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INDEPENDENT COMMISSION AGAINST CORRUPTION

PATRICIA McDONALD SC
COMMISSIONER

PUBLIC HEARING

OPERATION EMBER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 16 OCTOBER, 2019

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

<SAMER SOLIMAN, on former oath

[2.03pm]

THE COMMISSIONER: Right, Mr Soliman. And we've lost Mr Lonergan.

MALE SPEAKER: No, he's just outside.

10 MS WRIGHT: Commissioner, while he comes in, I tender the WhatsApp.

THE COMMISSIONER: Oh, yes.

MS WRIGHT: It's a 719-page extraction report containing WhatsApp messages.

THE COMMISSIONER: Hold on for a sec. It was Mr Thammiah's phone, wasn't it?

20 MS WRIGHT: Mr Thammiah's phone and the date range is 24 May, 2017 to 6 July, 2018.

THE COMMISSIONER: All right. The extraction report consisting of WhatsApp messages on Stephen Thammiah's phone covering the period 24 May, 2017 to 6 July, 2018 will be Exhibit 63.

**#EXH-063 – EXTRACTION REPORT CONSISTING OF
WHATSAAPP MESSAGES ON STEPHEN THAMMIAH'S MOBILE
PHONE COVERING THE PERIOD 24 MAY 2017 TO 6 JULY 2018**

30

THE COMMISSIONER: Right. Mr Lonergan.

MR LONERGAN: Thank you, Commissioner. Sorry, my instructing solicitor has just had to run out and grab my laptop which we left. It's all right, I'll start but I might be a little bit amiss of some references.

THE COMMISSIONER: All right.

40 MR LONERGAN: I represent the interests of Stephen Thammiah, which I think you're aware of from before. If we go back to when Mr Thammiah was first introduced to RMS in 2015, that was through yourself. You remember that?---Yep.

Now, you introduced Mr Thammiah to RMS and you assisted him in becoming a contractor or providing services to RMS, do you recall that, around that time?---Basically, yeah, yeah.

He did a number of scoping studies through 2015 and into 2016. Do you recall that?---I believe so, yeah.

Now, you knew at that time, that being the second half of 2015 onwards, that Mr Thammiah was a person who had come to have a dependency on you as a friend. Do you recall that?---Not a dependency, he was my friend though, yeah.

10 He was your friend and you knew that he was in a fragile state and you were I suggest to you grooming him between 2015 and 2016 to become a person who you could direct business to and exploit.---No, I don't know what you mean by exploit.

Well, I mean exploit as in lean on him to give you money whenever you asked for it.---No, that's, that's not true.

THE COMMISSIONER: And, Mr Soliman, sorry, you're going to have to move towards the microphone. Thank you.

20 MR LONERGAN: You were grooming him because you introduced him, you assisted him as much as he needed in terms of the preparation of the scoping studies for RMS through 2015 and early 2016. Do you agree with that?---No. I mean he done pretty much all, all of the work and when he asked me for help then I basically helped him.

He did do all the, or most of the work, however you provided information to him that was internal information of RMS that should not have been available external to RMS. Is that correct?---Hmm, such as what, sorry? No, I don't recall anything specific.

30 THE COMMISSIONER: Sorry, Mr Lonergan, is this at any time during the time Mr Thammiah's either doing work or providing scales to RMS?

MR LONERGAN: No, sorry, Commissioner, this is in the context of the scoping studies.

THE COMMISSIONER: Okay.

40 MR LONERGAN: So let me rephrase that. In terms of the scoping studies, you were providing information to Mr Thammiah and Novation through Mr Thammiah that was internal information of RMS that was not available and should not have been available to parties outside of RMS. Is that correct or not?---If you give me an example I can probably say yes or no, but I don't specifically know what's confidential, what's not.

Sorry, your answer there is you don't know what is not confidential information of RMS?---Yeah, well, I mean if you show me something I can tell you if I think it is or not.

No, no. Just put that to the side for a second. Your answer was you don't know what is and is not confidential internal information of RMS.

---That's correct, yeah.

Is that your answer?---Yep.

10 So if you were provided a document of RMS, you wouldn't be able to say one way or another whether that was internal confidential information of RMS?---Maybe using kind of some sort of common sense but I mean it's not really black and white.

Right. So is it - - -

THE COMMISSIONER: What about if it had "Confidential," written on it?
---Then yeah, obviously if you see that then that makes sense that it's confidential. It's common sense.

20 MR LONERGAN: But absent that you couldn't tell?---Not necessarily. I mean I basically used some common sense I guess but - - -

Well, you've been taken through, over a large number of days now, various documents, WhatsApp messages, emails et cetera. Is it your position, Mr Soliman, that you have not provided any internal confidential information of RMS to Mr Thammiah and/or Novation?---No, that's not what I said. I just said if you give me a specific document, I can tell you if I think it is or not.

But you accept you have provided him confidential information of RMS?
---Well, we were very close, so it's possible, obviously.

30 Possible or actually?---Unless you show me something, I mean, I don't know how else to answer you.

Well, I'm trying to understand your position, Mr Soliman. You either believe you have provided confidential information of RMS to Mr Thammiah or not. It's a yes or no.---I don't recall any specific thing that I think was confidential.

40 So your position is that you do not believe that you have provided confidential information of RMS to Mr Thammiah or Novation?---From what I can recall now, yeah, but you need to show me an example. I mean - - -

Well, let's go to WhatsApp page 291.

MS WRIGHT: There's two WhatsApp, so that should be Exhibit 63, I take it?

MR LONERGAN: Yes. Exhibit 63.

THE COMMISSIONER: And what page was it again, sorry?

MR LONERGAN: 291, Commissioner. So here, there's an example. "Meeting my director soon. Going to recommend we go to immediate tender. Keep you posted." Is that confidential information of RMS?---I wouldn't say so, no (not transcribable).

10 What, that you're going to go to a tender? So you're giving him a heads-up of a tender.---There's nothing kind of secret about that. I don't think so anyway.

The provision of internal RMS documents relating – sorry. Excuse me for a second. If we go to page 433 of the same exhibit. So here, Mr Soliman, you are telling Mr Thammiah that NEPEAN Transport had just sent in their quote and they've quoted \$5,600 for the Intercomp LP600.---Yep.

20 Is that internal confidential information of RMS?---I would say so, yeah.

So you have provided him confidential information of RMS to Mr Thammiah?---Yeah, judging by this message, yeah.

Right. Do you recall how many times you've crossed the line and provided him information of this confidential nature?---No.

It was very frequent, wasn't it?---Well, like I said, I mean - - -

30 THE COMMISSIONER: Do you agree it was frequent or not?---No. I mean, unless he shows me something, I don't know how many, if it was frequent or not.

MR LONERGAN: Mr Soliman, you've been shown so much over so many days. I'm not going to labour and go through all of them. I'm just putting the proposition to you that it was a frequent occurrence that you provided confidential information of RMS to Mr Thammiah.---Well, you just showed me one, so obviously it's very likely that there was something else that we didn't, I didn't think that it was problem at, at the time.

40 So you reject the proposition that it was a frequent occurrence?---Well, I don't – yeah, I do. I don't think it was.

Now, when you provided this confidential information to Mr Thammiah, you told him that it was okay for him to have that information, didn't you? ---No, I didn't say anything. I mean, obviously I didn't think there was a problem or a breach at, at the time.

So you weren't aware that this was information that you should not be giving to Mr Thammiah?---Just I didn't think about it.

You didn't think about it?---Yeah.

How is that possible, Mr Soliman?---Well, I was - - -

10 You're providing information and you're not thinking about – I mean, you've been trained. You've done internal training within the RMS in relation to pretty much every aspect of your job I would assume - - -? ---Definitely not for that.

- - - and you're telling me that you're not even thinking about the provision of information to Mr Thammiah/Novation and whether it's proper to do so or not.---Yeah, I wasn't thinking about it and I had my own issues throughout that period and I mean, we were very close so - - -

20 I know. We'll talk about your closeness. I've already put it to you that Mr Thammiah was in a dependent relationship with you where he depended on you and I put it to you now that he would do anything that you asked him to do.---I don't think so. I mean, I had as many issues as he did, if not more, so you could say the opposite.

No. I mean, I'm not going to count issues on sides of a ledger here but, Mr Soliman, Mr Thammiah depended on you. He was in a relationship with you as very close friends where he would do anything that you asked him to do.---No.

30 He trusted you implicitly and you asked him to do anything he'd do it.---Of course not. That's ridiculous.

You started with contracts relating to scoping studies and then the opportunity came along for Novation to join the, or to make an application to join the Maintenance Panel. Do you recall that?---Yeah.

Now, that was, so preceding that in January 2016 was the first time that you asked him for money. Do you recall that?---Probably around, yeah, that time '16-ish.

40 So about, you know, a bit of time after he'd started doing the scoping studies and had earned a bit of money from doing those you hit him up for 10 grand.---No.

Yes, \$10,000 in January 2016.---No.

And you told him that that money was to give to another person, to Tim, who is an Islander gentleman who was in desperate need of assistance. You

pulled on his heartstrings to give the \$10,000 to give to you to give to him, didn't you?---Sorry, who, who the hell is Tim?

Tim is the guy that you asked \$10,000 from Stephen Thammiah to give to.

MR YOUNG: Sorry, can we have some sort of particularisation of this. This is, when is this supposed to have happened, on what circumstances?

MR LONERGAN: Transcript page 1804, line 45-ish.

10

THE COMMISSIONER: So do you see there, Mr Soliman, Mr Thammiah gave evidence about you asked for 10,000 so that you, Mr Soliman, could help out a friend that was experiencing financial distress and this person's name was Tim and he was an Islander guy with a sort of square jaw and a bit shorter than me. See that?---I see it, yeah.

So did you have a friend called Tim?---No. And if I did, if I was willing to give someone \$10,000 I'm sure the contact will be in my phone so I don't know who he's talking about.

20

So you don't know who he is?---No.

All right.

MR LONERGAN: The point there, Mr Soliman, isn't, you didn't intend to give \$10,000 to this Islander gentleman, what you did was told Mr Thammiah that you were going to give \$10,000 to this Islander gentleman. ---Okay.

30 THE COMMISSIONER: So that's a different proposition now.---Yeah, it's a different proposition, that's changed now, but no, that's again - - -

No, no. But sorry, and I should correct that, I put the proposition to you that you knew this Tim and you said no, you don't. Now Mr Lonergan's saying, well, regardless of whether you knew Tim, the Islander with the square jaw, this is what you told Mr Thammiah. Do you remember telling that to him? ---No, that didn't happen. That's made up I mean.

40 MR LONERGAN; So he's giving you the \$10,000 under the pretence on your part that it was going to this Islander gentleman who's in desperate need and you kept it. That's correct, isn't it?---Once again, that's completely made up. If there was a Tim and he says in that transcript that we went to his house or something, I mean it would, that contact would be in my phone. That's just completely made up.

And that was the first time that Mr Thammiah had given you money that he had in his possession and that was the testing point for you, to see whether

you had fertile ground now to extract further money from Mr Thammiah.
---Again that's completely false, but as you will.

Then you bought a property in September 2016. Is that correct?

THE COMMISSIONER: Sorry, what date again?

MR LONERGAN: September 2016.

10 THE COMMISSIONER: Thank you.

THE WITNESS: I think we got the land around late 2016, yeah, I don't know exactly when.

MR LONERGAN: And you put in a DA application in February 2017 to develop that property, isn't it?---Hmm, around that period, yeah, I'm not sure when.

20 And by that stage – or sorry, so just prior to, in the months prior, so starting June/July 2016, so not long before you purchased this property, you started asking Mr Thammiah for \$2,000 on regular occasions. Do you recall that?
---No.

And he was going to the bank and he was taking money out for you between June/July 2016 and towards the end, November/December 2016, and that was a regular occurrence, was it not?---No. Sometimes he gave me the card and I would get the money out but, yeah, if that's what you're, what you're asking.

30 Right. And the way that this transpired between you and him is you demanded and he gave.---I never demanded anything, I mean - - -

Well, sorry, I withdraw that. You asked and he gave.---No. I mean we had an agreement from the beginning that I would pay, pay the money back and that's what was going to happen at the end of the house build.

40 That might be true, Mr Soliman, maybe you did say to him that you were going to pay him the money back, but the point is, whether you intended to or not is moot. You asked him for the money and whether you intended to pay it back to him or not, he gave it to you willingly because he was your mate, he depended on you for emotional support and what was his was yours.---No. I don't agree with basically everything that you just said.

THE COMMISSIONER: You don't agree?---No.

MR LONERGAN: And beyond that point, Mr Soliman, you knew that Mr Thammiah would give you whatever you asked for. So do you agree with that?---No.

And so it's the position that you didn't need to tell him whether the money was a loan, you didn't need to tell him whether the money that you were asking from him was because of the benefit that Novation received from your efforts. You didn't need to tell him any of these things, you just told him that you wanted the money.---That's ridiculous. I mean, who would, who would just hand over money for, without information or reason or agreement?

10 THE COMMISSIONER: Were you given only one card or did the card change?---I think he kind of gave me a few. He said he changed his personal account so it's probably a couple, a few, I don't know.

And you described it the other day as a blue card. Was it a blue card all the time?---No, no. He just kept on kind of giving me a different one whenever he said - - -

Sorry, I didn't hear that.---He just, he just kept on giving me a different one whenever he, he said, you know, "This is the card now."

20

MR LONERGAN: So, Mr Soliman, when was the agreement that you say that you were going to borrow the money from him?---Around the time that we got the land or the week before that, I think.

THE COMMISSIONER: Sorry, around the time you got the land?---Yeah, I think it was before that, yeah.

30 MR LONERGAN: And you were hitting him up for this money because you knew that he had some money that had come in from the contracts from Novation and you knew that he was an easy mark for you to get money out of whenever you wanted?---No. And he was the one that actually offered the money to me. So that goes against what we've already said.

Well, is that in a WhatsApp message somewhere, Mr Soliman?---I don't know.

Was that entirely verbal, was it in writing, anything like that?---I remember it was just in verbal, you know? It was just kind of a handshake agreement.

40 What, that he would give you whatever you wanted?---No. That he would give me some of the money from his settlement as a loan and I would pay that back.

But that was much later, wasn't it? The \$200,000 from the settlement was not at the start of this period. This is not, we're talking pre your purchase of the land in September 2016.---That's right. But he already knew how much was going to come in and he said he also had private finds. So, I had no reason not to trust him.

What, so you were going to ask him, not only from the money coming from Novation but you were happy to ask and take from him the money from his settlement?---I didn't ask. Like I said, he's the one that offered and I didn't take again. He, we had an agreement from the beginning.

There was no agreement expressly provided for, it was just a question of, as I've said to you, you wanted, you needed, you took?---Nope. I mean, he made the money, that doesn't make sense anyway.

10

Well, yes. I mean, we'll get to the money and how it was made in a minute but the point is, you wanted money, you demanded, gave you the card, you took out whatever you wanted, kept a record of it, sort of, didn't you?
---Yep.

20

And it wasn't constrained merely over time to the money that have come into the Novation accounts. You also knew that he had \$200,000 that was coming in and eventually did come in from his divorce settlement and you hit him up for that as well?---No. That's not how, how it went. He, he actually said the settlement money was more. So, I don't know if that was truthful or not.

THE COMMISSIONER: He said the settlement money was more - - -?
---More than 200,000. So I don't know if that was true or not.

MR LONERGAN: If we just go to Exhibit 63, page 50.

THE COMMISSIONER: 50, was it?

30

MR LONERGAN: 50, 5-0.

THE COMMISSIONER: Thank you.

MR LONERGAN: So you see there that's, we're moving forward effectively a year now, Mr Soliman, from what we were talking about and on 12 July, 2017 you know that he's received \$200,000 from his payout from his divorce. Yes?---He said he got more but, yeah.

40

So he had more but you wanted 200K from his payout. Is that right?---I'm not, still not sure what that means exactly. I don't know if it's 100 - - -

It's self-evident, isn't it, Mr Soliman?---No.

You want 100K from the card and you want 200K from your payout.---It's still not clear to me if that means 100K of the 200 which was on the card. It could be.

Come on. Seriously, Mr Soliman.---I don't know. I don't know.

It's a long day and I don't have time - - -?---Trust me, I know, yeah.

- - - for this round-the-bush type of answer from you. 200K from your payout, 100K from your card, 300K in total, right. You're aware of only one payout aren't you?

10 MR YOUNG: I object to this. I mean, whether it's a long day or not, my learned friend is not entitled to put in terms of a question an answer which has not been given simply because he didn't get – I mean, there's no god-given right for a cross-examiner to get the answer that he wants/she wants and he didn't get it in this case and the next question assumes that he did.

THE COMMISSIONER: Mr Lonergan, are you going to press the question?

MR LONERGAN: Yes.

20 THE COMMISSIONER: And sorry, can you state it again for me. How about you start again.

MR LONERGAN: Yes. In that case I withdraw the question and I'll start again. So "200K from your payout, you are payout, 100K from the card." Do you see that?---Yeah, I do, yeah.

So your payment is the payout, to your understanding at that time was the payout from his divorce settlement.---Payout means, yeah, the settlement I think.

30 And so here you are asking for 200K from Stephen Thammiah's divorce settlement proceeds.---No, not necessarily. Again, I said I don't know. That could mean that that message he got 200K payout and 100K would be put onto the card potentially but I'm not going to, going to swear on it because I'm not sure.

40 Well, Mr Soliman, I put it to you that it's blatantly obvious that what you're wanting here is 200K from Mr Thammiah's payout from his divorce settlement and in addition to that 100K from the card being the card that he had regularly given you to withdraw money from his account.---That's a crazy number because it's something, I didn't get that much in total.

THE COMMISSIONER: No, no, no, do you agree with that proposition Mr Lonergan has put to you?---No. No, I don't. No.

But whatever that means the 100K is coming from a different source or a different account, that's probably the better way to put it. The 100K it's anticipated is coming from a different account from either the 200 or the

other 100, isn't it?---Potentially yeah, but I don't know if he put money from the payout into the card or exactly what that message means.

Well, if he did that it would be 200 from your payout, 200 from the card or I'll take it from the card. See you're distinguishing there – let's assume what you suggested is correct, that you're getting 200 in total. What you're saying there is 100 of that 200 is coming from the card and the other 100 is coming from the payout.

10 MR LONERGAN: I'm sorry to interrupt but I think, perhaps it's me, but I think that you may be under a misapprehension as to what he was saying.

THE COMMISSIONER: All right, we'll stop. Mr Soliman, you've given evidence you don't remember what you meant when you said this. That's correct?---Yeah, the message isn't very clear to me.

20 But you've speculated. You've given some evidence along the lines of you were going to get in total 200,000. Is that correct?---No. I've said I don't know. I mean, it says that there's 200K from his payout and potentially that could mean there was 100K to go from that into the card but I don't know exactly, was it 200 - - -

Well, why won't he put the whole 200 onto the card?---Again, I don't know. I don't know what that message actually means right, right now.

Because what I want to – what it suggests is that different amounts of money are coming from different sources, one is coming from the payout and one is coming from the card. Do you agree with that proposition?---No.

30 If you look at what you said in that message - - -?---That's one possible way to view it. I see what you're saying but I just, I can't say yes because I know I didn't get that much so - - -

Well, we're not talking about what you actually got, it's what you're suggesting there in the message.---Yeah. I would say probably is no because I know I didn't get that much so - - -

40 What you're saying in the message is, you're identifying two different sources for the funds. You've agreed that that's a possible construction of what you've said.---It's possible. I don't know but.

And what I want to say to you is that by distinguishing between the two sources and identifying 100,000 from the card, the card must mean a different source, that is the Novation business account. Do you agree with that?---I don't read it that way at all.

All right. Okay, Mr Lonergan.

MR LONERGAN: So really the point here, Mr Soliman, is that you didn't care where the money came from, you just wanted whatever money Mr Thammiah had available. That's right, isn't it?---That's completely false, no.

10 All right. And the reason you wanted this or needed this money was you were doing firstly the purchase of a property in late 2016 and then after that, the development/renovations of that property in 2017 and you needed cash. ---I didn't need it at all. I mean, but he, he actually offered me, I already had the, had the loan but he offered me an interest-free loan as a, as a friend and I didn't see an issue, issue with it.

Sorry, are you saying you had a loan from the bank to do all the renovations for your property?---That's correct.

20 You hit Mr Thammiah up for the money. You didn't care whether it was from his divorce settlement or not, and it was the easy way to pay cash to the builders, get a discount for it and get the work done.---No. Again that's not what it was about. I think we're just going around in circles here but he offered the money to me as a, as a friend and I was grateful. I didn't think about it much back then but obviously now that I'm sitting in this seat I'm thinking about it.

30 Now, if we go to WhatsApp page 284, you'll see up there 140 each, that's why it's 100. And if we go back to 283, you'll see there on 283 you're asking Mr Thammiah what the balance and sums were for the half, i.e. the books and accounts of Novation.---I'm not sure if was Novation. I don't think I have any reason to ask him. It was potentially around the settlement itself.

Sorry, settlement of what?---His financial settlement from his divorce.

THE COMMISSIONER: So why is he paying tax on a settlement from a divorce?---It could be, well, it went into his account, right, you don't pay tax on it? I think you do.

MR LONERGAN: So the point - - -

40 THE COMMISSIONER: You're saying that to me, you're giving that evidence?---I'm not sure. I'm just, I'm asking the question. I don't know. Maybe I'm wrong.

Sorry, Mr Lonergan.

MR LONERGAN: No, Commissioner. So just explain to me, how does the money from his divorce settlement have anything to do with the messages on 283 that was just in front of you and will come back up?---Could be

asking, you know, what was the balance of the settlement and his private funds potentially.

THE COMMISSIONER: Well, sorry, I'm going to intervene Mr Lonergan. 283, Mr Thammiah says, "I've just halved what was left after tax," right? And this is trying to work out – and then over the page on 284 he says, "140 each. That's 100, 40 per cent tax," right?---Yep.

10 Do you see that? And you've just said to me that you thought possibly when you get a property settlement in a divorce you've got to pay tax on that money.---Yeah, well, it's a kind of income, isn't it? So - - -

Right, no, you've said that. But he's an individual, isn't he, getting a property settlement as an individual from his ex-wife, correct?---Yeah, I guess so. I don't know if went into his business.

Well, why down the bottom of 284, he makes the comment, "The company tax was the killer." See that?---Yep.

20 So it is obviously from that and also the fact that, "Tan hasn't told me I owe tax for the year. Just presuming I don't. Company tax was the killer." The context of these messages between you where you're trying to work out what division of the money you're going to get and he's talking about tax, 40 per cent tax, company tax was the killer, that it's clearly the money is coming from Novation.

MR YOUNG: Well, I do object on one basis, Commissioner, and there is a distinction there between personal and company.

30 THE COMMISSIONER: Yep. Okay. And I'm putting to you, Mr Soliman, that when you look at the context of these messages that it's quite clear the money that you're talking about, how it's been divided up, how you're getting half each after tax, it's clear, and the company tax was the killer, it's clearly referring to funds from Novation.---Again, I still didn't see it that way back then at all. I mean - - -

All right, Mr Lonergan.

40 MR LONERGAN: Whether you saw it as money from Novation or otherwise, right, the point is what you were doing here at this point in time was ascertaining how much money Mr Thammiah had available that you could ask for?---No. He's the one that offered it to me.

So if we go to page 142 of the same exhibit. All right, and see there, "Bro, can you transfer 20K to the account ASAP." Can you see that?---Yep.

And then later on he says, "Done." And then you say, "Thanks, bro. Carpenter said he will restart next week." Because you needed to give 20K

to the carpenter in order for the carpenter to start next week, didn't you?
---Hmm, I don't think it was 20K but yeah, he, he only ever put 20K in his bank.

Sorry?---He only ever put 20K in the cards that he would give me.

But here you're asking him. You're saying, you know, "Bro, give me 20K."
All right, and later on, "Thanks, bro." And the reason you were asking for the 20K was to pay the carpenter and the carpenter starts next week. That's right, isn't it?---Well, no, I'm not saying I need the whole 20K, I'm just saying basically transfer, you know, 20K to, to, to the card like he would generally do.

So how much are you taking out, one or 2,000, are you?---Well, no but I don't know exactly how much was for the carpenter if that's what you're asking.

The point is that you had a need for some money, for some cash, and you go back to your easy source of cash, being Mr Thammiah, "Give me the 20K," and you go and give that money or at least some of it to the carpenter so the carpenter can come and keep doing the development or renovations on your property. That's what this is about, isn't it?---Hmm, no. That's completely false, no.

You're saying that's not correct?---The way you're putting it is completely not true, as if he was, you know - - -

So if we go to the same exhibit, 63, page 508. So we'll start there. So you've agreed here on a price to fix the house with the builder, he's starting tomorrow and you'll need \$17,500 from Mr Thammiah.---Ah hmm.

Am I interpreting that correctly?---Yeah. I don't think I needed that much at the end anyway. He gave me maybe half of that or less.

"How soon can you make a withdrawal?" i.e. you need this money quickly. Is that right?---Yeah, I saw it, yeah.

So if you go over to the next page. Now, he's going he can start pulling out money today. "What can you organise?" "That's fine, bro." Go to page 510. And here we are, you know, "So he's starting work tomorrow but won't expect the full amount tomorrow." There's a reprieve. "I've got a week I'd say before he wants the dollars." Presuming that's the 17,500, is it?---No, it was much, much less than that.

So again, I've taken you to two examples here where you are hitting Mr Thammiah up for money and wanting it reasonably quickly from him in order to make payments to builders and/or carpenters. That's right, isn't it?
---Yeah, and that's what he knew, yeah.

And there was one amount for 20,000 that I took you to and another one for 17,500 that I took you to.---And that's what he offered to help, help me with.

No, that's what you demanded from him.---No.

He didn't offer to help you.---He did.

10 He didn't need to offer to help you. He never had an opportunity to offer to help you because you were in the position of, well, assertiveness over Mr Thammiah and he would do whatever you asked him for, including here providing whatever money he had in his account that you asked for.

MR YOUNG: Well, I object to this. I object to this constant - - -

THE COMMISSIONER: No, hold on, hold on. Mr Lonergan, there were a number of proposition in that question.

20 MR LONERGAN: Yes, Commissioner, I'll break them down.

THE COMMISSIONER: Does that deal with your complaint, Mr Young?

MR YOUNG: Well, it does, except, except there's this constant sort of Garcia-type reference to dependency or vulnerability or some sort of unconscionability that is not at all clear what that's referring to. I mean if there's something that's supposed to be a disability that Mr Thammiah was suffering from known to the, known to Mr Soliman, that ought to be put, but it just seems to be that there was some sort of dependency which is - - -

30 THE COMMISSIONER: Look, Mr Lonergan put right at the beginning that there was I think a vulnerability and hence a dependency by Mr Thammiah on Mr Soliman. Mr Soliman didn't agree with that, and I do take your point that with Mr Lonergan he does include it in questions and then asks another aspect of the question.

MR YOUNG: I think the starting point was the word fragile, that Mr Thammiah was in a fragile state, and the answer was, and I'm paraphrasing, but along the lines, well, we were both going through issues at the time.
40 Now, it seems to have developed from fragility to dependency and that for some reason that Mr Thammiah would do whatever was asked of him. And in my submission that can't simply be wrapped up in a question with a number of propositions, particularly where it may be the one that is not answered.

THE COMMISSIONER: All right. Mr Lonergan, I think you're going to have to – that was a very long question, I think if there are particular parts of that long question that you want to pursue, you'll have to break it up.

MR LONERGAN: Yes, Commissioner. I'm just trying to remember my train of thought now.

THE COMMISSIONER: I thought you were looking at - - -

MR LONERGAN: We were looking at the, well, the proposition was around the 20,000 and the 17,500 and I believe my question, Mr Soliman, breaking it down was you knew when you asked for the 20,000 and the
10 17,500 that Mr Thammiah would give you that money when you asked for it.---No, that's why there's a question mark on those questions.

And you knew that he would give it to you because of the nature of the relationship between the two of you.---I don't understand the question.

Well, the relationship I put to you is one of dependency of Mr Thammiah on you as a close friend.---He was not dependent on me. He was not a child.

And as a result of this relationship you asked Mr Thammiah for money and
20 he gave it to you.---That's not correct.

And you didn't care where the source of that money was coming from. All you cared about was whether Mr Thammiah had the money to give to you when you asked for it.---Well, I mean, it's not my place to figure out his finances. He's the one that offered it to me.

Mr Soliman, we've just been through where you were asking him about his finances, do you recall that, asking him to speak to Tan?---Yeah.

30 And that was about ascertaining finances, the financial position in particular in this case of Novation.---I still don't know if it was Novation's position or what but okay, there was one, one time there.

And it was Mr Thammiah's financial position being in this case Novation, but I think your answer was that it was potentially also including the settlement money. Is that right?---That's something what I would be asking about, yeah.

40 But the point is, Mr Soliman, you were asking about his financial position. ---At that point, yeah.

And then you were asking for money.---No. He already offered it to me right at the beginning. It's not about asking him every time.

Oh, it's not about asking him every time?---No.

It's just about telling him you want the money?---No, of course not. I mean, there was an agreement at the beginning. It's not like the way you make it out, no.

So you were asked a number of times by Counsel Assisting in relation to the accuracy of what you were saying in the WhatsApp messages being Exhibit 63 which you've been taken through today.---Yeah.

You recall that.---Yeah.

10

And on a couple of times you've said words to the effect of you were just talking yourself up. Do you recall that?---I may, may have been. Again, when I've looked at those messages they don't make sense to me now.

They don't make sense to you because they're incomprehensible or you can't - - -?---Because it doesn't really sound like me. I know I was going through. I still am going through major issues. [REDACTED]

20

So your own messages now seem weird to you?---Yes.

So in these messages, and I will take you to some specifically in a minute, are you saying that they were not truthful at the time you were writing them?---No. I mean, it seems like they were exaggerated as if, you know, as mates talk to each other, you know, like look how fast my car can go sort of thing.

30

So am I to interpret that that you were bragging to Mr Thammiah about how much power and influence you had within RMS?---No. I mean, maybe it was just, you know, my own personal issues coming out in text.

Sorry, how are your personal issues coming out in these texts, Mr Soliman? ---Well, he knew I was going through [REDACTED]

[REDACTED] that I don't even recognise my own words almost.

40

So these text messages are not you in reasonable state of mind. Is that what you're saying?---Well, yeah. I mean, that's - but again I could be skewed now with what I'm going through. So, yeah.

If we go to Exhibit 63, page 673. This is one of the last messages on that page, Mr Soliman, was a message that Counsel Assisting took you to and it's one that, you accept from me, was where you said that you answered that you were talking yourself up. Do you recall that?---I think my evidence was I could have been talking myself up because I didn't really, kind of, connect with the messages I saw.

So and talking yourself up is in the sense that you didn't have the ability to add in the requirement for the scale to be the maximum 18 kilos. Is that what you're saying?---Sorry, that's not what my evidence was, no.

THE COMMISSIONER: Sorry, now I'm confused.---So am I, sorry.

Sorry, you go ahead, Mr Lonergan.

10 MR LONERGAN: So are you saying that you didn't say, in relation to this message, that you thought you were talking yourself up?

MR YOUNG: May have been,

MR LONERGAN: Or may have been talking yourself up?---Yeah. I think I said that about a couple of messages. Was this one of them?

20 THE COMMISSIONER: Well, looking at it, were you talking yourself up? ---I don't know, I don't know. I through I said that about that last message on this page, that there were a few people in the meetings where we were kind of going through the specifications.

MR LONERGAN: And the point is, you didn't have the authority to unilaterally change the requirement in the relevant tender for the maximum to be 18 kilos. Is that correct?---I mean, I don't know. I mean, I guess I could have if I really wanted to but I wasn't managing the actual tender. So it was always kind of a joint thing.

30 THE COMMISSIONER: Sorry, I'm looking at his transcript from before lunch of, sorry, Mr Soliman's answer. He didn't actually say in respect of that message that he was talking himself up. It was put to him, "Where you said, 'I added a requirement for the scale to be a maximum 18 kilos,' that's because it was you who added the requirement. Isn't that the case?" And he said, "It's possible. I don't know because we were meeting as groups basically. So we went through what should be the specifications."

40 MR LONERGAN: Please the Commission. I stand corrected. If we can go to the page 463 of the Exhibit 63. You see that. If we go over to the next page, 464. Now, Mr Soliman, this is the period around when you were on your honeymoon holidays. Do you recall that?---Around that period, yeah.

You were shown by Counsel Assisting this morning your holiday calendar. ---Yep.

And that showed two holiday periods that were concurrent that ended on 12 March. Do you recall that?---Yep.

So you had your wedding - - -

THE COMMISSIONER: 9th.

MR LONERGAN: - - - on 3 February, I believe, and then you went on holidays about the 9th and came back - - -

THE COMMISSIONER: No, no, no. Sorry, the 9th is a Friday so formally the leave commences on Monday the 12th and then goes through to, I assume, Friday, 9 March.

10 MR LONERGAN: Yes. And he comes back to work on Monday the 12th.

THE COMMISSIONER: The 12th, yes.

MR LONERGAN: Yes. Do you recall all that, Mr Soliman?---Yep.

Now, so this is the 12th that you're seeing here. Your correspondence starts there, "FYI, processes was halted like I thought. They chose the Intercomp scale." All right. No one ever chose the Intercomp scale, did they?
---Sorry? I'm pretty sure that's what the outcome when I was gone, yeah.

20

You're pretty sure that was the outcome?---Yeah. That's what I was told by Jai, that that was the one chosen but they had talks when I was gone, so - - -

THE COMMISSIONER: So while you were away, Jai told you that they had chosen the Intercomp scale?---I think this is the day that I was back. He was saying that, that DJ has issued with it and he wanted the Intercomp scales so they had some meetings and stuff, whatever.

30 MR LONERGAN: So Jai, your evidence is that Jai told you that the Intercomp scales were chosen?---Yeah. From memory, yeah, yeah.

And that was the state of play as at 12 March when you came back to work?---No. I think by that point Jai was already kind of pushing forwards with the alternative option, with the PAT option at that point. I'm pretty sure but not exactly sure on dates.

If we go over to the next page. It says here that you stopped the process.
---Yeah. I don't think I did.

40 But you only came back to work on the 12th?---Yep.

So that's, I mean, how do I interpret that message to Mr Thammiah?---I'm not sure. I mean - - -

Why are you telling him that you stopped the process that you're saying wasn't stopped by yourself?---I'm sure again maybe I'm talking myself up but I don't really connect with this message, why I would say that in any other way.

Are you talking yourself up - - -?---Maybe there was still hiccoughs.

Sorry, I missed that bit.---Maybe there was still hiccoughs that I, that had to be resolved but I don't, I don't recall any.

The next one, "Meeting the exec director today to reverse the decision."
---Yeah, I don't, that didn't happen either, no.

10 "Lucky I came in today." Well, you didn't need to be there to reverse the decision, I guess it didn't matter whether you were in there or not.---Ah
hmm.

Do you agree with that?---Yeah. I mean, I don't really connect with these messages to be honest.

Sorry, what do you mean you don't connect with these messages?---Because it seems weird for me to say this, just looking at this now.

20 That's the point though, isn't it, Mr Soliman. None of this is correct, is it?

THE COMMISSIONER: What do you mean by – sorry, Mr Lonergan.

MR LONERGAN: Sorry, none of the messages as they sit on this screen are correct, page 465, they are not the truth of the situation as at the time you were sending them.---There must be some truth to it otherwise why would I send it? You know, there must have been maybe something that still had to get done but it just looks weird to me reading it now also as it is here.

30 So if we go over to 472, keep going over, so is this, the first message here, "Putting my arse on the line though. Exec director wanted assurance from me that whoever I pick will have the scales within three months max."
---Ah hmm.

Is there any truth in that?---It wasn't the executive director, it was my manager, Arnold, because he was, I know that he was starting around that time and there was a lot of pressure on him to get it done in three months due to there was media scrutiny over this.

40 THE COMMISSIONER: So is it correct that you were putting your arse on the line but it was your manager who wanted assurances from you that whoever you picked would have the scales within three months?---By the financial year ending, yeah.

MR LONERGAN: And your manager is Mr Arnold, isn't it?---Yeah.

And he's male, isn't he?---Yeah.

Right. So the next line, "I pinkie-promised her and she let me select whoever I want, so Novation is in."---Yeah. Sounds like I'm talking about the executive director but it should be my senior manager, so maybe I was, mixed my words because I was thinking about the exec or something. I don't know.

10 Who was the ex-executive director, the she, who was the ex-executive director?---Completely forgot her name. Melinda.

Melinda Bailey?---Melinda Bailey, yeah, Melinda Bailey.

THE COMMISSIONER: Okay. Thank you.

MR LONERGAN: And she's the only female in your managerial hierarchy, isn't she?---Hmm, yes, I think she was, yeah.

Because Mr Bailey was your direct manager and - - -?---No, Mr Jansen.

20 Sorry, Mr Jansen.---Yeah.

And then above Mr Jansen was who?---Mr, the director, Mr Roger - - -

Arnold?---Roger Weeks sorry, yeah.

But anyway, the point is that there were no females other than Ms Melinda Bailey in your managerial structure.---I believe so, yeah.

30 And so your evidence here is that you're not talking to her or making representations to her, you're doing it to your direct manager?---Yeah, that's an error. I must have been somehow thinking about the executive director at that point. I don't know. It doesn't make sense.

Sorry, I missed that last bit?---It doesn't really make sense because yeah, I wasn't talk to her but it looks like I may be thinking about the executive director and just typed it in quickly.

40 If we just go to volume 10, page 171. You'll see there, Mr Soliman, that you're on that email as a cc?---Yep.

This is an email from Mr Jones and Mr Jones is saying that the recommendation for the tenderer, Novation Engineering, should now proceed in this instance.---Yep.

So this is in your email box as of 6 March.---Yeah, I was on leave, though.

Yes, I know you were. And Mr Singh received this as well. You see that? ---Yeah.

Now, as of this point in time you accept that Mr Jones has confirmed his view, "The recommendation for the tender and Novation Engineering should now proceed."---That's what it says here.

So by the time you came back on the 12th Mr Jai Singh also knew that Novation Engineering had been awarded the tender.---Yeah. It was sent to him, yeah.

10 And Mr Singh didn't tell you that Intercomp was the winner of the tender. ---I believe he did, that they were selected but then that was changed basically as you can see here.

Sorry, where do I see there that Intercomp were the winner of the tender?---I mean, that Novation was now selected after the consultation process so I think you're missing a bit that happened prior to this.

And if we go to volume 10, page 172. Do you see though that's Jai Singh is the author of this tender evaluation report dated 7 March.---Yeah.

20

So this is preceding your return from holidays, right?---I think I was still on leave.

Yes. Preceding your return from holidays.---Okay. Yeah.

If we go over to page 177. You see there under Stage 8 Recommendation a third tenderer on a value-for-money basis is Novation Engineering Pty Ltd? ---Yeah.

30 Mr Soliman, I put it to you again, Jai Singh did not tell you that Intercomp was the successful party in this tender evaluation process on your return to work on 12 March.---Once again you've missed a lot of critical things. They've, we've heard a lot about this, that they were, they were talking about getting the Intercomp one if they could wait for the licence from them and that's what Jai told me was going to happen between this and obviously that previous email which you showed me I think.

40 If we go to volume 10, page 169, please. This is Mr David Jones's email 28 February where he's saying he won't sign the tender evaluation report. Do you see that?---Yeah.

Had a chance to read that, Mr Soliman?---I already know the gist of it, that he's basically selecting the Intercomp scale.

Where do you see that?---The first paragraph basically. That's his preference you can see.

So the bit you see there in, what do they call those things, brackets LP600 and LP788. See that?---Yeah.

“Whilst offering a more economical outcome (as a package with new scale storage racks) cannot be considered as both these model scales have not been evaluated and the LP788 is still undergoing certification.”---Ah hmm.

10 Is that why you’re saying that Mr Jones has selected the Intercomp scales?
---Yeah. That’s what Jai said. He wanted that one and they basically said
if, can we wait for the licence. So I guess the verbal selection was done but
they changed their mind because they couldn’t wait obviously, on a
hypothetical situation.

I’ve just taken you to a number of documents, Mr Soliman, where I put it to
you, were quite clear that Novation was the preferred vendor and was the
selected vendor from this evaluation process. Do you agree with that?

---They were the final one, yeah, but - - -

20 And at no time was Intercomp ever considered or given the award under the
tender.---I don’t think they were even given the award but they were
basically, maybe selected is the wrong word, but they were thought of to see
if that’s a potential option. But as it turned out, Jai said they weren’t, they
weren’t an option because they weren’t willing to wait or whatever.

So going back to Exhibit 63, page 468. There you say, “I’ve stopped the
contract.” What contract did you stop?---I’m not sure.

30 Well, it wasn’t the Novation contract, was it? Because Novation’s on the
next one, the next message, “Meeting exec director today for the Novation
contract.”---Yeah. I’m not sure what that contract refers to.

I mean, the point is, Mr Soliman, all of this is a concoction that you’ve
made up and represented to Mr Thammiah, isn’t it?---No. What, what
would be the point? I don’t understand the point.

40 Well, that’s my next question. The point of why you’re doing this, you
made all this up, the only recipient of these fabrications is Mr Thammiah.
Do you agree with that?---Of these messages, but again, there’s obviously
heaps that we’re missing here.

Sorry, let me rephrase that. The only recipient of these messages was Mr
Thammiah, wasn’t it?---Of these ones, yeah, and ICAC.

The messages here, you intended for Mr Thammiah to read and
understand?---I guess so, yeah.

And these messages were a fabrication, weren’t they?---No, definitely not.
There would have been a reason for them or, you know, I wasn’t thinking

about specific words. You know, you don't, if you scrutinise anyone's messages enough you're going to find error in everything. I mean - - -

I'm not putting, Mr Soliman, that these were error. I'm putting to you that these were fabrication.---No. What, what would be the point? Why would I, I mean fabricate things like that?

That is the question. Why are you fabricating messages to Mr Thammiah?

10 THE COMMISSIONER: Well, he doesn't agree with the proposition that he's fabricating.

MR LONERGAN: I understand that, Commissioner. But I put to him squarely that it is a fabrication.

MR YOUNG: About 11 times, with respect. I mean, we have spent a lot of time. He's put his proposition. I mean, it's denied. Unless he wants to take it further, I - - -

20 THE COMMISSIONER: It's a wee bit difficult, Mr Lonergan, if he doesn't agree that it's a fabrication as to why he sent fabrications to Mr Thammiah. Unless you want put some positive – you've asked him generally why did you do it, unless you want to put a proposition to him that, look, the reason why you sent it was X, I don't think you're able to pursue it further.

MR LONERGAN: Yes. That's where I'm going.

THE COMMISSIONER: Okay, good.

30 MR LONERGAN: The reason that you sent these messages to Mr Thammiah, Mr Soliman, is because you wanted him to believe that you were doing all these favours and assisting Novation. That's correct, isn't it?---No.

And you're doing this because at the back end of it you were going to go to Mr Thammiah and hit him up for money.---Again, no. That's not how it went.

40 And the more that he thought you were controlling and running these processes within the RMS, the more he felt enamoured to you to provide you with the money.---No, I don't understand what you mean.

Well, you were telling him that you were, on various occasions, working your arse off for two years for these results, you recall that?---For the scales in general, yeah.

And you were here making representations that I say were just false to him, saying that you've changed the outcome of the award of a tender to

Intercomp and managed to get Novation back in as the winning party. And the reason that you were doing this is because you wanted Mr Thammiah in your pocket.---No.

It wasn't a case that you became aware that you were getting too close to Mr Thammiah's business. You were in effect controlling the direction of the business that was going to Novation, and you were doing so because you knew that you could ask Mr Thammiah for money at any stage and he would give it to you.

10

MR YOUNG: Well, I hate to do it but, I mean, there are too many propositions in that.

THE COMMISSIONER: There were, Mr Lonergan.

MR LONERGAN: Yes. Please the Commission, I'll break those down. I withdraw that question. You knew that the more money that was in Novation's account, the more money you could take from Mr Thammiah. ---No.

20

And Mr Thammiah would give to you what you asked.---No, that's not correct. Just for the house.

And Mr Thammiah didn't question you about that. He just gave to you what you wanted.---He did question me a lot, obviously, about how much I needed and what it was for.

30

So this wasn't you crossing a line to help a friend's business, as you gave answers to the Commission before. This is you from the start setting up Mr Thammiah, grooming him, for you to extract benefit out of at a later date. ---That's completely false. I mean, he made all the money, so - - -

And that started in 2015. That's correct, isn't it?---What, what started?

The grooming process.---I already said I didn't groom.

40

MR YOUNG: Commissioner, I have to keep, I don't want to keep objecting on these sort of bases, but if a proposition's rejected, you can't just put it in the next question that the grooming process started in 2015.

THE COMMISSIONER: Mr Lonergan, you've put a couple of times, I think you started your questions, actually, this afternoon with a grooming proposition - - -

MR LONERGAN: Mmm, I did.

THE COMMISSIONER: - - - and he hasn't accepted it. Mr Soliman, you said in an answer to a question then that Mr Thammiah didn't question you,

he just gave you money, and you said, yes, he did question me, he questioned about what I needed, wanted, what I wanted it for.---Yep.

When you gave that answer, was that based on some WhatsApp messages you saw? Or is it your recollection of your relationship with Mr Thamiah?---Just the recollection mainly. I mean, generally wanted to know what it was for and stuff, which I didn't have an issue. We were close friends again, you know.

10 So you would tell him it's for X or it's for Y?---Yep.

Mr Loneragan.

MR LONERGAN: Sorry, just give me a second, Commissioner. So you were asked questions earlier today in relation to the mark-up of products that were sold by Novation to RMS. Do you recall that?---Yeah.

20 So if we just go to Exhibit 63, page 222. I just want to understand, over at 224, if we can just go over to there. "They dropped the prices to three times." What are you referring to in those communications, Mr Soliman?
---Looks like he has to drop his price.

Yes, so Novation has to drop its price to three times the cost price, is that what you're saying?---I don't know what price, but something price, yeah.

Well, it's your message.---Maybe the wholesale price, I don't know.

30 Well, the next message, a 300 per cent mark-up, are you saying there that the price that Novation has to charge is three times wholesale price?---I don't know if it was wholesale but, yeah, I mean, potentially, I think maybe these messages show he was, I thought he was charging too much.

And are you aware whether he changed those prices or not?---Not right now.

And do you recall hearing the evidence of Jai Singh in this Commission?
---Yep.

40 And Mr Singh was asked about the process of reconciliation in relation to spare parts.---Yep, yep.

And his evidence was that for part of the period he was, well, yourself, you replaced him with yourself in relation to managing the ordering of spare parts. Do you agree with that proposition?---Don't think so. I mean, the users generally went to Jai and Jai will just basically put an order in, from what I recall.

So there was no period in time when you were managing the procurement of spare parts for RMS?---I don't recall.

Commissioner, sorry, my solicitor's jumping at me. So no further questions, Commissioner.

10 THE COMMISSIONER: Thank you, Mr Lonergan. Mr Mahon, do you have any questions?

MR MAHON: There's no questions on behalf of Mr Hamidi, Commissioner.

THE COMMISSIONER: Right. Ms Hogan-Doran.

MS HOGAN-DORAN: Sorry.

20 THE COMMISSIONER: Now, I might just check, Mr Tighe, have you got any questions?

MR TIGHE: No, no, no questions.

THE COMMISSIONER: and Ms Fryer?

MS FRYER: No questions, Commissioner.

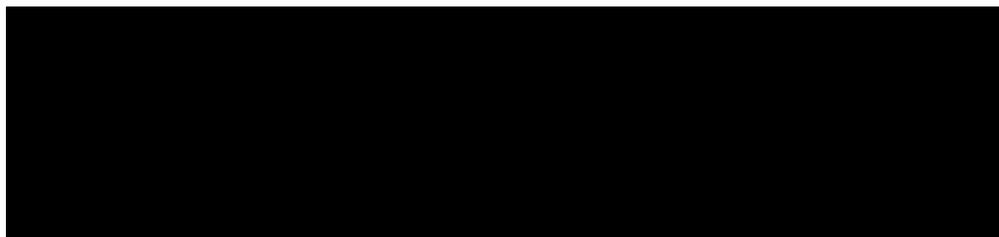
THE COMMISSIONER: Right.

30 MS HOGAN-DORAN: It's definitely let to me. Sorry, Commissioner, I was just trying to - - -

THE COMMISSIONER: I'm sorry, I'll just check. I haven't missed anybody out? Good.

FEMALE SPEAKER: Mr Young.

40 THE COMMISSIONER: Well, we've finished with Mr - sorry, before you re-examine we'll move to Mr Young.

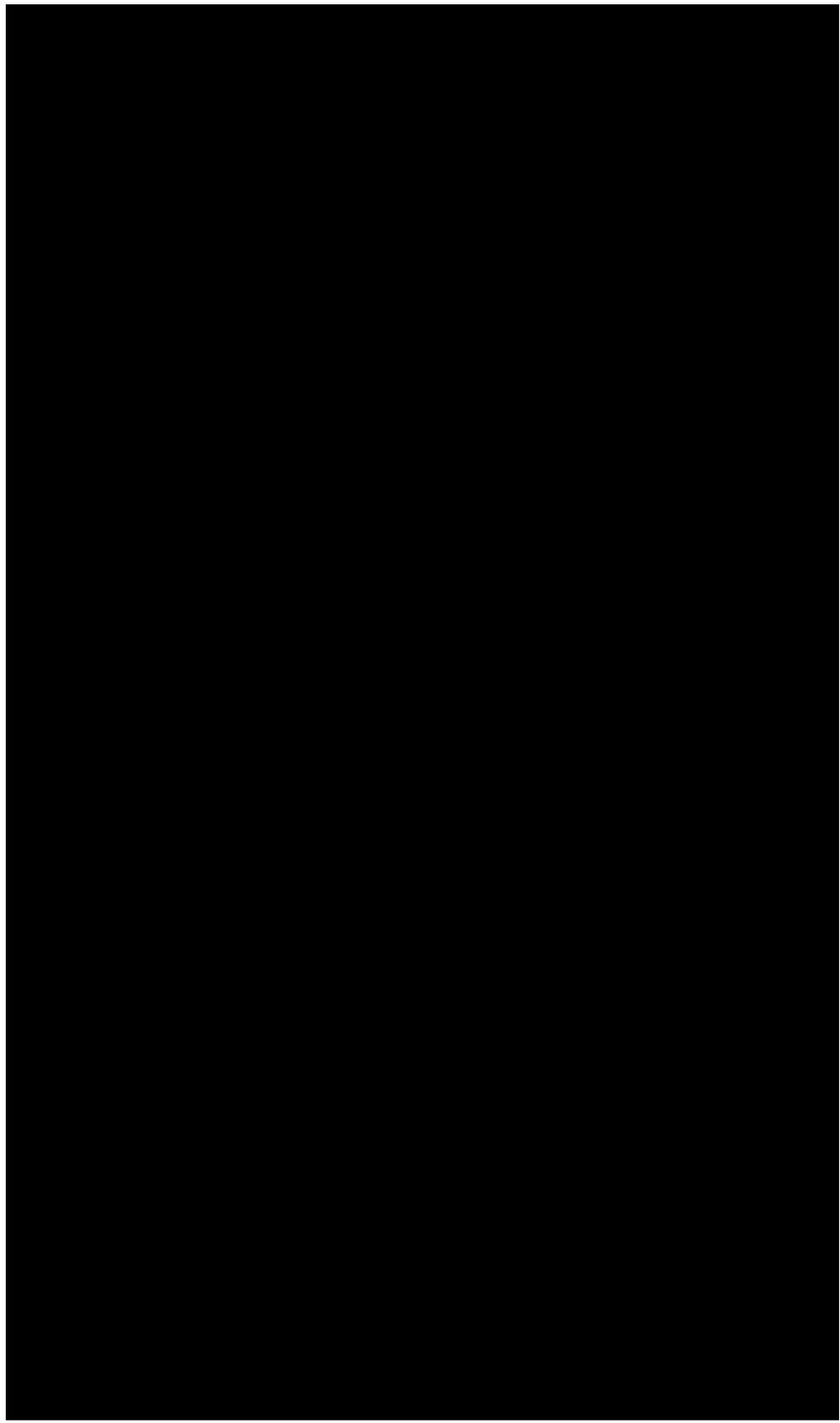


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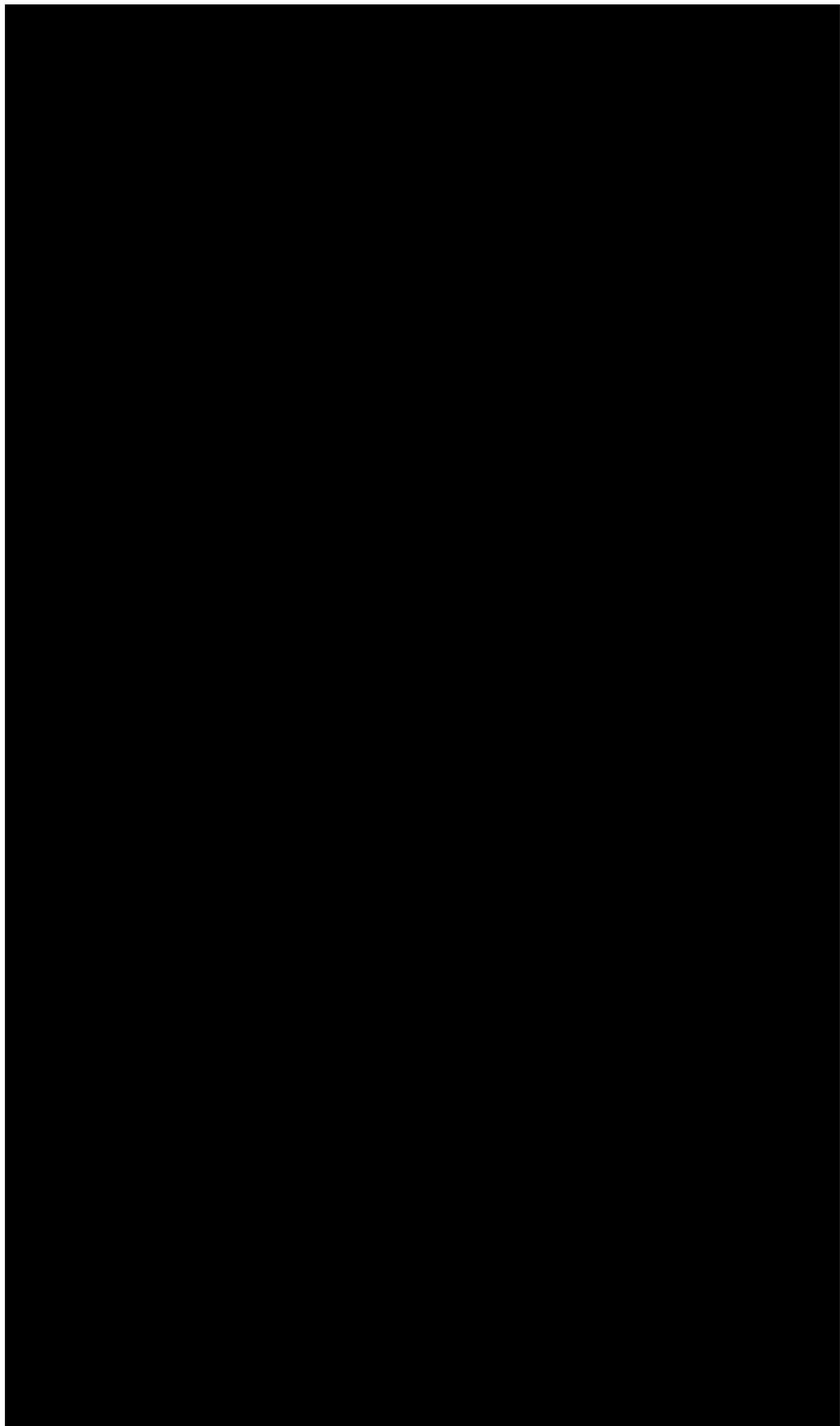
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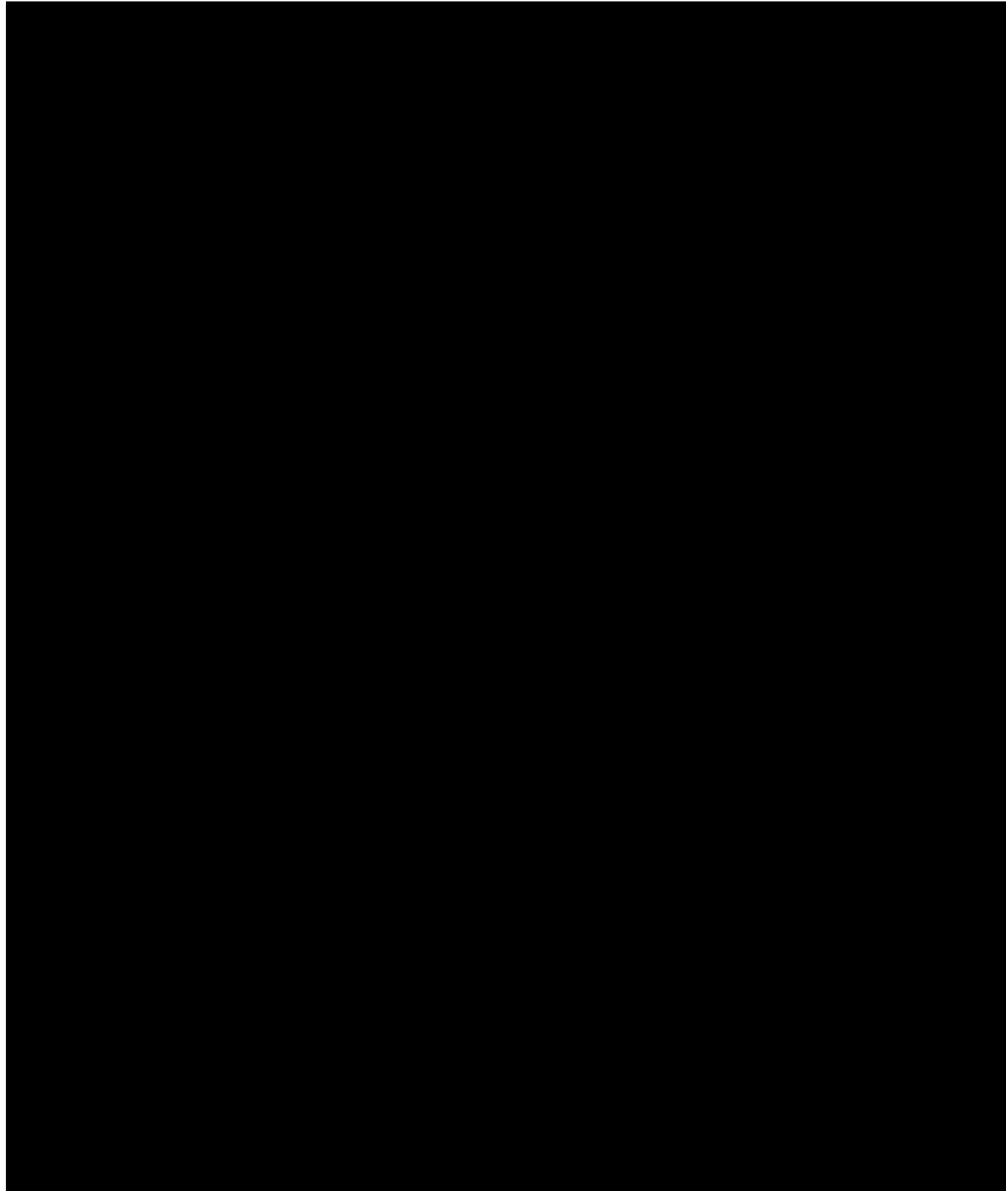
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I see. Thank you. Just one moment, please. The live stream can be reinstated.

THE COMMISSIONER: Thank you.

40 MS HOGAN-DORAN: Is that now back on?

THE COMMISSIONER: Yes.

MS HOGAN-DORAN: Thank you to the solicitor assisting. Mr Soliman, you were asked some questions about your dealings with Mr Malhotra of IRD. Could the WhatsApp messages, which I believe are Exhibit 63, be shown at page 361. Now, Mr Soliman, Counsel Assisting took you to the first message on that page, but not as I recall the balance of the messages on that page. You see there on the right-hand side Mr Thammiah

recommending to you to, "Play it safe." And then you responding on the left-hand side, "Exactly, which is why I won't contact him again." Next message. "He knows where I stand now. I told him to issue you a three-year licence after this tender to secure his business for three years minimum." And then the final message, "He's good now." You see those messages?---Yeah.

Right. You agree with me, don't you, that in making that contact with Mr Malhotra you were not acting impartially in relation to that engagement?
10 ---In which way, sorry?

Well, you were not acting in the interests of, you were seeking to exercise influence over Mr Malhotra and IRD?---No. Like I said, I thought the longer licence was better to, because if you change vendors regularly then there's basically periods there, months there where there's no one that you can purchase parts from.

I suggest to you that one of the reasons you favoured a longer licence was that if Novation was issued a longer licence such as a three-year licence,
20 that would improve the value of Novation itself. Do you agree with that?
---Hmm, in which way, sorry?

That if Novation had the benefit of a three-year licence from IRD, that would prove valuable to Novation. Do you agree with that?---Hmm, at this point, no, because there was only going to be basically, if there was going to be another tender there would just be one, so - - -

And the reason you spoke to Mr Malhotra and told him to issue a three-year licence to Novation after this tender was in order to build up the value of
30 Novation itself in the future. Isn't that right?---Again that's not what I was thinking about. I just didn't want to change from vendor to vendor every year and go through the same headaches.

I suggest to you that that's wrong, that indeed that was one of the reasons you spoke to Mr Malhotra to tell him, and told him to issue a three-year licence to Novation after this tender.---Yeah, I don't agree with that.

And you did that, I suggest to you, because you were a silent partner in Novation with Stephen Thammiah.---No. Like I said, I wasn't a partner but
40 I helped him, yeah.

And one of the reasons you were seeking to ensure the value in Novation would increase by having the benefit of this three-year licence after the tender was so that you could obtain for yourself a financial benefit from the increased value of Novation. Do you agree with that?---Like I said, no.

And was that the last occasion on which you spoke with Mr Malhotra?
---Don't recall.

Could the witness be shown page 396 of the same exhibit. Mr Soliman, you may recall this morning I made an objection in relation to or I raised a query in relation to the way a question was put to you by Counsel Assisting, and it was said, although I don't believe I have the benefit of the transcript, but my note is that it was said in respect of the fifth message on that page, which begins, "In your tender response." It was put to you that he said, "To provide chargers free of charge," meaning Stephen said that to you. Just looking at that message, you agree that that's a message from you to Stephen?---Sorry, am I looking at the wrong page?

396.---Yeah, which, which message, sorry?

"In your tender response." It's the one, two, three, four, five.---Yeah, yeah, sorry, yeah. Yeah.

Five on the page. Just look at that sentence. "In your tender response you must state that you are providing chargers free of charge." Do you see that now?---Yep. Yep.

20

And you recall sending that message to Stephen?---Not now, no.

You don't suggest you didn't send it to Stephen?---No.

No. You accept that this is another example of you and Stephen putting your heads together about this tender?---No, I thought he said in the previous evidence that he got the chargers for free from IRD, so - - -

I want you to focus on this message. This message is an example of you telling Mr Thammiah what to include in the tender, isn't it?---Don't think so.

30

What to include in the tender response by Novation.---No, like I said, I believe at this, at this time this is when Steve told me that he was getting them for free so, no, he shouldn't be charging for it.

Indeed. And that's why you told Mr Thammiah to state that you were providing chargers for free in the tender. You're telling him, "You must state that you're providing chargers free of charge." That's what it says on the page, doesn't it, Mr Soliman?---Yep, it does.

40

And the reason you're telling him to include that in the tender is because you were seeking to ensure that Novation would win this tender.---How so, sorry?

Don't ask me a question. Answer my questions, thank you, Mr Soliman. ---Okay, well, from what you've asked me, no.

Because you understood, didn't you, that by giving chargers free of charge, that would make the Novation tender more attractive to RMS, isn't that correct?---No.

It's plain on its face, isn't it, Mr Soliman, that it would be more attractive to RMS to receive an offer of provision of chargers free of charge – that is, without cost – than having to pay for it.---Sorry, no.

That must be so, mustn't it?---No. I mean, that doesn't make sense.

10

Are you suggesting in all seriousness to this Commission, Mr Soliman, that it would be better for RMS to pay for chargers than to receive it for free? ---Well, based on previous questioning, that's, that's what everyone's saying, right? That's what counsel is saying.

THE COMMISSIONER: No, no, no, no, no. Listen to Ms Hogan-Doran's question. Don't think about what you've been asked before or anything else that's been put to you. Just concentrate on her question and answer it.---Okay.

20

So it was along the lines of is it better for RMS to pay for chargers or get them for free.---Well, if it's, if they're not being charged for it, I mean, of course it's better if he doesn't charge for it. That's what makes sense.

MS HOGAN-DORAN: Of course. And it makes sense to a Tender Evaluation Committee to, at least on this criteria, consider more favourably not having to pay for chargers than, sorry, not having to pay for chargers than having to pay for them.---No, it's the total cost that they look at, obviously, not the separated costs between each item.

30

I'll put it a different way. Including chargers for free, rather than requiring a separate cost to them, would mean there would not be a technical breach of any requirements of the tender. Do you agree with that?---Could you repeat the question, sorry?

I think the point of your previous answer to my earlier question was that the chargers were included as a package. Is that how I am to understand your evidence?---I meant obviously that when anyone looks at the price of a tender, it's the total price of that service or, yeah, so no one's going to care if, you know, there's a lug nut free if you buy a wheel, it's just the total cost of the wheel, the package. If that makes sense.

40

Why would you suggest to Mr Thammiah – sorry, I withdraw that. Why did you tell Mr Thammiah that he must state that he is providing chargers free of charge?---If my memory serves correct, he said that IRD weren't going to charge him. So, you know, he shouldn't charge us back.

And the reason you told him that is because you wanted to ensure that that aspect did not cause Novation to fail to succeed in winning the tender. Do you agree with that?---The cost aspect you mean?

Yes.---Sorry, no, that doesn't make sense. The answer is no, that doesn't make sense. I thought they were the highest price, so - - -

10 Now, I turn your mind, Mr Soliman, to the period of January 2018, and do you recall that by January 2018 your plan was to sell Novation to Accuweigh in about mid-2018? Do you recall that?---I think Steve mentioned that to me and I think I said, "Yeah, if you want to, it's a good idea, I think. Why not?"

And the reason you wanted – my question's slightly different to that. What you've just said is you accept that Mr Thammiah told you of a plan to sell Novation to Accuweigh, is that how we are to understand your evidence?---I think that's what happened, yeah.

20 And that was a proposition with which you agreed, is that right?---No. I think he just asked what I, what I thought of it and I'm pretty sure I gave him my opinion, but, yeah.

And what was your opinion?---I don't remember exactly but I thought, yeah, I mean, "If it's going to be good, good for you, do it. It's up to you."

And the reason, I suggest to you, that you endorsed the plan to sell Novation to Accuweigh by mid-2018 is because that would enable you to realise your profit as a partner in Novation?---No.

30 Could the witness be shown page 359 of the Exhibit 63. Second message on the page, on the left-hand side is you informing Mr Thammiah that, "The scales tender is going out today, bro." This is on 17 January, 2018. Do you see that?---Yep.

And he responds, "Yeah, sweet"?---Yep.

40 All right. And the you respond, "Everything okay from your point of view, how me and you are working?" Next message, "I'll make sure Novation wins and gets the tender." Just stopping there, that tender is the 125 portable weigh scales tender, is that right?---Yep.

Question, "Are you still cool with our agreement? So there's no headaches again?" Next message, "Think about it and let me know." Just pausing there. "Are you still with our agreement". I suggest to you that is our agreement that after this tender is completed, you will then take steps to sell Novation to Accuweigh?---No. Well, that's not our agreement, that's his thing. I think whatever the agreement was, was referring maybe to the loan and the house build I'm guessing.

I'm going to come back to the loan, Mr Soliman. But I suggest to you that, "It's cool with our agreement," that when Novation would be sold to Accuweigh, that the two of you would each take your half of the proceeds of that sale.---No.

10 Next page, top of that. "I want to drive to the idea we had last night also. I would make sure you get the licence for three years minimum, dot dot dot, then we sell Novation to Accuweigh middle this year." I want to ask you some questions about that message, Mr Soliman. "I want to drive to the idea we had last night also." May we take it from that sentence that you'd had a meeting with Mr Thammiah the night before?---I don't know, maybe it was over a phone call or a meeting. Obviously there was something that happened, yeah.

And can you inform or assist the Commission as to what you say happened either in person or on the phone?---No idea.

20 And I suggest it's the idea that I'll make sure you get the licence for three years minimum, that is that Novation wins the licence for three years minimum.---I don't think so. I mean that's already kind of previously been spoken about, I mean - - -

And the three years minimum that you're referring to there is the licence from IRD to Novation, isn't it?---Must be, yeah.

"Then we sell Novation to Accuweigh middle this year." Do you see that? ---Yep.

30 So in addition to RMS awarding the contract to Novation for the supply of 125 portable weigh scales, in addition you would make sure that IRD granted a licence for three years minimum to Novation. That was what you were intending to seek to secure. Is that right, isn't it?---Not me. Like I said, that wasn't my idea and what would be the point even?

40 Well, you're telling Mr Thammiah that you'll make sure, not, it says to quote, "I'll make sure you get the licence." What part of that is you not doing anything?---Well, like I said previously several times now, it's not in the interests of the Roads and Maritime to keep on changing vendors then you can't obviously get parts or things you need for months on end during that process. So it was my preference to have a continuance of the business.

I suggest to you, Mr Soliman, that even if that be the case, your primary goal, your primary motivation was to ensure that Novation would have the value of the IRD licence and the contract from the RMS.---Could you explain how so I can give a proper response? What value if there's nothing else to sell?

When you are proposing that “We sell Novation to Accuweigh middle this year,” you were making that statement to Mr Thammiah because you understood that by selling Novation to Accuweigh there would be a valuable, that would be a valuable transaction. Correct?---I have no idea if it’s valuable or not, it’s just something that he brought up.

It was really never part of your consideration that you wanted to ensure that RMS would have access to the IRD scales, was it?---Well, it was part of my job to make sure the programs continue, so of course.

10

But you were prepared that if Rish Malhotra, on behalf of IRD, did not grant the three-year licence to Novation that you would ensure that RMS would not buy IRD scales, isn’t that right?---I don’t really think so, no. Maybe that was, you know, again, not right in me saying in those messages but - - -

I suggest to you that you’re just making that evidence up, Mr Soliman. What do you say to that?---I say it’s false because it’s not going to be up to me about at the end of the day which scale wins, you know.

20

One of the propositions you have, in fact the proposition you have put or the evidence you’ve given to the Commissioner is that your concern was to ensure the supply of portable weigh scales to RMS.---Yep.

And that that was your motivating consideration.---Of course, yeah, that was my job, yeah.

30

But you were prepared, weren’t you, that if IRD did not grant to Novation a three-year licence, as you had told Mr Malhotra it must do, that you would ensure that RMS would not buy his scales, isn’t that right?---Even though that’s what it says in the message, that never happened and that wasn’t my intention.

Indeed, that is what is said in your message, Mr Soliman.

MR YOUNG: Well, I object. That’s not what he – the distinction he said is that that’s what it said in the message, that’s not what happened. The question’s now being put that is what you said in the message.

40

MS HOGAN-DORAN: All right. I’ll take it in steps. Thank you, Mr Young. Mr Soliman, at the bottom of the page 360 of Exhibit 63 is your message to Mr Thammiah, “Keep it simple. All I do is issue the RFQ. Essentially if Rish fucks you and doesn’t give the licence, then I’ll fuck him and I’m not buying his scales.” When you sent that message to Mr Thammiah, you meant it, didn’t you?---Mmm, I don’t think in that, in that sense, because it’s not in my power, it wasn’t in my power to kind of stop a vendor from bidding. That doesn’t make sense. This message doesn’t even make sense to me now.

Well, I suggest to you that it does make sense to you and the reason your saying it doesn't make sense to you now is because it plainly exposes that your true motivation was your personal benefit and the benefit of Mr Thammiah. What do you say to that?---No, that wasn't my main motivation, as you put it. I mean, my job was to get the scales over, over the line, yeah.

10 And what this statement of you, Mr Soliman, exposes is that the best interest of RMS was no part of your motivation in your dealings with Novation and IRD in this respect. What do you say to that?---Don't agree.

20 And just going over to page 361, back to those messages I took you to a short while ago, because you were seeking to ensure your own personal benefit and the benefit of Mr Thammiah as partners in the Novation business, that is why you told Mr Malhotra that he had to issue a three-year licence after the tender to secure his business for three years minimum, as you say on page 361.---I needed that for the résumé time. I don't know, I'm just going around in circles but, okay, I'll give the same answer. Changing vendors over and over again, there's a period of time where there's no vendor that you can procure services from, so - - -

But you accept, don't you, as you must, Mr Soliman, that if you were to follow through on your earlier message to Mr Thammiah, that if IRD did not issue a three-year licence minimum to Novation, that you would ensure that RMS did not buy scales from IRD, that that would necessarily lead to a requirement of a new supplier.---Sorry, just missed the whole point of your question.

30 THE COMMISSIONER: No, no, no, no.

THE WITNESS: Could you repeat the question?

THE COMMISSIONER: Yes. Thank you, that's the appropriate response. Don't make a comment or criticise the question.---Sorry. I mean - - -

If it's not clear, state that it will either be repeated or reformulated.---Sorry, Commissioner. Yes.

40 MS HOGAN-DORAN: If you took steps to ensure that IRD, that RMS – I withdraw that? If you took steps to ensure that RMS did not buy scales from IRD or its distributors again in the future, that would necessarily mean that RMS would have to procure portable weigh scales from a different supplier. Do you agree with that?---In the hypothetical sense, yeah, but that's not what happened, that's not what I did.

And I suggest to you that because you threatened to do just that thing, that is that because you threatened that if IRD did not issue the three-year licence to Novation that you would ensure that RMS did not buy scales from IRD

again, that ensuring continuity of supplier to RMS was no part of your consideration.---Sorry, I mean, again, it's a hypothetical thing. That's not what I did. I didn't threaten anyone. I didn't say that to anyone. I mean, saying something on a WhatsApp message is different to acting it out.

10 All right. Let me just go back so I understand the evidence you've now just given. Are you saying that despite what is said on page 361, despite where you tell Mr Thammiah that you told him, that is you told Rish, to issue a three-year licence after this tender to secure his business for three years minimum, that you never had a conversation to that effect or communication to that effect with Mr Malhotra?---Could you ask the question – are you asking - - -

Did you ever have a conversation to the effect that is this message?---About the licence period, yes.

You did?---Yes, that's right.

20 All right. So you did tell Mr Malhotra to issue a three-year licence after this tender to secure his business for three years minimum?---No. I explained to him the reasons which I've explained to you.

I don't understand your answer, Mr Soliman. I'll try that again just so that I can be clear. Do you agree that you told him to issue a three-year licence after this tender? Let's just take that sentence on its own. Yes or no?---I recommended it to him, yes.

What about the next sentence?---Which sentence?

30 "To secure his business for three years minimum".---That's correct, yeah.

So that's no part of your hypothetical, is that right?---(No Audible Reply)

You're not saying that this didn't happen, that this conversation didn't happen?---No, that's what I said, no.

40 And what you're saying is that the hypothetical, it's only hypothetical it didn't occur because indeed Novation did receive the licence. Is that what you're saying?---No.

Well, what part of it do you say is hypothetical?---Your question was had I threatened someone to basically, you know, stop them selling the product here and the answer is no. I mean, it wasn't even up to me. That wasn't in my power, really. I mean, I recommended to him what was best for the Roads and Maritime Services.

Just excuse me, Mr Soliman. I've misplaced the page. I should have it here. So the hypothetical you say is because the licence was given,

therefore you never had the occasion to ensure that RMS would not buy scales from IRD. Is that how I understand it?---That was not my evidence, no.

10 I'll just leave that, Commissioner. Page 428. Now, this series of messages Counsel Assisting took you to, and the Commissioner also asked some questions of you, at this point is it's all set for this tender. This is the third message on the page, "My job is done, LOL." Next message, "Over to you, son." Now, this is February 2018, and the Commissioner asked you some questions about there being nothing here about there being a loan or about you paying back a loan. That's right, isn't it?---I think so, yeah.

And you had no intention – sorry, there in fact was no loan from Mr Thammiah to you, was there?---There was.

And indeed what you're contemplating here is that you will continue to receive cash from Mr Thammiah.---That's correct, yeah.

20 And "Two to 4,000 per week every week is still reasonable." See that's there?---Yep.

And it was still reasonable, I suggest to you, for the contribution you were making to ensuring that Novation would succeed to win business from RMS.---No, I mean, at that point, that's the money I needed for the house build at that point.

30 And the reason you were proposing to talk to him later is because you wanted that cash to continue at least up until the time that Novation was sold to Accuweigh, isn't that right?---No.

I want you to go forward to page 682. Now talking about the second. We're in the beginning of July 2018. Second message, "I'm aiming for a 1 August release date of the RFT online." You're referring to the second portable weigh scales tender?---Yep.

40 Mr Thammiah says, "Sweet." Yes? And then, "Should that work out well," he says, and you say, "Okay, we're rock solid." When you're saying that there, you're referring to you and Mr Thammiah as partners in Novation, isn't that right?---No.

I suggest to you you're speaking there, you and Mr Thammiah, as partners in a scheme to obtain a financial advantage or benefit from the RMS. Isn't that right?---No.

And the next message, "A miracle will mean we lose this." See that message there, the last one on this page?---Yep.

And the miracle was that it would take a miracle to foil your scheme in respect of this tender, isn't that right?---No.

Because all of the steps that you had taken to that point were designed to ensure that Novation would be successful in this tender, isn't that right?---I don't agree with what you're saying.

10 And all those steps that you had taken with respect to ensuring Novation would succeed in winning this tender were done to obtain a benefit for yourself.---Again, I don't agree with you.

And that benefit was either, well, was to continue to receive cash from Mr Thammiah.---No, I just needed it until the house build finished.

And/or to increase the value of your share of Novation.---I had no share in it.

20 And what you'd done is to set out from at least 2017 to manipulate RMS's tender processes to obtain a financial benefit or advantage for yourself, Novation and Mr Thammiah. Isn't that correct?---That wasn't my intention. I don't agree.

And what you set out to do was to rig RMS's tender processes to ensure that Novation would successfully tender for work from RMS. That's right, isn't it?---I don't agree, no.

And when you said in evidence yesterday to the Commissioner at transcript 1927, if that could be shown up - - -

30 THE COMMISSIONER: Sorry, which page?

MS HOGAN-DORAN: 1927 at line 16. "Well, you understand what "Rig" means, it's your word." Your answer. "Set, yeah, establish." You were very quick, weren't you, to give a definition of rig that exculpated you. What do you say to that?---I didn't realise I was quick, but okay.

40 To set, to establish. That isn't what you meant when you said that you, that isn't what you meant when you said, "I'll rig it accordingly," is it?---It's possible, but again I don't know what I was thinking back then exactly.

Let Mr Soliman see page 340 of Exhibit 63, please. Even if "rig it" does mean set or establish or that is one of its meanings, I suggest to you, Mr Soliman, that in the context of this message its meaning is plain. It means to manipulate this tender, doesn't it?---I don't think so. I mean I still don't believe I did.

And when you said, "Rig it accordingly," you mean accordingly, that is to ensure that the competing tenderers would be unsuccessful. Isn't that right?

---I mean again I don't believe I did that, so no.

I'm not asking about – just put that to one side and focus on my question. At the time that you sent this message this was your plan, wasn't it, this was your intention, to manipulate the tender process to ensure that Novation would succeed at the expense of the competing tenderers. That's right, isn't it?---No.

10 And when you say, "LOL," at the end of that sentence – you see that, "I'll rig it accordingly. LOL." LOL meaning laugh out loud, right?---Yep.

You agree with that. You mean a joke on those competing tenderers, didn't you?---I don't think so. I mean that could mean the sentence is a joke also. Again I would have to go back then to know what I was thinking.

But it would be a joke on those competing tenderers, wouldn't it, if you'd rigged the process to ensure that Novation would win. You agree with that? ---I mean, no, I mean I wasn't even part of it. That's a hypothetical situation. I wasn't part of the Tender Committee even.

20

Just put the Tender Committee to one side and focus on my question by reference to your role in relation to the tender requirements. What do you say then?---Okay, in the hypothetical situation that you're saying then I guess so.

30 You're saying. "The rest, leave it to me. I will rig it accordingly, LOL." What you were seeking to do was to rig it to the benefit of Novation and therefore yourself. What do you say to that?---No. I mean, I don't agree with that because I know I wasn't going to be part of the committee, I wasn't going to be even in the country. I mean, it doesn't make sense for me to say that.

But you accept that you did say that?---Yeah. It's right there but again, was that sentence a joke? Because I know I wasn't going to be there.

I don't have any other questions, thank you Commissioner.

40 THE COMMISSIONER: All right. Mr Young, how long do you think you'll be?

MR YOUNG: Zero minutes and zero seconds, Commissioner.

THE COMMISSIONER: Ms Wright, how long do you think you'll be?

MS WRIGHT: About two minutes. I've just got one matter.

THE COMMISSIONER: Could we just take a five minutes break and then we'll come back and just deal with your - - -

MR YOUNG: Certainly. I think, I won't delay you, Commissioner, I'll wait until you come back.

THE COMMISSIONER: All right. We'll just adjourn for 10 minutes. Not 10 minutes, sorry, five minutes.

10 **SHORT ADJOURNMENT** **[4.26pm]**

THE COMMISSIONER: Mr Soliman. Now, Mr Young, any questions?

MR YOUNG: No questions, Commissioner.

THE COMMISSIONER: Ms Wright?

20 MS WRIGHT: Mr Soliman, you were asked a question about a message in which you said to Mr Thammiah that he must specify that he's including chargers at no additional charge in the tender submission for the procurement for 125 scales.---Okay.

Could we just have that back up on the screen, please, at page 398, Exhibit 63. And senior counsel for RMS asked you in effect why you'd told him that he must specify that he was including chargers at no additional cost. And in your answer you suggested that you knew that IRD were not charging Novation for chargers.---Yes.

30 Do you recall giving that answer?---Yeah, it's come out in the messages or here or maybe he told me earlier.

Is that your evidence, that you told Mr Thammiah to include chargers at no additional cost because IRD were not charging Novation for them?---That's my best guess. I mean just looking at these messages.

I see. So it's just a guess?---Yeah, again it's hard to step back into that time and know what I was thinking.

40 All right. Well, I suggest the reason as at 30 January, 2018 that you told him to specify that he was including chargers at no cost was because the tender did not include chargers, it was only a tender for scales.---Was it? Okay.

Does that accord with your recollection?---Naturally it should be for both but I'm not sure to be honest.

And you say to him at page 399, after telling him he has to include them at no cost, that they are demanding new chargers. That was RMS inspectors who were demanding them?---That, that makes sense, yeah.

And you say two messages down, "Say that you understand it's not part of the requirements but are including free of charge to ensure the guarantees, life of the scales," et cetera, et cetera.---Yep, I see it.

10

You see that. And you say, "Because that's a requirement of the tender." See that?---Yep.

And chargers – well, I'll just take you to page 414. On 31 January, it's later in the day, you informed him that you were extending the tender to next Friday. Do you see that?---Yep.

20

And then on page 415 you informed him, "So we can amend the requirements for chargers," and then you tell him at 416, "So we can charge for new chargers now." And then at 417, you told him you've updated the RFQ about to be issued for sales procurement and you direct him to put the cost quote for chargers on a separate line to the scales. So isn't it the case that there was then approval to – there was a change in the tender requirements to allow chargers to be charged at additional cost?---I don't think so. From memory it was just a type of charger.

I have no further questions, Commissioner.

30

THE COMMISSIONER: All right. Thank you, Ms Wright. Now two things. Mr Young, you foreshadow that you may apply for a non-publication order concerning two answers by Mr Soliman today.

MR YOUNG: Two answers given in answer to Mr Lonergan and then the discrete part of the cross-examination which was actually the first part of the cross-examination by Ms Hogan Doran.

40

THE COMMISSIONER: In respect of the first two answers that you've earmarked from Mr Lonergan, I'd ask you to do this, the transcript should be available tonight?

MS WRIGHT: Yes.

THE COMMISSIONER: Would you identify what you would seek me to make a non-publication order over. Would you then send it through to the solicitor for the Commission and then I can consider whether I'll do that.

MR YOUNG: All right. Sadly, it'll have to be tomorrow morning but I, I don't think the transcript will be available before then anyway. This

afternoon's transcript, I don't think will become available until tomorrow morning.

MS WRIGHT: It'll come through later tonight and it can be forwarded to Mr Young.

MR YOUNG: I'll try and attend to it tonight but I may have difficulty but I'll try to make sure it happens at a reasonable time, before tomorrow morning's hearing.

10

THE COMMISSIONER: All right. Mr Lonergan.

MR LONERGAN: Yes. One of the answers that Mr Soliman gave was a reference both to his and Mr Thammiah's mental health issues. So - - -

THE COMMISSIONER: Look, what I am pressing is if you were concerned about an answer that's been given in respect of your client, I'm going to need you to identify it.

20

MR LONERGAN: Happy to do that.

THE COMMISSIONER: And then the basis on which you are seeking a non-publication order, then I can consider it.

MR LONERGAN: Please the Commissioner. Yes. We can do that.

MS WRIGHT: There might just be delay, Commissioner, in when the parties will receive the transcript so there's some uncertainty about when they will get it but I understand it can be put up on the restricted website as soon as possible tomorrow but it can't happen tonight.

30

THE COMMISSIONER: All right. So is that all right if we proceed on that basis, it'll go up on the restricted website, you can identify if there is any section and just very briefly the basis on which – and I think you've made applications before, so it's just so I know the basis of it and with precision what you would seek to be covered by it, and then I can consider it.

MR YOUNG: Certainly. I've got no difficulty with it going on the restricted site for the moment.

40

THE COMMISSIONER: Right. Mr Soliman, I'm not excusing you because we are to complete Mr Thammiah's evidence and there might be something that Mr Thammiah gives evidence about that as a matter of fairness you need to comment upon. I don't know whether that is going to be the case but because you are still subject to the original summons I'm not excusing you from that summons. What I anticipate is that I will after hearing Mr Thammiah's evidence, if it is the case that you are not required to come as a matter of fairness to answer anything, I can make an order in a

sense in chambers excusing you from any further attendance or the summons and I'll notify your legal representatives of that.

MR YOUNG: I would ask in the circumstances that he – I know it's late in the day, but he be released from the summons. He can always be re-summonsed, but he has been under continuous summons for a period of four months and if something arises – I think realistically Mr Thammiah's evidence may not finish this week and I don't know whether the Commission would be sitting next week, but it just seems to be indefinite in relation to the process and I would ask that in circumstances where he has been under summons for so long and given evidence again this week and there were factors that happened this week which were beyond anybody's control, but I mean they do add to the stress of being a witness when things happen late on Friday when one's expecting to be giving evidence and then it becomes Tuesday and then Tuesday extends into Wednesday and I'd ask that you consider it but not necessarily immediately but perhaps overnight.

THE COMMISSIONER: All right. Look, my position at the moment, Mr Soliman, is that I'm not excusing you, but your counsel has made a submission to me. I will consider it overnight and if the position changes that I do excuse you, your legal representatives will be informed and you'll be told by them. Otherwise you'll continue to be subject to the summons, and as I said, it's only as a matter of fairness in case Mr Thammiah gives some evidence that we think you should respond to. I don't know whether that's going to be the case or not.

THE WITNESS: Okay, thank you.

THE COMMISSIONER: All right.

THE WITNESS: Yep.

THE COMMISSIONER: Okay. We're adjourned until tomorrow morning at 9.30.

THE WITNESS STOOD DOWN [4.47pm]

40 AT 4.47PM THE MATTER WAS ADJOURNED ACCORDINGLY [4.47pm]