner.

MS LONERGAN: Could you turn to tab 15 of Exhibit 65?---Yes.

And you see that's an email from Daniel Paul to you?---Correct.

And it's headed cost estimates?---Correct.

And then as an attachment it identifies CCTV general budget and then a number and then Art Gallery?---Correct. Yep.

And before receiving this email do you recall whether you had a conversation or received information from Mr Paul that he was going to send you a spreadsheet that's to do with the budget for the Art Gallery?---I don't recall the specific conversation, no.

10

And if you could have a look at the attached spreadsheet and it goes from page 264 to - - -?---Yep.

- - - to page 270. Is that a document you prepared?---No, it's not.

Are you able to say - I'll withdraw that. What, what does it show on your interpretation?---The, I interpret this document as, as being the costings if you like that Daniel was preparing for the Art Gallery, which actually encompassed the, the CCTV, the access control, oh hang on, no just the CCTV component, sorry.

20

I beg your pardon?---Just the, oh no, and the access control components as well.

Anything else? Is there anything in there that covers any additional parts of the security upgrade?---From just the cursory glance that I've had it's, it's predominantly the CCTV and the access control products.

30

All right. And what proportion of that spreadsheets relates to costings or description of the CCTV aspect?---Sorry, could you repeat the question, please?

Yes. What proportion of the costings and information set out in the spreadsheet relates to the CCTV aspect of the upgrade?---I'd probably say it's probably about two-thirds I'd say.

About?---Two-thirds.

40

About two-thirds. Okay. And are you able to identify in that document anything, any information provided by you?---The - yes, if - I can't remember which - - -

If you can turn back to Exhibit 65 tab 12?---Yeah.

And the documents we're looking at the back - looking at, at the back of that email trail?---That's right, yeah. So front page is 251 onwards to 254 the information that I provided in that particular spreadsheet I think is actually being populated into, into Daniel's spreadsheet here.

Right. And the information you provided in Exhibit 65 tab 12 is costings of a variety of cameras?---Correct.

Nothing more than that?---Nothing more.

And no suggestions as to how it should be - how the, how the solution should be made up or recommending how many cameras for any functions or anything of that nature?---Nothing of that nature.

10

Straight out raw prices for cameras?---Correct.

Did you expect to be receiving this budget spreadsheet from Mr Paul?---I was surprised to receive it.

Right. And why were you surprised?---In my dealings that I had previously with - as preparing tenders we'd always provide the information but yeah, never actually receive any sort of feedback in regards to what's actually been provided.

20

Right. And there was information on this spreadsheet if I understand your answers previously correctly that had nothing to do with anything you provided to Mr Paul or any information you conveyed to Mr Paul. Is that correct?---Correct.

When - where Mr Paul says no analytics applied yet, what's that referring to as you understand it?---The - one of - part of the offering that Dan was looking for was the ability for the surveillance system to have analytic capability whereby the, the camera's looking at a - let's take a piece of artwork for example and that if the artwork actually moves or is - has been removed that that could actually generate a, a software alarm to alert the security staff that something had occurred in, in that particular (not transcribable)

30

Is that anything to do with the function of the Pelco Endura 2 system or as something separate?---It's, it's a feature that's within a multitude of CCTV products.

All right. Was it within the Verint system that ended up being benchmarked?---Correct.

40

And was it within the Pelco Endura 1 Solution or not? Was it a functionality - - -?---I - - -

- - - that could be done by that system?---I'm not 100 per cent certain.

All right. And did you show this budget document to anybody?---No, I did not.

And where Mr Paul says we are 300k over right now?---Ah hmm.

What did you understand him to be referring to?---I would take that as a typical Dan comment that Dan's always have - has an interest of, of driving the price down as hard as he can. Yeah, and just being you know a comment of that we're 300k over budget. There's nothing that I can do from, from our side to reduce the final in store price because we're only supplying product to the integrator.

10

Why was he telling you that?---I do not know.

Okay. "And do not email this around." Was that - what did that mean to you in terms of - - -?---Maintain confidentiality.

All right. And can you recall now what was happening on or around 31 October in terms of your meetings at the Art Gallery, were you attending the Art Gallery with Mr Paul and (not transcribable) any sorts of - - -?---Once again I, I, I know that I was at the gallery. We had conducted some, some camera trials there but the exact dates I can't confirm I'm sorry.

20

Could you turn to - I'm sorry, could the witness be shown - he has Exhibit 65. Turn to tab 16A, please. You see that's an email from Mr Paul to you and others at Q Video?---Correct.

And it's a Art Gallery camera schedule. See that?---(No audible reply)

The items of equipment listed within that email from Daniel Paul is that referring to any particular camera brand? So is it referring only to Verint or is it a more general reference?---(No audible reply)

30

If you're unable to say just say so?---No, sorry, I was just - would you want to just repeat the question again, please.

Yes. Was this email referring to any particular brand of camera?---No. This was actually the, the actual list of cameras for the, for the Art Gallery. So in one of Daniel's previous emails there was a quantity of 220 cameras and, and that spreadsheet at the back there just nominates the, the level for the camera and, and the potential type of camera.

40

Is it giving any information regarding capability of the cameras listed? ---Under the type it lists whether it's an analogue camera or whether it's a megapixel camera.

All right. Excuse me.

THE COMMISSIONER: Can you tell from there what sort of camera, what sort of solution the, these cameras have been based on?---No, I can't, Commissioner.

MS LONERGAN: Could you turn to tab 18 of Exhibit 65? And you see that's an email from Daniel Paul to you and it's headed Defence? You see that?---Yes.

10 And it's dated 3 December, 2008. Were you working on a contract for Defence with Mr Paul at that stage?---Personally no I don't recall that I was working on one with Daniel.

All right. Is it possible you were providing assistance to Mr Paul for preparation of specifications for a Defence contract?---No.

20 Are you able to assist with why you'd be sent an email about the Defence project that Mr Paul appears to have been working on? Look at paragraph 2 of Mr Paul's email, "if it works we would consider it for the Art Gallery too." Does that give any clue as to why you were sent the email?---This would be in regards to the, to what we call a high level interface between the access control product and the CCTV product.

Yes?---And Daniel's comment there on confirmation from Lenel to be the, to be the front end is just to see whether we could actually integrate both of those products seamlessly from an operational perspective.

Is it your understanding that at this stage it's a discussion of an interface between Verint and other systems as opposed to any other - - -?---Correct.

30 - - - the introduction of any other new product?---To be Verint.

We're talking about Verint?---Correct.

And do you recall whether you were having any discussions with Mr Paul about – at this stage about whether he was going to benchmark Verint to the Art Gallery project?---No. No, we, no.

40 And did you attend – I'll withdraw that. Is it fair to say you provided a fair amount of assistance to Mr Paul in the preparation stages for the Art Gallery project?---I, we worked together on the project, yes.

All right. Did Mr Paul pay Q Video any money for that assistance?---Not to my knowledge.

What was your understanding as to – I'll withdraw that. Why did you provide that assistance to Mr Paul?---To promote our products. I guess from a wholesale distribution perspective the – our job is to try and get our

products written in as a benchmark product. And we invested the time, effort and energy to, to provide that information to Daniel.

You gave some evidence that you met Mr Morris at the Art Gallery on a couple of occasions?---I did.

Do you think that meeting Mr Morris and having that presence in the Art Gallery with Mr Paul assisted Q Videos position in terms of being a chosen distributor for the Art Gallery project?---I don't believe so.

10

And why not?---I think it would have just shown Dan's knowledge and I guess of, of dealing with various suppliers. And also I don't know whether other suppliers had actually been invited in to meet Mr Morris and to be part of the Gallery as well.

Yes. Well, taking up that last point, you don't know whether Dan Paul gave the same opportunity to any other, any of the other suppliers on the contract do you?---I do not know.

20

THE COMMISSIONER: It was an opportunity for you to show your enthusiasm for the project and your knowhow and your professionalism? ---Correct, Commissioner, yes.

MS LONERGAN: Could the witness be shown a email dated 4 February, 2009 and if you could turn to the last page of that, I'm sorry, the second page of that email and you see that's an invitation from Daniel Paul, an invitation to tender that was provided to various integrators and suppliers, is that right?---Correct.

30

And your, your company Q Video was one of the invited suppliers? ---Correct.

Did you go to that tender briefing or on 4 February?---I did.

During that tender briefing did Mr Paul discuss why he benchmarked a particular product for the CCTV aspect of the contract?---I don't recall.

You don't recall. Do you recall - I withdraw that. Now, if you can turn to the first page of that email please.

40

THE COMMISSIONER: Sorry, what page of the bundle?

MS LONERGAN: It's 482, and you see Paul Thompson sent you an email at 8.29 and he says he's going to call Dan from the car in a minute for an update, do you see that?---I do, yes.

Were you aware that your boss, Mr Thompson, was in contact with Mr Paul during the period the tender was open?---Yes, I did.

And did you consider that to be appropriate given that you were one of the distributors who were hoping to be involved in the ultimate award of the contract?---Mr Paul and Paul Thompson had numerous conversations about various projects, that they may have spoken about that particular, oh, that conversation may have related to the, to the Gallery but overall I can't comment upon the nature of that.

10 Well, you'll see it probably did relate to the Art Gallery - - -?---Yeah.

- - - because of the context, that's correct, isn't it?---Correct, yes.

Did Mr Thompson tell you during the period the tender was open, that's 4 February to 23 February that he had a number of conversations with Daniel Paul about the Art Gallery project?---I, I don't recall.

20 Now, could the witness be shown Exhibit 66 please, I just want to take you to one page in this document, it's page 401, you'll see under the description "Technical specifications description of CCTV system" it says the CCTV system shall be System "System" or approved equivalent?---Correct.

Now, are you able to say whether you received a copy of the specifications that actually stated what the system was that was benchmarked?---I can't recall.

Did you have any doubt that what was benchmarked was the Verint system for the CCTV aspects of the contract?

30 THE COMMISSIONER: Well, I don't know, I don't think you'll find the answer to that question in the document. You're being asked a question which is directed to your memory?---Mmm. I would have nearly sworn that the, that Verint was nominated as the, as a benchmark product in the specification.

That was your understanding?---I, from my memory I thought that I had read that in the document.

And was that said to you by Mr Paul or not?---I - - -

40 From time to time?---I can't recall, Commissioner, I don't, I don't remember that actually being said to me directly.

But were you under the impression that at the stage the tender came out, the specifications came out, that the benchmark was Verint?---I was hoping it was going to be Verint as a benchmark.

Yes, but were you under the impression that it was?---No, I wasn't.

But after it had come out – I think you said that you could have sworn that it was written in as Verint?---I thought it was, sir, yes.

So your impression was that Verint was the benchmark?---Correct.

That is at the time the specification had come out?---At the time it was released, yes.

Yes.

10

MS LONERGAN: Commissioner, I tender the email dated 4 February, 2009, pages 482 to 484 between Paul Thompson and Tony Theissen.

THE COMMISSIONER: I'm not sure if they take the matter any further. What, do you still want to tender it?

MS LONERGAN: If it pleases you, Commissioner. Mr Theissen - - -

THE COMMISSIONER: She's not going to tender it.

20

MS LONERGAN: I beg your pardon?

THE COMMISSIONER: It's not being tendered?

MS LONERGAN: No. No. Between 3 February and 23 February, did you receive, that's the period the tender was open for the Art Gallery, did you receive any request from any integrators other than Kings to quote a price for the Endura system?---I believe the, Mr Grubisic from ACG requested a price as well.

30

In the period that the tender was open, that is between 3 and 23 February? ---I believe so.

You believe so. I'll show you some emails in a minute - - -?---Please.

- - - that cover that. As at, as at the tender period when it was opened, 3 to 23 February, are you able to say now whether Pelco Endura 2 had been released?---Released to market, no. Had been released from a, Pelco had made press releases regarding - - -

40

THE COMMISSIONER: No, you're being asked about release to market? ---No, it hadn't.

No. And then go no you were saying there'd been some information conveyed about it?---Correct. Yes.

And what was that?---That it was going to be the new, you know, version 2 of Endura and that it was due for release in April of 2009.

Say that again?

THE COMMISSIONER: It was due for release in April 2009.

MS LONERGAN: Thank you?---Thanks Commissioner.

10 Could the witness be shown Exhibit 71, please. Now if you could turn to page 515 of that email and at the bottom of the page there's a message from Daniel Paul to you with a subject matter, Megapixel. And Mr Paul is asking you to forward a USB with images on it, please. Are you able to assist with what that was about by looking at the context of the rest of the email trail? ---I think that that would have been the images from the camera trials that we actually did at, at the Gallery.

And at that stage the camera trials that you'd conducted were all to do with the Verint system?---Correct.

20 And if you turn to page 514 it's an email from you to Mr Paul dated 7 February, so this is during the period the tender is open and in the last paragraph, the last sentence you make a comment, "I am a little concerned about Lenel and their ability to perform all the CCTV tasks outlined in the docs. We will work through that"?---Sorry, which page was that again, sorry?

That's 514.

30 THE COMMISSIONER: The last paragraph?---Ah yes, yes. Sorry, if you could repeat the question, please.

MS LONERGAN: The last paragraph in the last sentence you say, "I'm a little concerned about Lenel and their ability to perform all the CCTV tasks outlined in the docs. Do you see that"?---Correct.

40 That gives the impression that you were actually under the, actually the opinion that Lenel was performing, needed to perform the CCTV tasks. Can you explain what you were referring to there?---In one of the previous correspondence there was the reference to the, to that high level interface between Lenel and, and the CCTV product.

Oh, yes?---And the -- from the discussions that I'd had with Lenel regarding how we could achieve that, that high level interface they weren't filling me full of confidence in their ability to perform that task.
And you - - -

THE COMMISSIONER: And why, but why was that important?---It's that final interface for the operators.

Yes, but why was it important that it was Lenel?---Oh well that was the specified or benchmarked product for the access control.

MS LONERGAN: You were in court when Mr Yallouris gave some evidence regarding this particular email. Mr Yallouris said that mega pixel cameras could not work on the Endura 1.5 System. Is that correct?--- Correct.

10 Okay. And is that something to do with analogue versus digital technology?---It is. The version 1.5 was, was, was if you like the stepping stone to the - to version 2 which is the mega pixel product.

All right. Could the witness be shown Exhibit 135, please.---Thank you very much.

Now, Commissioner, I understand when this document was exhibited before the second page that was provided to the parties was incorrect. If I may correct that now and substitute the correct second page for the large fold out spreadsheet. I have a copy each for the Commissioner and the witness.
20

THE COMMISSIONER: So that Exhibit 135?

MS LONERGAN: That is, Commissioner.

THE COMMISSIONER: Is that the budget? Sorry, the spreadsheet?

MS LONERGAN: Yes, it's a spreadsheet, Commissioner, and apparently -
- -

30 THE COMMISSIONER: Is this the wrong spreadsheet?

MS LONERGAN: Yeah. The first page which has got 102 in the top right corner is correct but apparently a number of the copies provided have two page 102 instead of a 102 and a 103, Commissioner.

THE COMMISSIONER: Right. Thank you.

MS LONERGAN: Corrected. Mr Theissen, I'll just give you a bit of time to look at the spreadsheet - - -?---Yeah.
40 - - - and I'll ask you some questions about it.

THE COMMISSIONER: So the, the new document should be 103? The new, the new, the - - -

MS LONERGAN: Yes. It should be 102 and 103 and one page being unattached to the front, Commissioner.

THE COMMISSIONER: Yes.

MS LONERGAN: Have you had an opportunity to have ea look at that document, Mr Theissen?---Yes, I have.

Now is that a document you prepared, that is the spreadsheet?---Yes, it is.

10 Right. And what was the purpose of the spreadsheet?---This was our, our costing template that we would use. If we read the column from the - from left-hand side across we have the manufacturer's part numbers, a brief description of the product. The, the Art Gallery Project was actually broken down into three locations. So we had individual quantities per location. We then have the, the total quality. If we were purchasing the product locally or from overseas it was listed there, what our list price was, what our discount was, unit rate, freight cost, exchange rate and then what our potential margins could actually be for the, for the sale of the products.

20 And your email that attaches - first of all is that spreadsheet described as the copy tenderer response pricings? That's what's on the email attached to the front of the spreadsheet?---It is, yes.

And did you prepare the spreadsheet at about the time you emailed it?---I believe so, yes.

And along the top - in the top column on the right-hand side of page 102 is a series of names?---Correct.

30 Are they the personnel from the different companies that you understood were tendering on the Art Gallery Project?---That's correct.

And is there any reason why there's nothing written under those names?--- That was just my reference for the project.

And this spreadsheet is it all based on an analysis of Verint as the benchmarked product for the Art Gallery?---Correct.

40 And did you prepare a similar - I withdraw that. Excuse me, Commissioner. So those - that spreadsheet and your analysis within it was that based on any information provided to you by Daniel Paul other than the Verint, sorry Verint was the benchmarked CCTV product?---The - yeah. Just the Verint was the, the benchmark product. The, the quantities were, were taken out of the, the tender documents.

The tender documents being the specifications prepared by Mr Paul?--- Correct.

Right. And that's the specifications provided to everyone - - -?---Correct.

- - - as opposed to anything provided to you independently of it?---Correct.

THE COMMISSIONER: And the prices, is this is the first time you had disclosed publicly these prices or had you disclosed them before to anyone? Oh, this was our internal document, Commissioner.

So this wasn't given to anyone?---No, definitely not, sir.

10 Why wouldn't you want to give to anyone?--Because it had our, our, our actual purchase price.

So the purchase price from, from Verint?---Correct, and other suppliers as well, there's a whole list of materials down the left-hand side there.

Yes, I see that.

MS LONERGAN: Could the witness be shown Exhibit 1/46, that is Exhibit 1 tab 46. Now, if you look at the first page of that email, page 536, Mr Theissen, there's an email from Charlie Diekman to Mr Yallouris and you, "How are you going with the Pelco options pricing," do you see that? 20 ---That email is not actually to me, it's actually Tony C which is Tony Colicchia.

Oh, thank you. Have you seen, have you seen that email before?---I hadn't but I know where the context is going so - - -

I beg your pardon?---I know, I know where this will, I know what it'll be about.

30 Is there any reason you can see why you wouldn't have been included in an email about Pelco options?---Charlie would have been, Charlie would deal with, with myself on the, on the day to day pricing and if Charlie needed to, to make things move quicker he would go above me to Mr Paul Thompson who was my manager and to the powers that be to apply pressure to, to get the pricing as quickly as he possibly could.

All right. So from your answer are you suggesting that he was cutting you out as the man doing the hack work so he could get straight to the bottom line of what was the best price he was going to be able to get for the project? 40 ---Correct.

Is that a fair summary? And Tony Colicchia, is he, does he have any role in terms of determining pricing?---He would, yes.

Are you able to assist with why Mr Yallouris would be copied into that as well, I'm sorry, why it would be directed to Mr Yallouris?---Ah, well, we, it's the, it's in regards to the, to the Pelco pricing and Terry was our point of contact within Pelco to obtain that pricing.

Are you able to say whether there was any arrangement at this time, that is February 2009, between Q Video and Kings that if a Pelco product was supplied for the Art Gallery that it would be supplied only through Q Video?---No, there was none.

Would you expect to know about that if there was such an arrangement for example between Paul Thompson and Mr Diekman?---No.

10 So there may be an arrangement that you weren't told about?---I, I can't comment upon that, I don't know.

Now, were you a party to any discussions during the period the tender was open, that is 3 February, 2009 up to the time of this email, 17 February, where Daniel Paul was present where the availability of the Pelco Endura 2 option was discussed?---I, I can't recall, at that, at that stage once the tender had actually been released by role was to meet, greet, make sure I was across all the companies that were actually tendering so that we could, you know, present our, our offering to them for consideration.

20

Did you read - I'm sorry, I withdraw that. The witness should be shown Exhibit 137 please. I'm sorry, just keep that with you for the moment. Could the witness be shown Exhibit 74 and also at the same time Exhibit 47. Exhibit 1, tab 47, I'm sorry.

THE COMMISSIONER: Sorry, do you mind saying it again?

MS LONERGAN: Yes, I knew this would cause confusion, Exhibit 74 and as well - - -

30

THE COMMISSIONER: Exhibit 74.

MS LONERGAN: - - - Exhibit 1, 47, 1 tab 47.

THE COMMISSIONER: Yes.

MR LLOYD: Sorry, what was the other one? What was (not transcribable)

40 MS LONERGAN: Excuse me, Commissioner. Now first of all I want to ask you some questions about Exhibit 74. Now you see there's an email from Mr Yallouris to Mr Thompson starting on page 537, halfway down the page?---Correct.

At 3.18am. Do you see that?---I do.

And you see that there's basically three options set out over the following page?---Correct.

And there's pricings given for each option in US dollars. Do you see that?
---Yes, I do.

And the email at the top of page 537 suggests that at least later on 18 February you were provided with a copy of the email trail that sets out those options?---Correct.

10 Are you able to say whether you were party to discussions about these three options at or before the time of this email?---I think the, the option 1, 2 and 3 may have actually come from myself, for request, the request for pricing.

And the options 1, 2 and 3 are they all referring to Endura 2?---Correct.

THE COMMISSIONER: So are you saying that you sent these to Terry Yallouris?---I say I can't recall whether I sent them to Mr Yallouris but I may have seen it to Mr Thompson to say can you please inquire with Terry for the pricing on this.

20 You wanted to know what the prices were?---Correct.

MS LONERGAN: And if you turn to page 539 which is an email from Mr Thompson to Mr Yallouris dated 16 February?---Correct, yep.

And you see, "Hey there. Don't forget to send me the quotes for options 1, 2 and 3 once you have the good news". Are you able to assist with what the good news could be or was in relation to option 3?---I, I don't know. I don't know.

30 THE COMMISSIONER: So it doesn't help for you to look at option 3 to try and work it out?---The only thing that I can see being the main difference between the other options and option 3 is, is the quantity of the two megapixel cameras.

So it doesn't help to find out what the good, the good news is?---I wouldn't understand it, so - - -

MS LONERGAN: And option 3 is the most expensive option by some US\$150,000?---Correct.

40 And there's a comment, "Please note all megapixel options are based on V2 Endura due in April. Do you see that?---I do.

Is it correct to say that each of the three options are megapixel options?
---Yes, they are.

And did you – does that comment regarding the availability date or the due date for version 2 correspond with your recollection as to when it was going to be – version 2 was going to be available?---Correct.

THE COMMISSIONER: And by available released to the market?
---Correct.

MS LONERGAN: And then if you can turn back to page 539 of that document and you see paragraph 2, "Spent a couple of hours with Dan today", this is Paul Thompson talking, "He likes the idea of option 2 very much." Were you aware of any discussions between Paul Thompson and Daniel Paul in which the use of Pelco Endura 2 was discussed?---Not that I recall.

Not that you were party to?---Not that I was a party to.

See the last paragraph there. Mr Thompson says, "Still hoping Kings or Tony get it, it seems to be leaning towards Kings." Do you understand that to be reference to Tony Grubisic from ACG?---I do.

"And you see Tony's trying all sorts of alternatives to give him an edge." Do you see that?---I do.

Are you able - does that, does that comment by Mr Thompson assist you as to whether by this stage you had provided a costing of the Pelco Endura 2 Version for Mr Grubisic's firm?---I don't think we had provided Tony a copy of the quote by then at that stage.

Could you have a look at Exhibit D47. Just them open together or keep it - -

THE COMMISSIONER: What exhibit number is that?

MS LONERGAN: Exhibit 1, I'm sorry, Commissioner. Exhibit 1 tab 47.

And you see the first page of that exhibit is your email to Charlie Diekman at Kings copying in Mr Thompson attaching a proposal?---I do.

And if you turn over the page you see there's a proposal by you of 18 February setting out some details about Pelco Endura Version 2?---I do.

See that? And then you turn over the page which is 556 in the top right corner and you've set out various cameras and details of hardware?---Yes.

And you've got a supply only price down the bottom of the page there \$785,000?---Correct.

See that? Now my question is turning back to Exhibit 74 and the options one, two and three set out in that document, are you able to say what if any of those - which of any - if any of those options ended up being incorporated

into the page 556 summary?---Okay. In the quote, yes. It seems to closely reflect to option 1.

THE COMMISSIONER: Is it, is it - - -?---It's not a 100 per cent to the - - -

That's what I was going to ask. Is it a combination of, of options?---It looks as though it is, Commissioner.

10 So, but largely option one but other features have been added to it. Is that, is that what it is?---It's the, the quantities are different so, which affects the total solution.

Right.

MS LONERGAN: Are you able to say whether - just turning back to Exhibit 74 that sets out the options?---Yeah.

20 That's the email from Mr Yallouris to Mr Thompson. Are you able to say whether Mr Yallouris prepared those options based on having access to the tender specifications that were released by the Art Gallery on 3 February? ---Possibly.

There's another document that may fill in some of the picture. I handed up and tendered a document headed 'Art Gallery' and it's a series of emails pages 117 to 125.

Excuse me, Commissioner.

30 THE COMMISSIONER: So I will just - this is - - -

MS LONERGAN: Commissioner, it's an email trail that - - -

THE COMMISSIONER: Yes, I can see that.

MS LONERGAN: Thank you, Commissioner.

THE COMMISSIONER: A chain of emails ending with the email from Terry Yallouris to Tony Theissen of 18 February, 2009 is Exhibit 138.

40

#EXHIBIT 138 - EMAIL FROM MR YALLOURIS TO MR THEISSEN SENT AT 9:57AM ON THE 18 FEBRUARY 2009 ATTACHING A COPY OF THE PELCO ENDURA MP PROPOSAL (ICAC REF: 117-125)

MS LONERGAN: Excuse me, Commissioner.

Mr Theissen, have you had an opportunity to have a look at that email, series of emails?---I have, yes.

And you see on 18 February Mr Yallouris appears to have noted up an email from you to Mr Clarke and Mr Yallouris copied again to Mr Thompson?

---Correct.

10 You see that. And you see in bold there's comments in brackets, Terry Yallouris and various pieces of information provided afterwards, do you see that? You have to say it out loud?---I do, sorry, yes.

Thank you. And you see that Mr Yallouris is providing some more information in response to some queries that you had?---Correct.

Now, you see point 5, you were asking for some data sheets, data sheets on the equipment offered, preliminary release would suffice, you see that?---I do.

20 And you're asking "Are they on the Pelco website" and Terry Yallouris replies, "Yes"?---Yes.

Now the data sheets you are seeking, was that to cover matters such as storage?---It'd be more product specification sheets as to Endura 2 because I know that the, the integrators would request that from us.

Right. And you, and you see question 6, you're asking about the quotation validity and that you want it to be held for 90 days?---Correct.'

30 Now, what quotation are you referring to there?---That'd be the quotation from Pelco.

Okay. So I'm sorry to keep having you jumping - - -?---That's fine.

- - - to different documents but is that the quotation that's set out in Exhibit 75?---I believe that's the email from myself to Mr Yallouris is, is in response to that, to that Exhibit 74.

40 All right. So can we discern from that that the option or combination of options that were selected from those set out in Mr Yallouris' 18 February, 2009 3.18am are, sorry, form the basis of your quotation provided to Q Video in your, with your letter of 18 February, 2008?---Correct.

THE COMMISSIONER: That's 47, tab 47?

MS LONERGAN: That's Exhibit 1, tab 47. Excuse me, Commissioner.

THE COMMISSIONER: I'm just not sure about which quotation it is. You say the quotation validity is the one that - - -?---On - - -

Tab 47, Exhibit 1, that's the quotation by Q Video to Kings?---No, the - - -

No, not that one?---I think you should be looking at Exhibit 74,
Commissioner.

MS LONERGAN: That's right, Commissioner, I'm sorry, the numbering is
confusing.

10 THE COMMISSIONER: Yes. I just better get that right.

MS LONERGAN: Exhibit 74 is the, is Mr Yallouris' email - - -

THE COMMISSIONER: Yes.

MS LONERGAN: - - - with options 1, 2 and 3.

THE COMMISSIONER: So the quotation validity is the quotation - - -?
---From Pelco to - - -

20

Yes, from Pelco constituted by Mr Yallouris' email which is Exhibit 74?
---Correct.

MS LONERGAN: And then if you could turn to exhibit 1 tab 47 - - -?

THE COMMISSIONER: Tab?

MS LONERGAN: - - - which should still be in front of you.

30 THE COMMISSIONER: Tab?

MS LONERGAN: Tab 47. It's not a new document it's one of the three we
had out, Commissioner.

THE COMMISSIONER: Yes.

MS LONERGAN: If you could turn to page 558 of that document, Mr
Theissen. And you'll see there's another quote from you to Mr Diekman
dated 19 of 2009?---Correct.

40

Are you able to assist with why you did a further document for Mr
Diekman?---That would be for a breakdown of the, the equipment schedule.
The first quotation that I provided on page 556 lists the materials but it has a
lump sum price at the, at the bottom.

Yes?---Then the subsequent quotation provided on page 559 actually then
provides a unit rate breakdown for the proposal.

THE COMMISSIONER: So it's really a supplement to the first quotation?
---Correct, Commissioner.

MS LONERGAN: Could the witness be shown an email dated 19 February 2009 which I'll hand up. And you see that's a series of emails between yourself and Mr Diekman and Mr Roche?---I do.

And it's about the Art Gallery and some updated drawings, that's right isn't it?---Correct.

10

And you see your comment on page 141 in the bottom half of the page, "LOL, can't wait for you guys to get the order and for me to get my measly commission cheque"?---Correct.

My question is did you know at that time that is 19 February that you were in fact going to be the successful supplier and Kings the successful tenderer?---No, I did not.

Is it a joke?---It's a joke.

20

Excuse me. I tender that email, Commissioner.

THE COMMISSIONER: The string of emails ending with the email from Mr Roche to Mr Theissen of 19 February 2009 is Exhibit 139.

**#EXHIBIT 139 - EMAIL FROM MR ROCHE TO MR THEISSEN
SENT ON 19 FEBRUARY 2009 RE UPDATED DRAWINGS (ICAC
REF: 141-144)**

30

Mr Theissen, what do you mean by commission?---That was part of my salary package, Commissioner, so I would have - - -

I see. Your salary package you were talking about?---Correct.

MS LONERGAN: Another email dated 20 February 2009 which attaches a three-page document. Now you're mentioned on the email but I want to ask you some - I'm sorry. You're copied into the email from Mr Thompson to Mr Diekman and I want to ask you some questions about the attachment to the email?---Okay.

40

You see it's dated 20 February 2009. Now are you able to say where the attachment that is pages 565 to 567 was obtained?---Sorry, could you repeat the question?

Yes. Are you able to say where the attachment, pages 565 to 567 was obtained?---It would have been something that, that Paul would have created. I, I, I don't - - -

THE COMMISSIONER: Paul Thompson?---Yes Commissioner, yes.

MS LONERGAN: You didn't create it or obtain the material?---No, I did not. No.

Are you able to say whether this is information that was available on the Pelco website at the time?---Possibly.

10 And if you can turn to page, if you have a look at page 566 and 567 and - - - ?---Yes.

- - - advise whether the outline contained in that document provides information regarding the storage capacity of the Endura 2 solution?--- Under page, yeah, 567 the, the last, the heading which says Endura Network Video System - - -

Yes?--- - - - there's reference to the, to the storage side of things there.

20 Are you able to say within your technical expertise whether that means that at least at that stage information regarding the storage capacity of the Endura 2 was known?---Yes.

When you answer yes - - -

THE COMMISSIONER: What makes you say that Mr Theissen?---Well the, well the storage capacity of the - - -

30 It refers to storage pooling and load balancing. I mean I don't understand this. That's what I'm really asking you, you to tell me the basis on which you say that this - that at the date this email was written by reference to this document and especially page 5, 6, 7 why it is that you say the storage capacity of Endura 2 was known?---Because the, the way traditional video would store is that the video stream would come from the camera and then be stored to the hard drive. And it would just you know, segment right into the, into the hard drive. Endura had a, a unique way of taking that information and spreading that information across a number of the recording devices, which was a unique feature within Endura.

40 Well it's just this concept of storage capacity that I'm grappling with. Is storage capacity not a number?---It is a number, but it's that coupled with the, the ability of Endura to be able to - - -

To do it, to store?---To do the storage but also in the H.264 as well.

Okay. So I don't see a number on this page?---There's no, no reference to the, the capacity.

But from what you do see you can infer that the number must have been known. Is that what you're saying? It must have been known to refer to the author of this document?---Oh, possibly.

Well you say you don't know? You said that this storage capacity would be known. I'm trying to find out whether you mean the actual, what is it, what's it measured by?---In gigabytes or terabytes.

10 Well does, does it mean that the capacity so measured is known?---No, it doesn't Commissioner, no. I was incorrect in my answer there, sorry.

Pardon?---I was incorrect in my answer.

So what do you mean by storage capacity then? When you gave all this long evidence, the long answer and I'm not criticising you, I'm just trying to understand, what did you mean by storage capacity being known?---I, yeah, I'm at a bit of a loss at the moment, Commissioner.

20 MS LONERGAN: Commissioner, the problem may have been the way I asked the question. Perhaps if I could go about it another way.

THE COMMISSIONER: Yes.

MS LONERGAN: Mr Theissen, could you look at page 566 and under the last heading on that page 41 OFF et cetera, can you see there's a number of bullet points?---I do.

30 And the bottom bullet point is "reduces storage costs over megapixel option"?---Correct.

Now, is that a reference to an advantage of the Pelco Endura version 2 first, is that an, is that an advantage that the Pelco Endura 2 system has?---No. Well, the, that, that heading of those, those particular cameras are what we call analogue cameras.

THE COMMISSIONER: They're not, they're not Pelco cameras?
---They're, (a) they're not Pelco cameras and (b) they're not actually a megapixel camera so their storage requirement is less.

40

It's not relevant, right.

MS LONERGAN: I'll shortcut it. Is there anything on page 566 or 567 that assists in relation to storage capacity or storage aspects of the Pelco version 2 system?---For the final total capacity of the, the storage or how it impacts on the storage, I don't quite understand.

Either?---Okay. Under system cameras 82 off the, the fourth line down, there's a reference to H.264 and JPEG and MPEG 4 and those, those features can compress the quality, compress the video down in file size so the smaller the file size that we have the, the smaller amount of hard drive that we need to store the information for the period.

Thank you. Anything else?

10 THE COMMISSIONER: Well, can I just ask you before you go on to look at the second paragraph on that page, if you read that and there's a reference to RAID5 storage. Does that, does that tell you anything? Does that mean - what does it mean?---Oh, RAID5 is, is a type of storage that, that we can use. It provides a level of redundancy within the system.

So that's the storage that Pelco Endura 2 offers?---Endura 2 actually offers RAID6 storage.

20 MS LONERGAN: If you turn over the page, Mr Theissen, dot point 2 under Endura network video system?---Correct.

RAID6 capable?---Correct.

And is RAID6 to do with storage advantages or, or not?---It, it provides a level, a higher level of redundancy for the system so if you have - - -

30 THE COMMISSIONER: So you can store more?---Not so much store more, Commissioner, more a case that if a hard drive was to fail within the system under RAID6 you, you can rebuild the information that, that may have been on particular hard drive so it's a redundancy side of the solution.

Well, let's put it this way, the person writing this seems to have a pretty good appreciation of precisely what are the attributes of the Pelco Endura 2 solution, is that a fair statement?---Correct. Commissioner, the information has probably been taken off data sheets I'd say.

Off what, I beg your pardon?---Off data sheets.

Off data sheets, relation to Pelco Endura 2?---Correct.

40 Yes. All right.

MS LONERGAN: Could the witness be shown an email from Tony Grubisic to Mr - - -

THE COMMISSIONER: Sorry, is that, is that going to be tendered or not, or is that not necessary?

MS LONERGAN: Sorry, Commissioner, yes, I tender that document.

THE COMMISSIONER: Yes. The email of 20 February, 2009 from Mr Diekman to Mr Roche and others and the attachment with a front cover of Q Video Systems is Exhibit 140.

#EXHIBIT 140 - EMAIL FROM MR THOMPSON TO MR DIEKMAN ATTACHING PELCO ENDURA BROCHURE SENT ON 20 FEBRUARY 2009 AT 12:35PM (ICAC REF: 564-567)

10

MS LONERGAN: Could the witness be shown an email from Tony Grubisic to Tony Theissen attaching a quotation dated 18 February, 2009. Mr Theissen, this is an email from you to Mr Grubisic providing a quotation on the Verint system for ACG.

THE COMMISSIONER: From Mr Grubisic to Mr Theissen.

20

THE WITNESS: Too many Tonys'.

MS LONERGAN: I'm sorry, yes. Down the bottom of the page on 15 February is an email from you, Mr Theissen, to Mr Grubisic?---Yes.

Headed 'Verint Compliant Proposal' and you see over the page you state that you've attached the complaint response - - -?---Correct.

- - - for quotation TT580?---Correct.

30

And then pages 554 to 550 - sorry. 544 to 553 is a, a quotation provided by Q Video on a Verint Solution for the Art Gallery, is that correct?---Correct.

And you provided that quotation for Mr Grubisic?---I did.

Are you able to say whether you provided an alternative quotation for Mr Grubisic based on the Pelco Endura System at that stage?---I do recall providing a quotation to Mr Grubisic but at what time - - -

You're unsure of a date?---No, date I'm not - unsure.

40

I tender that email and attached quotation.

THE COMMISSIONER: Well it's a chain of emails isn't it?

MS LONERGAN: Chain of emails, yes, Commissioner.

THE COMMISSIONER: With attached quotation. The chain of emails ending with the email of 18 February 2009 from Tony Grubisic to Tony Theissen with attached quotation is Exhibit 141.

**#EXHIBIT 141 - CHAIN OF EMAILS ENDING WITH EMAIL
DATED 18 FEBRUARY 2009 FROM MR GRUBISIC TO MR
THEISSEN**

MS LONERGAN: Now, Mr Theissen, do you remember attending any
meetings at Kings shortly after the tender period closed to discuss the Art
10 Gallery Project?---There may have been meetings.

Do you recall going to a meeting on 25 February 2009 to a meeting attended
by Mr Diekman, your boss Mr Thompson and Mr Yallouris?---I don't recall
the meeting.

You don't recall the meeting?---I, I don't, I'm sorry.

Excuse me. I'll show Mr Theissen an outlook diary entry dated 25 February
2009.

20 Have a look at that document, please. And the attendees listed as required?--
--I see that, yes.

Just looking at the attendees prompt any memory on your part as to what
was discussed at the Kings office at Waterloo on 25 February?---I'm sorry,
no, it doesn't.

THE COMMISSIONER: What, well what would the purpose there could
be in any (not transcribable)

30 MS LONERGAN: Could the witness be shown a Q Video Systems quote
dated 26 February 2009 to Mr Grubisic. Did you have a look at that
document, Mr Theissen?---Yes.

You see that that's a quote that you provided to Mr Grubisic on the Pelco
Endura Version 2?---I do.

You see it's dated 26 February 2009?---I see that.

40 Are you able to assist the Commission with the circumstances surrounding
the request for that quotation?---The only thing I can surmise from that is
that I don't recall the exact events leading up to it but what I can surmise is
that Tony must have gotten in contact with us after the, the first round of
meetings at the Art Gallery for a, an Endura proposal for - to submit for the
project.

Now you're surmising that's what happened, do you don't have recollection
of what in fact happened?---I don't have a recollection, no, I don't.

If I tell you that the round one meetings weren't 'til 27 February - - -?
---Right.

- - - are you able to offer any explanation as to why you provided a quote dated 26 February?---I can't, it would have been - I can - once again I can only surmise that it was a request from Mr Grubisic.

Your usual practice is to date the quotations the day you actually provide them?---Correct.

10

I tender that quotation.

THE COMMISSIONER: This is a letter is it?

MS LONERGAN: Yes, yes, Commissioner.

THE COMMISSIONER: Letter from Tony Theissen on Q Video letterhead to Tony Grubisic with attached quotation by Q Videos is Exhibit 142.

20

**#EXHIBIT 142 - LETTER FROM QVIDEO SYSTEMS TO ACG
FIRE & SECURITY ATTACHING PELCO ENDURA VN 2.0
PROPOSAL DATED 26 FEBRUARY 2009**

MS LONERGAN: Mr Theissen, was it your usual practice to provide quotations by email or by mail?---All of my quotations would go out via email.

30 If the witness could be shown a fold out schedule and I will have the witness outline what the schedule is. Now Mr Theissen, is that schedule that was prepared by you?---Yes, it is.

And could you outline what the purpose of the schedule is?---The purpose of the schedule is to provide a, a summary to track the, the equipment that been ordered for the Art Gallery project. When the materials had arrived, when they'd actually been invoiced and there was a progressive table as the, as the project was delivered.

40 Are you able to say when you prepared it?---It was after the contract had been awarded, I'd be guessing and saying April/May.

April/May of 2009?---It may have started then, but I can see the, the first reference to a date is 23 July, that I can see on the document.

And there's some dates as late as November 2009. Do you see that, under the heading Supplier Invoice Date? So about two-thirds of the way down

the page in line with the word freight on the left hand side you'll see there's a date 27 November, 2009.

THE COMMISSIONER: Do you see the panel of items headed Equipment Ordered for the Project Over and Above What Was Originally Quoted? Do you see that?---I do, Commissioner.

And then if you go to the date column in that section and look at the last date?---I do, Commissioner, yes, the 27th.

10 27 November?---Yes.

And so this, this column is details as the schedule states of equipment ordered over and above the quote?---Correct.

That's the quote by Q Videos to Kings?---Correct.

And the ordering is the ordering by Kings I take it?---Correct.

20 Yes.

MS LONERGAN: And above that box there that the Commissioner has just taken you to Mr Theissen, you see in slightly larger type is the words Agreed Project Value is \$725,000. Do you see that about, just under halfway down the page?---Yes, I do, yes.

And next to that minus 27, 240. Yes, see that?---Correct.

30 And then there's a figure 705,460?---Correct.

Now are you able to assist with the significance of that figure in terms of payments made to Q Video for equipment provided for the Art Gallery contract?---In regards to that dollar value or - - -

Yes?---Okay. So the – our original project or tender price was 725.

Yes?---There's the sum of 27,240 which relates to the network switches, which were actually taken out of the, of the order.

40 Yes?---And, and so therefore we had a revised total project price around 705.

THE COMMISSIONER: So what does that figure represent, you said total project price, has it got any, has it any relationship to payments received?---The, well, I don't have when payments were actually made on this spreadsheet, Commissioner. What I do have is the, across the top are the, the invoices that were provided or submitted to Kings by Q Video.

Where does one see that?---If you - - -

Where are the details of the invoices is what I'm asking?---Okay.
Commissioner - - -

I see, invoices, in the blue section?---Correct, Commissioner.

10 So that's, that's, and so you go to supplier, invoice date, invoice, who's -
well, can I just ask you this, let's start, in the blue section - - -?---Correct.

- - - there is the, there's the heading "Supplier" and there you've got a list
of, the supplier's really manufacturer, isn't it, in that - - -?---Our supplier if
you like, Commissioner.

The supplier to you, to Q Videos?---Correct.

And that is in most cases, if not all, the manufacturer?---Correct,
Commissioner, yes, in most cases.

20 Yes. And then you've got, the next column is QVS, what's that PO, what's
the PO, what's that mean?---Purchase order.

That's your purchase order. Can you just explain how the purchase order
works, who puts in, that's an internal document is it?---It is, Commissioner.

And what, is it a purchase order raised in Australia?---Correct,
Commissioner.

30 And sent to America?---To the supplier, that could be America or a local
supplier.

Right. And then you've got quantity ordered, that speaks for itself, that's Q
by price, that's the price what?---That we would purchase the product at.

Now do you, if the product - yes, I see. From, sorry, in the case of Pelco
that's the product you were purchasing for Pelco?---Correct, correct,
Commissioner.

40 And then that's the amount in Australian dollars and in US dollars?
---Correct.

And in case it's US dollars?---Correct.

And in case its US dollars?---Correct.

And then the supply invoice date, that means what? Whose invoice, the
date of whose invoice?---Date of the supplier's invoice, Commissioner.

To, to Q Video?---To Q Video, correct.

And then supplier invoice, that's the details of the supplier's invoice number is it?---Correct, Commissioner.

And the rest speaks for itself and if you go along, keep going along to the right, you've got different sections of the Art Gallery contract, am I right in understanding that?---Correct, Commissioner.

10 So you can see to what sections the work, the costs are attributed, is that right?---Correct, and also there's a reference there to the purchase order from Kings Security as well. They'll be the invoice number that was generated by Q Video and then there'll be the date that the, the invoice was generated, then there would be the, the quantity and then what the total price was.

There's nothing here that deals with payment is there?---No, there's no, Commissioner.

20 Yes, thank you. But this deals with the invoices Q Video sent out?---And the delivery of the product too, Commissioner.

And the delivery of the product to the Art Gallery?---To the, to Kings as the integrator.

Sorry, to Kings?---Correct.

So this is the amount which you would expect - - -?---Kings to pay.

30 - - - Kings to pay Q Video?---Correct.

So you would expect on the basis of this, this shows on the basis of the assumptions that we've discussed that the, that, that Kings owes or owed or owes Q Videos \$705,460 for goods supplied in connection with the Art Gallery?---Correct, Commissioner.

40 Yes?---But may I also state that the, this document was a working document and the, as the installation was progressing the, the quantities and materials used by Kings may have increased or decreased as well based upon what was happening.

Substantially or not substantially?---Not a great deal but - - -

By what percentage would you say?---Oh, it'd only be a couple of points.

MS LONERGAN: A couple of points of percentage?---Percentage points, yes.

And under the heading 'Total amount invoiced', do you see there's some yellow boxes - - -?---Correct.

- - - in the bottom third of the page. Total amount invoiced is that a reference to what Q Video invoiced to Kings? So was it an invoice raised by Q Video to Kings to be paid for the goods that they had provided?---No. The - if you go around about - just above the, the section that says equipment ordered for the project over and above and if you - the, that box or that row if you follow that across you'll then see - and if you - in the blue section there you'll see you know the first ones \$280 and the next one's \$349,220 that's like a progressive amount, so that was the actual invoice that was generated for the, for the project.

THE COMMISSIONER: So what's the yellow?---The, the yellow I, I, I believe there's a - it comes back to being a summary of the project value.

MS LONERGAN: The yellow figure next to the figure 14 five or six lines under that and the box next to it 42,200?---Yes.

20 Is that, is that an additional amount invoiced or something else?---That would be an additional amount because as part of the, the tender our product offering incorporated the, the AT network switches and there was an amount listed above the 27,240 which was removed from the, the 725 figure to give us 704,460.

Was that part of the initial - - -?---Proposal.

- - - proposal?---Correct.

30 Excuse me.

THE COMMISSIONER: We've seen that what, what appears to be at a quick glance the latest entry and that is 27 November 2009. You've seen that, Mr Theissen?---Yes, Commissioner.

Does that, does that indicate that this document was prepared not earlier than 27 November 2009?---It was prepared earlier, Commissioner.

40 Earlier than 27 November? It couldn't have been.

MS LONERGAN: Did you prepare it as you went along, Mr Theissen?---It was - yes.

THE COMMISSIONER: Yes. I'm sorry. I didn't word what I mean precisely. That date of 27 November 2009 indicates that while the document might have commenced earlier it was completed not earlier than 27 November 2009?---Not completed, correct.

So it shows the position as at least 27 November 2009?---Correct.

MS LONERGAN: Mr Theissen, if I can take you back to the agreed project value part in the middle of the page?---Yes.

725 minus 27,240. I'm sorry if I'm going over the same area - - -?---That's fine.

10 - - - again. Can you just explain what the - is that a minus 27,240?---It is, yes.

All right. And can you explain again why that was taken off the project value?---The - when we prepared our submission for the, for the project we had incorporated the AT or (not transcribable) which is the, the brand of, of network switches and as the order was - well the project was awarded to Kings discussions were held and they - Kings decided to, to, to look at the, the Cisco product range for the, the for network side of things. So if you like the - so therefore we removed the, the, the cost associated with the network switches and then you'll see in that bottom section which says
20 Cisco network switch variation so that then comes into the project - - -

Add it back in?---Correct.

THE COMMISSIONER: Sorry, did you say it comes back into the project?---Correct, Commissioner.

Yes.

30 MS LONERGAN: So you take the, the 24,000 roughly off and put 42 on? ---Correct.

And do you see the column eight, eight boxes over headed 'Supplier invoice date' eight boxes from the left?---Yes.

And the first entry 16 June 2009. See that one?---I do, yes.

Now that, that series of dates seemed to correspond with a piece of equipment being supplied, is that right?---Correct.

40 Do those dates reflect the date of availability of those particular items or the date was physically provided to the Art Gallery?---I believe that would be the supplier invoice date so which would have been the, the date that Q Video supplier, yeah, sent the product to us. So it could be - and from there it could be - we would have - we may have received it the next day or if it was from overseas we would have received it seven to 10 days later.

You're talking about the day that it was shipped from the United States for example, if it's a United States piece of equipment?

---For example, correct. Yes.

The pieces of equipment in the left hand column, would you be able to identify please which of those relate to the Endura 2 system?---Okay.

Most of them, are most of them related to the Endura 2 system?---The, I'd probably say 70 per cent would be.

Thank you. I tender that schedule.

10

THE COMMISSIONER: Yes. The schedule of items supplied by Q Videos, the schedule of items ordered and supplied by Q Videos is Exhibit 143.

#EXHIBIT 143 - QVS SPREADSHEET REGARDING PRODUCTS QUOTED / SUPPLIED TO KINGS SECURITY RE: ART GALLERY PROJECT

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MS LONERGAN: Commissioner, I see a suppression order over the name of the suburb in the top line.

THE COMMISSIONER: Yes. Well I think – there'll be a suppression order in regard to anything which identifies the names of suburbs at which equipment has been installed in any document which has been tendered today.

30

SUPPRESSION ORDER TO ANYTHING THAT IDENTIFIES NAMES OF SUBURBS AT WHICH EQUIPMENT HAS BEEN INSTALLED IN ANY DOCUMENT TENDERED TODAY

MS LONERGAN: Could the witness be shown Exhibit 137? Now you weren't copied into this email Mr Theissen or this email trail, however I think you were in court when Mr Yallouris gave some evidence - - -?---I was.

40

- - - along the lines of that his understanding was that there was an agreement involving yourself and Paul Thompson with Kings to try and put as much Pelco product into the Art Gallery as possible?---Not so much an agreement with me, but that would be - - -

Yes. Were you in court when Mr Yallouris gave the evidence?---I was, yes.

Now is that a fair reflection of the situation?---Well I think Terry would have liked to have as much Pelco product go into the project as possible, yes.

Were you - - -

THE COMMISSIONER: But was that an understanding that he had with Mr Paul?---I do not know, Commissioner.

- 10 MS LONERGAN: Was there anything formalised about that agreement?
---None, not to my knowledge.

Could the witness be shown Exhibit 2, tab 28. And you see that's an email trail dated June 2009 to which you've been copied in?---I do.

And you see that the email commences with a, I'm sorry, I direct your attention to the comment by Peter Roche - - -?---Yes.

- - - about, "Now someone has a 20,000 or a 20K problem and it ain't me".
20 Do you see that on page 216?---I do.

Do you know what that's referring to?---That's in reference to the, to the housings for the, for the Art Gallery.

And you see Mr Paul's response, "It looks to me like the 20K problem could be increased to 50K spread around", et cetera?---I do.

Do you know what he is proposing by way of a solution there?---I do not.

- 30 Did you consider it to be a joke?---I read it when the email came through and I basically disregarded it. I was more focused on the delivery of the project.

Could the witness be shown Exhibit 1, tab 63. And you see that's an email, a series of emails headed "???" but it's in reference to The Gap?---Yes.

A project that was being completed involving closed-circuit TVs at The Gap amongst other things?---Yes.

- 40 Do you recall being involved in that project at all in terms of preparation?
---We would have, at Q Video would have submitted a tender response for the, for The Gap project but we were unsuccessful for that.

Who did you tender to?---I can't recall the, the tenderers but we would have prepared a couple of quotations for that project.

All right. You didn't tender directly to - - -?---Oh, to the, no.

- - - the Council?---No.

All right. Do you know why Q Video didn't get that job?---No, I don't.

Did you expect to be successful in that?---No.

Do you know whether Paul Thompson leaving Q Video had any relationship with not succeeding in obtaining the supplier for The Gap contract?---I, I would not believe so.

10

Those are my questions.

THE COMMISSIONER: Yes, thank you. Mr Griffin, do you have any questions?

MR GRIFFIN: No, thank you, Commissioner.

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

20 MR NAYLOR: No, Commissioner.

THE COMMISSIONER: Mr Lloyd, I've been doing my best for you but I think you're the only one again. I'm sure it's nothing personal.

MR LLOYD: Indeed. I often feel like a shag on a rock but it's not an unusual feeling. Commissioner, I won't be long. I know I've said that before and it's clear you don't believe it.

30

THE COMMISSIONER: No, no, no complaints, Mr Lloyd.

MR LLOYD: I've probably only got a bit but I will need to take instructions on many of the exhibits that I've seen, they've been coming fast and furiously, particularly the bit chart and I'll need to get instructions on that but may I do this, ask a few questions now and then leave the material on which I've got to get some instructions?

THE COMMISSIONER: Yes.

40

MR LLOYD: Thank you, Commissioner.

You were asked questions, Mr Theissen, about Exhibit 65, tab 15?---I have that, Mr Lloyd, yeah.

And I think you responded in relation to the email itself on the first page of that series that you took "do not email this around" to mean keep it confidential?---Correct.

And you did so?---I did so.

And you gave, as I understand it, none of this information to integrators?---I did not.

And it would be the integrators in the end that would be seeking quotations from you?---Correct.

I also want to suggest to you, and it's clear that you gave a lot of assistance to my client Dan Paul in allowing him to put together the specifications?
---Yes.

10

THE COMMISSIONER: For what? Generally or - - -

MR LLOYD: Well, including the products that were in, within your range?
---Correct, our - - -

If they met a benchmark standard?---Correct.

In regard to all, in regard to tenders generally or in regard to the Art Gallery?

20

MR LLOYD: In relation to the Art Gallery, I'm restricting my questions to the Art Gallery?---Okay.

As I understood your evidence before lunch that Dan Paul contacted you when he was involved as a consultant and it became clear to you obviously that he was the consultant to the Art Gallery and would be heavily involved in preparing specifications for the needs of their project?---Correct. #3.50.04

30

And as I understood your evidence, you were saying that you spoke to him in order to calculate a bill of materials, put together a spread sheet to talk about what cameras and fields of view might be necessary and to make sure that a product being put together by QV would meet the needs of the client.
---Correct.

As I understand it, in that process you would be telling him what was required in relation to meeting the needs of the Art Gallery, broadly speaking.---Broadly speaking, yes.

40

You went along to look at the concept including the cameras that were needed, the fields of view that would be acceptable and then you would put your range of the components of your product to him to meet those needs.
---Correct.

And I want to suggest to you it would be almost impossible for him to prepare adequate specifications without the input from the suppliers of products to meet the needs of the particular client.---It wouldn't have been as detailed.

Sure. In fact, this was a common occurrence in the industry - - -?---Correct.

- - -to your experience of consultants preparing specifications to come to the horses mouth, the supplier of the product so as to meet the client's needs.
---Correct.

And you saw nothing suspicious about any of your conversations with Mr Paul in that context?---I did not.

10 You were shown the Exhibit 66 which was the tender specification.---Yes Mr Lloyd, yes.

And you were taken to one part of this, the pages are numbered in the top right hand corner.---I see that.

You were taken to page 401.---Correct.

20 And Counsel Assisting took you a few lines down on that page to the description of the CCTV system where the CCTV system shall be System, System.---I see that.

No name given.---No name given.

And I think your evidence was to the affect, you were almost certain Verint was mentioned in the document as the bench mark.---I still believe that.

30 Well, let me assure that your belief is correct. So let me take to the page that Counsel Assisting didn't take you to at page 414 where we see the table of benchmark products.---I see that yes.

Where the CCTV system right in the middle of the page Verint is mentioned.

MS LONERGAN: Commissioner, just to save time and assist Mr Lloyd, there's no dispute that Verint's mentioned in the document.

40 MR LLOYD: Well, with respect Commissioner, the inference being put in the question deliberately put, one could assume, was that Verint was not mentioned as a bench mark.

THE COMMISSIONER: No, no, that's not right.

MS LONERGAN: If that's the impression that was given Commissioner, that's not a correct one.

THE COMMISSIONER: If that's the impression, it's not intent, it's not intended.

MS LONERGAN: It's not intended, thank you Commissioner.

MR LLOYD: Well, I just want to clarify, the benchmark's there, isn't it?
---It is.

Thank you.

10 THE COMMISSIONER: The evidence generally although not as far as I understand it conclusively in the sense that every witness has said so is that until a late stage, Verint was the benchmark there. It's not been suggested otherwise.

MR LLOYD: No, indeed.

THE COMMISSIONER: So where at, Mr Lloyd we're again on the same page.

MR LLOYD: I don't know why that question was asked then.

20 THE COMMISSIONER: No, no, I think it is important to establish that everybody, most people, thought that at least for a very long time that Verint was the benchmark. That's the relevant fact and as I understand it it's almost, if not completely, common ground.

MS LONERGAN: Commissioner, if I can assist, the reason I asked that question was in the context of asking Mr Theissen whether he received a copy of the tender specifications that actually identified the CCTV system, that was all.

30 THE COMMISSIONER: All right.

MR LLOYD: Did you get the tender specifications?---At the tender briefing, yes.

And you were aware from that briefing that Verint was the benchmark?
---Correct.

40 I want to suggest to you that all the assistance you gave to Dan Paul you understood was to be no guarantee that whoever became the successful tenderer would buy any of your products?---Correct.

I think that's probably it, Commissioner, other than getting instructions on that - - -

THE COMMISSIONER: Very well, Mr Lloyd. We will adjourn until Monday, 13 August at 10am but I regret that tomorrow this room is being used for another enquiry so those persons who have got their documents should attempt to remove them and there will certainly be no access to them

tomorrow because the - it is a compulsory examination and it will be in private. We will certainly attempt to accommodate those persons who wish to leave their material here. I suppose stuff on the trolley will do no harm but all the material on the desks should be cleared because you may come back on Monday and find that someone has removed them that it will not be the Commission.

MR LLOYD: I'm sure you wouldn't want any more documents, Commissioner. WE might just leave ours on the side.

10

THE COMMISSIONER: Yes, that's - I think that is fair enough. Adjourned 'til Monday.

AT 3.56 THE MATTER WAS ADJOURNED ACCORDINGLY

[3.56pm]