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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 FRIDAY 18 OCTOBER, 2019

AT 10.00AM

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

THE COMMISSIONER: Right. Ms Wright, any issues?

MS WRIGHT: No, Commissioner,

THE COMMISSIONER: Mr Thammiah. Oh, sorry, Mr Lonergan. I ignored you. I'm terribly sorry.

MR LONERGAN: That's all right. I'm okay with that.

10 THE COMMISSIONER: Used to it?

MR LONERGAN: Yeah. I was going to say that but I - - -

THE COMMISSIONER: Sorry, I'm being silly.

MR LONERGAN: - - - thought maybe I should not. Slightly obscure topic but Mr Thammiah is finding it difficult to give evidence because of an associated flashback in relation to ICAC attending his premises and one of the individuals in this room was there when that happened and he's
20 instructed that he is finding it difficult when answering questions with the presence of this person in the room.

THE COMMISSIONER: All right. I assume you're referring to, was it, an execution of a search warrant?

MR LONERGAN: Yes, Commissioner.

THE COMMISSIONER: All right. Okay. And your application is for us to try and arrange somebody else to come in and - - -
30

MR LONERGAN: Yes. It's no slight on the person at all.

THE COMMISSIONER: No, no, no.

MR LONERGAN: It's just Mr Thammiah's associated quite a traumatic event for him and associates - - -

MS WRIGHT: Could I just suggest a short adjournment and that can be done?
40

THE COMMISSIONER: Yes.

MS WRIGHT: It might have been helpful for my friend to raise that - - -

THE COMMISSIONER: The only - - -

MR LONERGAN: It's only just come up.

MS WRIGHT: Okay.

THE COMMISSIONER: My only hesitation is, yes, is just the organisation but I agree with Ms Wright. We'll just take a very short adjournment.

MR LONERGAN: Please the Commission.

SHORT ADJOURNMENT

[10.09am]

10

THE COMMISSIONER: Right. Now, what I decided to do is that we have changed personnel. I have to stress that it was a decision I made in the hope of expediting these proceedings and getting Mr Thammiah's evidence finished and hopefully assisting him in his recollection but it was – my decision to grant the application was confined to the circumstances of this case, very specific circumstances, and it is not to be taken as any form of precedent. Mr Thammiah.

THE COMMISSIONER: Right. Ms Wright.

MS WRIGHT: Thank you, Commissioner. Mr Thammiah, yesterday afternoon, I was asking you questions about the Novation prospectus sent to Mr Malhotra of IRD. You recall that?---Yes.

10 Whose idea was it to send the prospectus to Mr Malhotra?---I'm not sure if Mr Malhotra asked for it or not. I'm not sure.

Was it you don't know whether there was a request from Mr Malhotra, that's what you mean?---Yeah.

Was it Mr Soliman who said you should send a prospectus to him or did you think of it yourself?---I can't recall.

20 Now, do you recall then meeting with Mr Malhotra somewhere in Sydney? ---Yes.

Where did you meet?---It was at a café outside of the offices of Roads and Maritime Services in Parramatta. I think it was off - - -

Is that the meeting where Mr Soliman attended and then left you both to yourselves?---Yeah. I think he was there earlier with another team. It's the other component of the maintenance that was being, I guess, handed off to another company.

30 When you say he was there with the other team, are you talking about Mr Malhotra?---No, no, Mr Soliman. He had, he had an earlier meeting, that's why he was at that café and then Mr Malhotra and I met him there.

THE COMMISSIONER: And sorry, to your knowledge, the earlier meeting was with whom?---It was the other company that took over the maintenance of the weigh-in-motion systems at the heavy vehicle stations. I can't remember the name though.

40 MS WRIGHT: Were you present at any stage during that meeting?---No.

Your meeting with Mr Malhotra, which Mr Soliman attended in part, was the purpose of that meeting to discuss IRD formalising Novation as a seller or distributor of IRD products?---I thought it was, it was just an introduction I thought, yeah.

There was a purpose to the meeting, wasn't there, other than an introduction?---Well, yeah, it was an introduction to meet Mr Malhotra to talk about getting a licence and taking over maintenance.

Thank you. That's what I was asking. Now, did Mr Soliman ever talk to you about a multi-vendor model?---I have heard the phrase but I can't remember him mentioning it. Oh, yeah, he probably mentioned it to Rish a bit, about, yeah, but I can't, yeah.

What did you understand it to mean?---Something about having multiple vendors to reduce the risk involved.

10 And did you understand Mr Soliman had in mind that Novation would be one of the vendors to RMS?---Yeah. He, he recommended us and Hamish from Tenlow Tool, yep.

And did you understand that that was in the context of a multi-vendor model that Mr Soliman had discussed?---He never made that discussion with me. I think that was an internal discussion.

20 How did you know about it?---I've heard it mentioned and understood why it was applied in this sense because of Glen, because of ELWC, sorry.

You, or Novation, then signed an agreement with IRD as its exclusive distributor on New South Wales. Is that the case?---Yes.

And that was on 23 November, 2016, do you agree with that?---Yes.

And at that time, I take it you expected that thereafter, RMS would give you work to supply IRD products?---Yes.

30 In particular, PAT scales and spare parts.---Yes.

Now, following your appointment – that is, Novation's appointment – Novation started supplying spare parts for portable weigh scales to RMS, that's the case?---Yes.

And was that from early 2017?---Yes.

40 Once you got that sole vendor licence from IRD, is it the case you were no longer interested in doing scoping studies?---No, I was interested in doing scoping studies, but I was told there would be a conflict of interest and I couldn't do them anymore.

Did Mr Soliman tell you that?---Yes.

And what did he tell you about a conflict of interest? What did he say to you?---I, basically said I can't do the studies anymore because now I'm a vendor that sells equipment, so I, so I thought he put that across as a conflict of interest, that was the reason.

Did you question that at all?---I didn't question him at all, in many respects.

Now, do you recall whether you had any scoping study quotes in the pipeline, so to speak, at the time you took over as IRD's sole vendor?---Yes, that's correct.

You did have some quotes for scoping studies in the pipeline?---Yes, we did.

10 And what happened about those quotes?---Nothing eventuated with those quotes.

Did you - - -?---But I remember doing them with him. I think, I think we did all of them on that one day. This is the ones that didn't actually eventuate. And, yeah, he was excited about it and said, you know, we had all this work to kind of do, and, yeah. But that was pre this licence.

20 So you recall doing a number of quotes together with Mr Soliman. That is, preparing the actual quotes with him on a particular day?---Yeah, I remembered those because it was, I remember it was just all on one day. For some reason, like, he said all this work had come in and, like, these are all these projects we need to do. Yep.

Were you at his house when you prepared those quotes with him?---Yes, I was.

And did he prepare the quotes, or did you prepare them?---No, I prepared them with his help, obviously, I needed information.

30 And why didn't those quotes – I'm sorry, I withdraw that. Did you submit those quotes to RMS?---No, I didn't.

And in some circumstances, there's no email, Mr Thammiah, of you submitting a quote to RMS, and I'm talking about the quotes that we're, that you've said was, you recall were prepared on a particular day.---Sorry, I beg your pardon?

40 I'll take you to each one. If we could have volume 2, page 1. Do you see here an email of 3 October, 2016, from Mr Soliman's personal email address to his RMS address and your personal email address as well as your Novation address?---Yes.

And it says, "Quote attached, convert to PDF and send." Do you see there? ---Yes.

Was that a direction to you to convert the document to a PDF and to send it in to RMS?---Yes.

And at page 3 is the actual quote, “Over dimension vehicle enforcement system using LTI lasers”.---Yep.

Now, why would it be that that document was found on Mr Soliman’s personal computer at his home address?---Because we worked on it on his personal computer at his home address.

10 And at page 28, you then sent the very same document as a PDF in to him at his RMS email address, didn’t you?---I don’t remember this but, yes, I did, obviously.

See, isn’t it the case that he prepared the quote and sent it to you and asked you to convert it to PDF and to send it to him, which is what you did on this date, 7 October, 2016?---No. I distinctly remember those quotes being done.

20 You distinctly remember them, do you?---Yeah, because it was a weird situation where I’ve never done multiple projects, you know, quoting for multiple projects at a time like that.

And you hadn’t asked to quote, he told you that you could quote for them, hadn’t he?---Well, no. I felt like I was, like, I felt like Novation was the go-to for technology trials for Roads and Maritime Services. I thought this was the relationship we were building with this organisation. You know, I thought it was just the work that needed to get done.

And you were building the relationship at Mr Soliman’s house.---No, I wouldn’t say that at all.

30 You were building the relationship with him, not the organisation, weren’t you?---No. I was already in a very (not transcribable) relationship with Mr Soliman so I didn’t need to build that any further.

But why the need for the two steps with this quote? Why the need to be with him on 3 October, 2016 and for you, together, to send an email to yourselves saying, “Quote attached, convert to PDF and send,” and then for you to then do that? Why the need for those two steps?---In all seriousness I don’t, I didn’t want to be at his house doing my, doing my work but I had no other place to go.

40 THE COMMISSIONER: Well, that’s not what you’re being asked. You’re being asked why the two steps with this quote.---Sorry, yes. Okay.

Can you answer that?---Yeah. I guess we worked on these quotes at his house. I didn’t have my laptop so he has to email it to me, he emails to me a PDF, I send it across. That was the last step.

Why didn't you have your laptop with you?---Because it didn't need to be – it's, you know, it's a brick. It's, yeah, it's useless. I can just send an email and do everything online. You don't have to carry things around.

MS WRIGHT: You specifically remember not having your laptop at his house on 3 October, 2016, is that your evidence?---I very rarely brought my laptop to his house for that reason, because we work in a digital age.

10 So why the need for the two steps? Why the need to send from his personal email address to his RMS address, your personal address, your Novation address, and then for you to resubmit from Novation to, solely, his business address on 7 October, 2016?---Sorry, can you break that down again?

I'm not understanding your explanation as for the need for these two steps. If what you were doing was perfectly legitimate, couldn't, on 3 October, when you had prepared these quotes at his house, you simply have said, "Here's the invoice"?---I beg your pardon? Where, here's the invoice?

20 THE COMMISSIONER: Yes. It's up there, it's on his screen, it's on his computer.

MS WRIGHT: You're submitting it to him.---What do you mean? They, they were quotes.

Yes. Which you submit to him.

30 THE COMMISSIONER: Can't you see there are a number of steps that are being introduced which, I assume, an inference it may be submitted to me, was part of trying to conceal what the arrangement that you had with Mr Soliman?---He sent it to himself as well. Like, I don't even think he realised like - - -

40 You don't understand it, do you? There are a number of steps which the inference that can be drawn is that you are party to an arrangement where you are trying to conceal Mr Soliman's involvement in the Novation business. And that's an inference that is able to be drawn, it would appear, and I assume there'll be submissions on this, the course of this convoluted process that seems to have been put in place, with emailing it to different people and different email addresses, and Ms Wright is asking you, as she keeps on saying, why the need for the two steps? Why the need for the emails going, you know, from his personal address to you, and then from you to Novation, and then Novation to RMS? It suggests concealment. Do you agree with that or not?---I agree with that.

MS WRIGHT: Yes.---But, you know, I, I really did not think of those issues at all, because I felt like I was being guided through this process from a legal perspective by Samer.

Now, another of the quotes on 3 October's at page 31 of volume 2. Quote 96, Secondary Vehicle Trigger User Laser Technology Field Trials and Scoping Study. Have you ever seen this document before the Commission proceedings?---I would have, but I can't remember it.

At page 40, again there is an email from Mr Soliman's personal email address to you at your two email addresses and to his own work address, attaching this particular quote, and that's on 3 October, 2016.---Yes.

- 10 But there's no evidence, I suggest, Mr Thammiah, of you ever sending an email submitting this quote to RMS or to Mr Soliman. Is it the case that you never sent in the quote to RMS?---Yes.

And the quote is only on Mr Soliman's personal computer. Have you, had you ever - - -

MR LONERGAN: Sorry, I object to that statement, Commissioner. It's, that can't be just on his personal computer, because it was sent to his RMS address.

20

MS WRIGHT: All right. I take the point. This quote was not submitted by you to RMS, Mr Thammiah?---Yes.

And did you not act on receiving this quote by email from Mr Soliman?
---(No Audible Reply)

That is, you didn't do anything with it.---I, yeah, I didn't do anything with this quote.

- 30 And why is that?---Because the IRD licence eventuated.

Why is Mr Soliman sending you the quote, rather than you sending it to him? Do we have page 40? Why is he sending you the quote?---Because we worked on this quote at his home, on this day.

And why didn't you submit the quote to him on that day at his home?
---Because I didn't need to, because I could do it at any point in the next two weeks. I didn't, I don't think it was like, urgent for him to receive this.

- 40 Why the delay?---I seriously, well, I should just say I don't recall, but, I'm sorry, I'm trying to put an answer across.

At page 58, here is another quote on Novation letterhead, being quote 97, for an over-dimension vehicle enforcement using SICK high-speed FPS. And over the page, page 59, the date of issue is stated to be 3 October, 2016. Did you issue that quote on 3 October, 2016?---I don't think so.

How did you prepare it?---I believe this was part of those quotes done on that same day.

Do you have a specific recollection of preparing this quote?---No, I have a recollection of being at his house and doing multiple quotes.

10 Isn't it the case you're tailoring your evidence to the evidence in the Commission which is that the quotes were found on his home PC and so you've invented this story about preparing the quotes on his home computer? Is that really the truth?---No.

And are you seeking to protect Mr Soliman because you know the truth to be that he prepared these documents?---No.

Because you had arrangement with him, didn't you, that he would prepare Novation documentation that you would then submit to RMS?---No.

20 That was to hide his involvement in Novation's business.---No. I've got plenty of documentation training and I've produced many documents in my project management life so I did not need any help with these documents at all, but he offered that help willingly.

You never asked him for help?---No.

Page 97 of volume 2, here is a similar email on the same day, 3 October, 2016, from Mr Soliman's personal email address to your two email addresses and to his own address, attaching quote 98 in a Word form. Do you see that?---Yes.

30 And the Commission's investigation shows this quote at page 88 was found on Mr Soliman's home computer. So were you still thinking of proceeding with this scoping study and the other three of which I've taken you to the quotes on 3 October, 2016?---Yes, on 3 October, yes.

And did Mr Soliman inform you on that day or shortly after that day that ELWC had ceased doing business with RMS?---It must have been around that time. I'm not even too sure. I thought we, yeah, I'm not too sure.

40 And did you as a consequence discuss with him that those scoping studies would not proceed, that is Novation's involvement would no longer be required for those scoping studies?---Yeah, yeah, at some point he, he informed me, yes.

And that was as a consequence of ELWC no longer doing business with RMS. That's what you understood?---No.

Did you agree with me?---No, I did not.

Isn't it the case that he had a discussion with you that around this time, 3 October, 2016, ELWC had ceased doing business with RMS?---I really don't recall when he had that discussion.

And you understood, didn't you, that Novation stood to be awarded scale-related contracts by RMS from that time, didn't you?---No.

And you were no longer interested in doing smaller value scoping studies from that time?---No, that's not the case.

10

Now, just going back to – did Mr Soliman ever discuss with you AZH being involved in scoping study work?---No. Not at all.

Did he ever mention it to you that AZH was doing any work for RMS? ---Never.

Now, Novation's appointment by IRD from 23 November, 2016, as its sole distributor of PAT scales and parts in New South Wales was initially for a period of 12 months. Do you recall that?---Yes.

20

And did you become aware, in 2017, that Mr Malhotra may be interested in signing a contract with another company other than Novation?---Sorry, could you repeat that question?

Did you become aware, in 2017, that Mr Malhotra may have an interest in signing a contract or doing business with another company other than Novation in relation to portable weigh scales?---Yeah. I think – I, I don't recall but I read the messages and there is a reference to Accuweigh, I believe.

30

You're referring to the messages between you and Mr Soliman via WhatsApp?---Yes.

In 2017?---Yes.

And Mr Soliman discussed with you that Mr Malhotra might have been looking at, or interested, in meeting with Accuweigh, didn't he?---Yeah. But it doesn't make any sense either.

40

And you understood that Mr Soliman was concerned that Mr Malhotra might give Accuweigh a vendor licence for PAT scales?---Sorry, did you say I was?

You understood from those messages from Mr Soliman that Mr Soliman was concerned about the possibility of Accuweigh getting a licence from IRD?---No, it didn't make sense to me. I thought he was lying.

Well, you didn't tell him it didn't make sense, did you?---No, I can't, I can't stand up to him in that condition.

THE COMMISSIONER: Did you put in any of the messages, "Why are you raising this? This doesn't make," as you have said now, "This doesn't make sense"?---No. I was in a dependent relationship with this man and I needed him regardless.

10 Whether you were in a dependent relationship or not, my question was did you raise that in the messages that it did not make sense, "Why are you concerned about it"?---Sorry. No, I did not.

MS WRIGHT: Do you agree that you and Mr Soliman had a plan to ensure that IRD did not switch distributors from Novation in New South Wales?

MR YOUNG: Well, I object to this, Commissioner, in that it seems to be developing a life of its own which is beyond the scope of the inquiry. The scope of the inquiry is in relation to the awarding of contracts, in other words by RMS to Novation and AZH. Issues in relation to other companies and Novation can only be the subject of the inquiry insofar as they relate to that. Issues about Novation per se and its relations with external companies are not the subject of the inquiry.

THE COMMISSIONER: Ms Wright.

MS WRIGHT: Part of the awarding of contracts by RMS is Novation's ability to supply the product, and part of the background is, well, there's evidence that Mr Soliman and Mr Thammiyah discussed matters going to whether IRD might switch distributors. It's highly relevant to the terms of inquiry in my submission.

THE COMMISSIONER: I'm going to allow the question.

MS WRIGHT: Mr Thammiyah, did you and Mr Soliman have a plan to ensure that Novation, to ensure that IRD, or to seek to ensure that IRD didn't switch distributors?---No.

40 Now, you were concerned to ensure that Novation obtained a renewal of its sole vendor licence with IRD in 2017, weren't you?---Sorry, I missed that first part.

You were concerned to ensure that you got a renewal of that contract with IRD, did you?---No.

The first contract was 12 months?---Yes, but - - -

You needed to sign - - -?---Yeah.

- - - a further contract with him to be IRD's distributor on an ongoing basis, didn't you?---Yes.

And so Mr Soliman discussed that with you, that you had to get another sole vendor licence?---Yeah, he told me what I already knew, yes.

And he told you that Mr Malhotra had shown an interest in meeting with Accuweigh, and that he'd told him no, didn't he?---Sorry, he may have portrayed it that way, but I never believed it.

10

You viewed Accuweigh as a competitor, didn't you?---Exactly, and I don't see how IRD could distribute to a competitor. It didn't make sense.

A competitor might take Novation's place in being able to supply PAT scales.---They weren't interested in anyone that distributed someone else's scales, and Intercomp was Accuweigh's brand. Everyone knew that.

Around this time, you were supplying spare parts in the early part of 2017, to RMS?---Yes.

20

And you were applying a significant mark-up on those parts, were you not? ---Yes.

You were applying a 10-times mark-up, or a 1000% mark-up, on the spare parts compared to IRD's wholesale price. Do you agree with that?---Yes.

And that was an excessive and unjustified mark-up, wasn't it?

MR LONERGAN: Oh, objection. It calls for speculation.

30

THE COMMISSIONER: No, it doesn't. How does it - - -

MR LONERGAN: Well, he's established that it's a 10-times mark-up, or a 1000%, as Counsel Assisting points out. Then whether that's excessive or not is, well, (a) a question for submission, and (b) asking the witness to speculate as to what is excessive in mark-up.

THE COMMISSIONER: Ms Wright?

40

MS WRIGHT: I submit it is relevant, because his knowledge that it was excessive would be relevant to the question of whether this could be an offence.

MR YOUNG: Well, I object to it as well, again on the basis that it's got nothing to do with the awarding of contracts. That is the focus of this inquiry. It is not about whether Novation conducted itself properly in relation to business. This is going down a path which is not the focus of the inquiry.

THE COMMISSIONER: Ms Wright?

MS WRIGHT: Commissioner, it would be corrupt conduct under the Act to be excessively, or to be overcharging for a product, and also to be involved in false invoicing. And both of those aspects are relevant and need to be enquired into under the terms of reference in relation to the award of contracts by RMS to Novation. It falls squarely within the terms of the inquiry, in my submission.

10

THE COMMISSIONER: Mr Lonergan or Mr Young, do you want to say anything else?

MR YOUNG: Well, even if one accepts the premise of Ms Wright, that it could be corrupt conduct, it is not corrupt conduct the focus of this inquiry, which is in relation to the awarding of contracts to Novation and AZH. The subsequent conduct of Novation is not relevant unless it goes to those questions. We're now entering into an area of whether, post awarding of contracts, Novation acted in a way which Ms Wright says is corrupt. In my submission, it's a path which the Commission is not entitled under the reference to go down.

20

THE COMMISSIONER: Mr Lonergan, have you got any other submissions?

MR LONERGAN: Just the point that if Counsel Assisting is going to pursue the false invoices or alleged false invoices, then that is a separate line of inquiry to the one that she's presently on and so they should not be conflated between what is an allegation of excessive charging and in my submission asking the witness to speculate as to what is excessive or not. And you know, it's a question of fact that has been established that the mark-up was 10 times and thus a question of submissions as to whether it is excessive or not. The question therefore is of no probative value.

30

THE COMMISSIONER: No, look, I'll allow the question.

MS WRIGHT: I'll slightly reword it. Mr Thammiah, you knew at the time you issued your invoices for spare parts to RMS that your prices were excessive, didn't you?---I thought they were high but warranted.

40

And on what basis were they warranted?---I guess it was justified to me because, well, not just to me but I guess the perception was that the maintenance would be where you really made money in this contract, so when I didn't get the maintenance and all I had was the parts it made sense to charge quite amount, quite a bit for the parts.

THE COMMISSIONER: And did you come up with that perception yourself?---(No Audible Reply)

You sat back and thought, hmm, I tendered for a maintenance contract and I actually can't do the maintenance but I'll make my money by applying a 1000 per cent mark-up. You came up with that?---I think I might have, I think I might have alluded to this earlier but - - -

No, no, no. At the time, you're giving evidence of your thinking at the time. ---Yes.

10 And you thought of that at the time?---At the time I felt like it was my decision, yes.

All right.

MS WRIGHT: You expected that when you issued invoices for spare parts that Mr Soliman would do what was necessary within RMS to approve them. That was your expectation, wasn't it?---No, not at all.

20 Because you had discussed with him that that's what would happen, that you would issue invoices and he would approve them for payment.---No.

You expected them to be approved, didn't you?---No, I expected a process to be run, I had no expectation of approvals. Like, if there's a, if it gets rejected, it gets rejected, that's just a process.

So why did you send him IRD's wholesale price list?---I beg your pardon, I think that price list was given to him by Mark Mitchell initially. They had these wholesale prices.

30 Why did you send, why did you forward to Mr Soliman IRD's price list for Series I, II and III PAT scales?---Because I thought it was information he already had.

THE COMMISSIONER: So you - - -

MS WRIGHT: Then why would you send him something he already had? Sorry, Commissioner.

40 THE COMMISSIONER: No, no, no, no. Look - - -

THE WITNESS: No, he said he didn't have the document anymore from Glen but he said he already had those prices.

MS WRIGHT: You received the price list from IRD which you requested, didn't you?---Yes.

You then forwarded them, very quickly I suggest, to Mr Soliman in late November 2016?---Yes.

You or someone simply added a zero to most of those IRD prices. Correct?
---Yes.

And then you sent your price list to Mr Soliman on 1 December, 2016,
didn't you?---Yes.

Who prepared Novation's price list dated 1 December, 2016, was it you or
Mr Soliman?---It was me.

10

It was you?---Well, yes, it's me because it's my documentation, but I can't
recall preparing that particular document.

Did Mr Soliman have any involvement in the preparation of Novation's
price list dated 1 December, 2016? And I'll show it to you if you need me
to.---(No Audible Reply)

THE COMMISSIONER: I'm sorry, was that – oh, we're showing it to him?

20

MS WRIGHT: I said I will if I need to, but he should be familiar with it
because it's his price list, but do you want me to show you the price list?
---No, sorry, could you just repeat the question though?

Did Mr Soliman have any involvement in the preparation of Novation's
price list dated 1 December, 2016?---No.

So you prepared the price list dated 1 December, 2016 in its entirety?
---Yes, I'm – look, if you can show me the document because I feel like
you're pressing this document a little bit.

30

Fair enough. Volume 9A, please, at page 112. Did you send this email
dated 1 December, 2016, to Mr Singh?---Yes.

And why did you BCC Mr Soliman?---Just to keep him informed.

Having only just forwarded to him the IRD price list in the preceding days?
---Yes.

40

When you sent him IRD's price list in the preceding days, you sent them to
his personal email address, not his work address, didn't you?---Yes.

And you did that because you knew that his involvement was not legitimate,
didn't you? You were seeking to keep it hidden.---No, I didn't.

You sent him the IRD price list to his personal email address, Mr
Thammiah, not to his work address. That was deliberate, wasn't it?---I can't
recall. If he asked for it, I would have sent it to his personal address, yeah.

And you then discussed with him, didn't you, what prices Novation should apply based on IRD's prices, didn't you?---I can't remember that discussion but I do recall making the decision for myself.

You were both seeking to make a profit off the distribution of scale parts, weren't you?---No. I was.

10 So then you BCC Mr Soliman on this quote at page 113. If we could have that. And my question to you earlier was, did Mr Soliman have any involvement in setting these prices?---No. I don't believe so.

And you've applied, I'll just take an example, a price of \$ [REDACTED] 0 to an aluminium base board, right and left. Do you see that?---Yes.

And IRD's price was \$ [REDACTED] for that item, wasn't it?---Yes.

You don't think that that was a wholly unjustified mark-up, going from [REDACTED] top \$ [REDACTED] 0?---At the time no, given the situation.

20 The situation being that you couldn't do anything with these parts except procure them. You couldn't maintain them or provide any services in relation to them, could you?---Well, I applied for the maintenance and I didn't get the maintenance. So that's why I couldn't do it.

THE COMMISSIONER: Well, you weren't capable of doing it yourself. You would have to have contracted it out. That was the only possible way you would have done it.---The way he discussed this going forward was to use the same model that ELWC had in place for the last 20 years.

30 So the answer to my question is, "Yes, I couldn't do it. I would have had to have contracted the work out." Is that the answer to my question?---Sorry. I guess I am answering it from my perspective - - -

Yeah, I'm not interested in you answering it from your perspective. What I am interested in is listening to questions and answering them, all right? So my question to you was, you couldn't have done the maintenance yourself. The only way you would have performed it was by contracting it to a third-party. Is that correct or not?---I didn't view it as a contract.

40 All right. Nonresponsive answer. Go on, Ms Wright.

MS WRIGHT: Is it really your evidence, Mr Thammiah, that you had no discussion with Mr Soliman in late November/early December, when you issued this price list to RMS about the prices that Novation would be charging?---Sorry, could you repeat that?

You can see this price list here?---Yes.

And you sent this under your email to Mr Singh on 1 December, 2016, which we saw a moment ago.---Yes.

And if we could just go over the page, there's the email. And then if we could back to the price list. You see it's called a quote, but it's just a price list, isn't it?---Yes.

If we go over to the second page of this document, you don't actually quote a total, do you?---No.

10

And see there, you've got battery packs at \$600?---Yes.

You see that?---Yes.

And IRD had told you that they should just be given, supplied locally. Hadn't they?---I believe those two events are quite apart, when this was - - -

THE COMMISSIONER: Right, so IRD didn't tell you that the battery packs could be purchased locally? Is that your evidence?---At this point in time, I don't believe I had that knowledge.

20

MS WRIGHT: And coming back to my question, is it your evidence that you did not discuss at all with Mr Soliman the prices included on this price list that you've just seen?---No, I can't recall a discussion taking place.

Could I have volume 18, at page 306? You forwarded to Mr Soliman's personal email address on 28 November, 2016, IRD's price list, didn't you? ---Yes.

30 At 7.57pm. You see that?---Yes.

And if we go over to page 307, this is Mr Garza's email to you, copied to Mr Malhotra, "the price list as promised", do you see, for the SAW 10A, and 10C, and 15C Series? Have you got that?---Yes.

And then going over to page 311, these are the IRD price lists sent to you. ---Yes.

40 And there's another one on page 316, and that's for the Series III. And then just to complete the picture, at page 244 of that volume, about three minutes later, you sent to Mr Soliman at his personal email address, the Series II price list of IRD. Do you agree?---(No Audible Reply)

Then if we go over to page 245, is the Series II price list.---Yes.

And do you see where it says "battery pack", halfway down the page?---(No Audible Reply)

Do you see that?---Yes.

There's no price. Do you see?---Yes.

No price. And then if go back to page 311, this is the Series I 10A battery pack. Again, just after package 3D, halfway down the page. "Get locally."
---Ah hmm.

Do you agree with that?---Yes.

10

And so you knew that you were being told, advised by IRD just to get batteries locally, six NiCad batteries, get them locally?---I was only made aware of this when we had the battery issue with the, I think it was the first tranche of the 125 scales, that was when we had a few of these wires sort of breaking when they were, when they were reactivating the scales out at Accuweigh, and that's when I was made aware of the fact that I could get these locally by IRD.

20

Well, you were sent this document by IRD on 25 November, 2016?---I agree but I did not take any notice of those.

You based your prices off IRD's price list when you came up with Novation's price list, didn't you?---Yeah, but I don't think every copy that I have been given in terms of price lists like Fernando mentions, there were multiple price lists. I don't think every one of them had a zero or a, "Get locally," for the battery compartment. I think that's where the errors kind of occur.

30

You saw these prices on IRD's price list and you applied a zero to them, didn't you?---Yes but to be fair that's also an American prices versus Australian prices. You know, it's not - - -

But my point, Mr Thammiah, is that you well saw when you did that that IRD had said, "Battery pack, get locally," or on another list it said, "Battery pack N/A," meaning not applicable, no price, IRD's not charging a price. You well saw that at the time you prepared Novation's price list.---No, I did not.

40

You must have because you saw every other price, didn't you?---Sorry. Like I'm suggesting, but not every price list had a zero or N/A.

THE COMMISSIONER: No. We're talking about the IRD price list you've received and as Ms Wright has taken you to, it either says, as in page 311, "Get locally," or with the one on 245, "Not applicable." And what she's putting to you - - -?---Sorry. I did not, I did not know at the time.

So even though you've received this, you're using this to base, add a zero where there is a nominated price, to your price list, you didn't notice, "Get locally," next to the battery pack. Is that your evidence?---Yes, it is.

MS WRIGHT: And even though, an example I took you to before, on the very same price list as the one on the screen, take the \$ [REDACTED] charge for the aluminium base board, you applied a zero for a price of \$ [REDACTED] 0?---Yes.

10 And you based that price of \$ [REDACTED] 0 on IRD's price of \$ [REDACTED], didn't you?
---Yes.

Now, coming back to my question. Having sent these price lists to IRD, sorry, of IRD to Mr Soliman on 28 November, 2016, you must have discussed with him what Novation's prices would be.---Look, I agree, a discussion must have taken place because he was so involved with my work. I mean, I, I thought of him as a mentor so I, I know a discussion did take place.

20 Did you agree that he prices would be 10 times the IRD prices?---No. I did not make any agreement with him.

THE COMMISSIONER: No, I think you're being asked whether you discussed with him the adding of the zero to the IRD prices. Did you discuss it with him?---No. I can't recall that.

30 MS WRIGHT: What did he tell you about the prices that you could or should charge?---I can't remember any specific – it's, it's really hard to remember anything specific about this discussion but all I remember was, yes, I thought it was high but I thought that RMS was okay with that as well. That's the perception I had at the time.

Did you tell him that you proposed to apply a 10 time mark-up to IRD's prices?---I really don't know. He, I can say logically it must have happened but I really don't know.

And your impression, whatever conversation, although you can't assist the Commission with what it was, your impression was that would be acceptable to RMS?

40 MR YOUNG: I object to that.

MS WRIGHT: That's what he said.

MR YOUNG: No, well, I don't care whether he said it or not, but evidence about impression - - -

THE COMMISSIONER: I can't hear you, Mr Young.

MR YOUNG: Evidence about impression is unfair. It's being put, it's being put against Mr Soliman that something because of an impression. I mean either Mr Soliman said something or Mr Soliman didn't say something. If it's simply a question of what his impression was then it's of no probative value in relation to Mr Soliman at all, it's unfair.

MS WRIGHT: Commissioner, if it's unfair it's because the answers that are being given are so vague that I have to deal with the answers as they come. He has accepted there must have been a discussion, he's not able to assist with specifics about what the discussion was but he has said in an answer that - - -

THE COMMISSIONER: He said logically it must have happened.

MS WRIGHT: And he also gave another element to the answer which was that he understood that those prices would be okay to RMS. Now I'm just exploring what the basis of that understanding was and whether it derives from something Mr Soliman said and what it was.

20 THE COMMISSIONER: All right. So you're focussing on his understanding that RMS would be fine with the mark-up, or sorry, with the prices.

MS WRIGHT: That's right, yes.

THE COMMISSIONER: All right. Mr Young, I'm going to allow that question.

30 MR YOUNG: I accept that ruling, Commissioner, but the word impression was contained in the question, I do want to make that point.

THE COMMISSIONER: I think Ms Wright is going to ask a question about the basis of his understanding.

MS WRIGHT: Yes.

THE COMMISSIONER: Okay.

40 MS WRIGHT: Yes. That's all I meant by the word, and I don't recall the word you used, Mr Thammyah, did you say that you had an impression or an understanding that the prices would be okay and acceptable to RMS?--- Yes.

And how did you form that understanding?---Oh, it would have been through Samer.

THE COMMISSIONER: But how through Samer?---Through a discussion, yeah.

MS WRIGHT: About Novation's prices?---Well, yes, around prices.

Could I take you to page, to Exhibit 63, excuse me, at page 220. Do you see here the WhatsApp messages between you and Mr Soliman around 4 September, 2017?---Yes.

10 And he tells you that someone's called him today to ask if, "I prefer the maintenance vendor to be same as procurement vendor. I said that's none of my business, up to IRD to appoint the vendors." Do you see that, the second blue message?---Yes.

And then he tells you, "Just watch out for Jason, he's a serious snake." See that?---Yes.

And you understood that to be Jason Ferguson of Accuweigh?---Yes.

And he says that, "If Jason asks anything about me or RMS, say you haven't spoken to me much, et cetera, et cetera, you get the drift?"---Yes.

20 And you understood what he meant by that, didn't you?---Yes.

And what did you understand?---That he didn't want Jason to know that he preferred me.

And that was because Mr Soliman wanted Jason, to your understanding, to believe that he was independent of you?---Yes.

30 And then he asks you, "Are you going to give him same," I suggest it should say, "same prices we were using?" Do you accept that that's what he was asking you, whether you were going to give Jason of Accuweigh the same prices that you and Mr Soliman were using.---I'm not sure about - - -

MR LONERGAN: Sorry, objection.

MS WRIGHT: I understand the objection. I'll withdraw, I'll rephrase the question. Do you understand he was asking you whether you were going to give Jason the same prices as Novation's?---Sorry, I, I, I read that differently.

40 How did you read it?---I thought this, well, I, look, I don't recall this conversation, reading these messages and sort of interpreting them, but from what I can tell, maybe it's RMS prices.

I think I'm just asking you to agree that the word "sae" means "same". I could have been more direct about that. Do you see it says "sae"?---Yes.

It appears to be a typo.---Yep.

It means "same prices". Mr Soliman was asking you whether you were going to give Mr Ferguson the same prices. You agree?---Yes.

And where he says "we were using", he's referring to the prices, isn't he?
---Yes.

And where he says "we" he's referring to Novation.---No. I thought it was RMS/Novation in that sentence.

10 RMS didn't have prices for parts, did it? Or scales.---Sorry, are you saying at this point or - - -

RMS purchases parts and scales.---Yeah, so - - -

It's not a seller of parts and scales, is it?---But I thought that's, I'm reading this and seeing Jason as a customer as well. I don't see it any other way.

A customer or potential customer of Novation's. That's what this is about, isn't it?---Yeah. I mean, he's asking for parts.

20

And so when he says "we" in "Are you going to give him same price as we were using?" you understood he meant Novation, Novation's prices.---
Sorry, could you repeat that?

When he said, "Are you going to give him same price as we were using?" you understood Mr Soliman meant are you going to give him the same prices as Novation has been using.---I'm sorry, I read that differently, so, no.

30 Well, how is that even remotely possible, Mr Thammiah? There's no one else using prices except for Novation.---Sorry, I, I'm a little lost, yeah.

All right, well, we'll just move on. I might come back to that. Page 221. He includes a question mark, and you say, "Not sure as going to speak to you was." And then Mr Soliman says, "They were exorbitant." You see that?---Yep.

And then over the page, at page 222, he says, "Yeah, drop the parts pricing."---Yep.

40

And you understood him to be referring to drop Novation's pricing for scale parts.---Yes.

And you understood "drop" to mean reduce the pricing, reduce the prices, didn't you?---Well, sorry, I'm reading this now and agreeing with you, but I don't recall this. Is that okay or - - -

You received these messages.---Yes.

This is not the only time Mr Soliman discussed with you dropping Novation's prices, is it?---I, I don't know, unless it was mentioned somewhere else in this, I don't recall.

And when you see there that it says, "Yeah, drop the parts pricing," you can, looking at that now, it's clear he's referring to dropping Novation's or reducing, decreasing Novation's prices for parts, isn't he?---Yeah, appears to be, but it doesn't make any sense either.

10

Well, you've agreed with me that you were charging 10 times the prices. ---Yes.

There was a margin of profit that could have been reduced, wasn't there? ---Yes.

20

And so it makes sense in that sense to be suggested to you that you should drop the prices, doesn't it?---Yes, but it, it doesn't make sense why he's suggesting that I drop the prices. Like, I'm reading that, it doesn't make sense.

Accuweigh was not aware of your prices, was it, at this point?---No. I'm not sure.

And in fact, you were very concerned about others becoming aware of the prices, weren't you?---I don't recall, unless, I don't recall.

30

You were concerned, Mr Thammiah, that others would become aware of Novation's prices because you even asked IRD not to put its prices in its deliveries, didn't you?---Yeah, because it was going to my competitor, and I don't want any of my prices, regardless, going to my competitor.

And part of that thinking was that others may discover that you were charging clearly uncompetitive prices, I suggest.---Sorry, sorry, this, that doesn't make sense to me, because my - - -

THE COMMISSIONER: Well, no, do you agree with that or not?---Sorry. No, I don't.

40

MS WRIGHT: You don't believe that you were charging prices well above market?---I set the market.

You were the only market, is that what you mean?---I had the licence.

Mmm. And so, you took advantage of that to charge whatever you wanted, didn't you?---It was a sole licence agreement, that's, I thought that's what everyone did.

Well, here, I suggest, you did drop your prices shortly after these messages, didn't you?---I don't know if that happened - - -

You did, you dropped your prices towards the end of 2017, didn't you?---I have no idea.

Well, I'll take you to all of it. Now, page 221, where it says "exorbitant", you can now, although you claim not to recall these messages, that that's a reference to the parts pricing being exorbitant. You can see that now?

10

THE COMMISSIONER: See Mr Soliman saying that to you, at the bottom of 221?---Yes, but I, I don't, I don't understand this conversation. It seems so out of place.

All right. But of course you don't respond, "They're not exorbitant," do you, in the messages?---I presume not.

No?---No.

20 MS WRIGHT: Then over at page 222, Mr Soliman directs you to apply "half of what we are using now". You see?---Yes.

And you clearly understand what he means, because you say, "Five times," in response, don't you?---Yes.

And you understood five times the price to be half of 10 times the price, didn't you?---Yes.

30 And so you were suggesting or agreeing with his suggestion that you drop parts pricing by half for Mr Ferguson of Accuweigh, weren't you?---I don't, I can't, I'm not sure. This doesn't make any sense to me.

Well, I suggest it makes perfect sense in the context of what you were charging and what's been put to you in relation to giving prices to Mr Ferguson of Accuweigh. Do you maintain it doesn't make sense?---Sorry, I, I don't understand the context of this conversation, and I don't know if I spoke to Jason or had any other discussions, it doesn't really make any sense.

40 And then – I note the time, Commissioner.

THE COMMISSIONER: Is it an appropriate point for you?

MS WRIGHT: Yes.

THE COMMISSIONER: All right. We'll take the morning tea adjournment and resume at 10 to 12.00.

SHORT ADJOURNMENT

[11.28am]

THE COMMISSIONER: Mr Thammiah. Ms Wright.

MS WRIGHT: If we could have Exhibit 63, page 222 again. Do you see these are the messages in which you understood at the time that Mr Soliman was asking you to drop the prices applied by Novation for parts by half and you confirmed, "Five times." Do you see?---Yes.

And then over the page he asks you to call Rish to confirm whether their wholesale pricing is confidential and he says, "I don't want Jason to know the big profit margin. Anyway, chat tomorrow." So you understood he didn't want, or he wanted to ensure that IRD's wholesale price as not disclosed to Accuweigh, didn't you?---Yes.

Because you said, "Cool," didn't you?---Yes.

20 And you understood that he didn't want Accuweigh to know how big the profit margin was?---Yes.

Because it was exorbitant, wasn't it?---Yes, it was big.

Do you not agree that it was exorbitant?---I, I don't because I kind of gave myself that reason and I kind of stuck with that.

And you didn't say to Mr Soliman when he told you it was exorbitant that it was not exorbitant, did you?---No, I did not.

30 Now, he then says to you at page 224 that there's a couple of things that you need to do. To, "Call Rish to confirm their pricing's confidential so Accuweigh or WeighPack can't find out the mark-up and assuming it's confidential, drop the prices to three times, that's 300 per cent mark-up." And he says, "We can't charge more than that, too risky. We may lose the sole licence somehow." Now, before – this is as at September 2017. You'd already been charging RMS for upwards of 20 to 25 invoices and \$750,000 worth of scale parts at 10 times the mark-up, hadn't you?---Yes.

40 And that was not known, to your knowledge, to anyone outside of RMS and yourself, was it?---No. I don't think the parts was known, no.

The prices and that the invoices that you had sent were not known to others outside of Novation and RMS, were they?---Sorry, what parts? Sorry, what are you speaking of?

To your knowledge, at this stage in September 2017, no one other than RMS and Novation knew about what you'd been charging RMS for scale parts?

---No.

And you were discussing here with Mr Soliman that a price list would be given to Accuweigh, weren't you?---Yes.

And so your prices would become known to a third-party potentially?

---Sorry, are you talking about my wholesale price list, just my price - - -

10 Your prices are not wholesale prices, are they?---No, but if Accuweigh were asking me for prices I'm going to give them prices.

And that would be the first time someone other than Novation or RMS would know about your prices. Isn't that the case?---I don't know if this is the first time because I thought Mark Mitchell was the first.

All right. So you're referring to the time Mark Mitchell asked you for a price on a scale?---Yes, yeah.

20 And you gave him a price around \$ [REDACTED] for a particular scale?---Yes.

And you had not given Mark any prices for parts, had you?---I'm not too sure at that stage, but yeah, it's more than likely it was just a scale, yes.

And so at this stage in September 2017, this is the first time that Accuweigh were becoming aware of your prices?---Yes.

And Mr Soliman's directing you to drop your prices, isn't he?---Yes, he is.

30 And he's saying, "We can't charge more than 300 per cent, it's too risky, we might lose the sole licence somehow." See that?---Yes.

And you understood that to mean if you were to continue to charge at 1,000 per cent mark-up, that may lead to us losing the sole vendor licence from IRD.---No, I didn't perceive that.

Well, when he says, "Too risky," what did you understand?---It doesn't really make any sense. If I've got the, if I've got the licence it doesn't matter what I charge so I, I don't know what he's trying to get across here.

40 If you've got the licence, it didn't matter what you charged - - -?---Yeah.

- - - because Mr Soliman was authorising the expenditure for RMS, wasn't he?---Well, if you've got the sole vendor licence you can give a price to anyone and you can make that independent.

And they may reject that price.---Yeah, if they so wish.

So as a sole vendor licence-holder you could charge a price or give a quote and a company might reject your price, but this didn't happen with RMS, did it?---No, it didn't.

And you understood that the person who would consider whether your prices were acceptable was Samer Soliman?---No. I understood that they had a fleet of 500 scales that needed these parts and I was the sole vendor.

10 THE COMMISSIONER: No, you weren't asked that, Mr Thammiah. You were asked - - -?---Sorry.

- - - whether you know that Mr Soliman was the one within RMS who was going to approve the - - -?---No, I did not.

You didn't know it was Mr Soliman?---No.

20 MS WRIGHT: I suggest that is a lie, Mr Thammiah. You knew that Mr Soliman was involved in approving your invoices, didn't you?---I knew he was involved but I did not know that he was the only entity or the only personnel involved.

And you knew he was involved in authorising purchase orders for Novation, didn't you?

30 MR YOUNG: Well, I object to, I object to the word involved, Commissioner. In my submission it's a weasel word. I mean if something's going to be put in relation to what that involvement is, that should be put. Involved could mean anything along a whole process. But it may be a big involvement, a small involvement, whatever. It's a long way from being the sole decision-maker.

MS WRIGHT: Commissioner, it's relevant and it's one question among others about what his awareness was about Mr Soliman's involvement in authorising expenditure. Now, I propose to become more specific, but at this stage I'm asking a basic - - -

THE COMMISSIONER: It's a starting point.

40 MS WRIGHT: Yes.

THE COMMISSIONER: Yes, I'll allow it on that basis.

MS WRIGHT: Mr Thammiah, you were aware that Mr Soliman was involved in authorising purchase orders, weren't you?---Yes.

Because he at times spoke to you about purchase orders.---Yes.

And you knew, didn't you, that he would have a significant responsibility in actually authorising the purchase orders?---Yes.

And you were actually sent some purchase orders which he'd signed, weren't you?---I'm not too sure if he signed them. Was that an internal document? Sorry.

10 All right. So you I suggest were aware that your prices, going back to the scale parts prices that I've been asking you about, would be accepted based on Mr Soliman's involvement in authorising expenditure on behalf of RMS.
---No.

You have just told me that you were aware that he had a significant responsibility in authorising purchase orders.---Yes, I agree.

And you understood that purchase orders were the means by which the expenditure would be authorised at RMS, didn't you?---Yes.

20 And you were submitting invoices for parts to Mr Soliman and Mr Singh, weren't you?---Yes.

And you knew that Mr Soliman, in the background, would ensure that your invoices were paid, ultimately. Weren't you?---No.

What did you understand to be the process, Mr Thammiah?---I understood that I had a sole vendor licence, and that Roads and Maritime Services had no option but to procure parts for myself.

30 THE COMMISSIONER: So, I don't think you're actually being asked that. You're being asked your understanding of the process whereby an invoice that you submitted for parts would be paid.---Right.

So what was your understanding of the RMS process – you're not saying to me that - - -?---Sorry.

- - - "I could put any invoice in and it would be automatically be paid."
---No, no.

40 You would understand that there had to be some checking procedure within or some verification procedure.---Yes.

What was your understanding of that?---Yep, look, my understanding of SAP is that there is multiple gates to a PO, and there's multiple approvals. It's not just two people.

MS WRIGHT: Could I have volume 9B at page 24? Do you see this email from Mr Soliman's personal email address to your Novation Engineering address on 29 March, 2017?---Yes.

Where he says “remaining funds” at the top?---Yes.

And he says “existing POs”. You understood that to be purchase orders?
---Yes.

And he’s told you how much money is remaining on three different purchase orders?---Yes.

10 And he says, “Action on Steve, create three invoices to charge random parts to each of these POs to use up the remaining funds.”---Yes.

And you understood that if you were to invoice to charge parts, any parts, first, you understood that to mean you should invoice to charge any parts?
---I thought it to mean any of the parts already ordered.

It meant to invoice for and to charge for random parts to each of the purchase orders, didn’t it - - -?---No, it’s not how I read it.

20 - - - to use up the remaining funds.---I, yeah, I, I agree it’s to use up the remaining funds.

And so you understood that if you were to invoice, that would be approved, there’d be no issue with that, would there?---In this case, I agree, because those three POs were already being invoiced.

You understood that any time you sent an invoice for parts to RMS it would be approved and paid, didn’t you, Mr Thammiah?---No, I did not.

30 Were you ever not paid for an invoice, did anyone ever raise an issue with you, based on your prices or the fact that the particular parts weren’t needed, in 2017?---No.

You had an expectation, didn’t you, that you could invoice for parts even if they weren’t needed - - -?---Not at all.

- - - by the maintainer?---No.

40 Because you in fact acted on this direction from Mr Soliman on 29 March, 2017, to invoice for random parts, didn’t you?---I’m sorry, I don’t know.

If I could have page 40.

THE COMMISSIONER: Of that volume?

MS WRIGHT: That’s the same volume, 9B, Commissioner.

THE COMMISSIONER: Yes. Thanks.

MS WRIGHT: You, at 4 o'clock that afternoon, issued an invoice, 101/15. Do you see that?---Yes.

If we go over the page here is an invoice for \$18,601 including 12 battery packs.---Yes.

And handle weigh pad coupling hardware aluminium base board. Do you see that?---Yes.

10

And then at page 43, you issued another invoice a few minutes later, around 4.09pm on the same date.---Yes.

If we could go to the next page. Again, you've invoiced for about \$21,780 for electronics cover steel base boards and battery compartment covers, or one of them.---Yes.

20

And then if we go to page 46, on 29 March at 4.12pm, you issue a third invoice. And if we go to the next page, the invoice is for a 15C3 III scale at \$9,950 and an alignment flex frame at \$6,950, totalling \$18,500. Now, I take it you issued those three invoices pursuant to Mr Soliman's request for you to create three invoices to charge random parts, didn't you?---Yes.

No one had told you those parts were needed, had they?---No, not sure. I thought he would have given some instruction but I can't recall.

Mr Soliman?---Yeah.

30

The maintainer was WeighPack at this stage?---Sorry, yes.

That was Mark Mitchell?---Yes.

And he hadn't raised with you the need for, how many was it, six battery packs and aluminium base board et cetera, had he?---But he's not my customer. He shouldn't raising any - - -

THE COMMISSIONER: Right. Did he raise it with you?---No, sorry.

40

MS WRIGHT: And you have no recollection of Mr Soliman telling you which parts to invoice for, do you?---No.

Is it fair to say you just charged random parts? That means just any parts that you selected based on no actual need for those parts.---No.

How did you come up with those particular items to charge RMS for?---I can't recall but because Samer was my only contact, I'm presuming it was him.

I see. So he would have been the only person who could have told you which parts to charge?---Yes. More than likely. Could have been Jai but I seriously doubt it.

And the particular direction that he sent to you is to charge random parts. So he has not told you which parts to charge for, has he?---No, he hasn't.

It's fair to say then that it's very likely that it was you who determined which parts to charge RMS for?---I agree it's possible.

10

It's very likely, isn't it?---I really don't know.

In circumstances where Mr Soliman has asked you charge randoms parts, he would be the only person to tell you which parts to charge and he hasn't actually told you which parts to charge, you were the person who determined what parts to charge for. It's very likely, isn't it?---It's possible but I really can't recall this situation.

20

Is that the truth, Mr Thammiah?---Yes. It is. I only can, I only just discovered this through the whole process. It's not like I remember any of this happening.

You see, the Commission has made inquiries with IRD about what they supplied to Novation in the period January to May 2017 and IRD has said that they did not provide batteries nor did they provide 15C scales in 2017. Now, I'll take you to that but do you have a response to that at this stage? That is that you charged, including in the invoices I have just taken you to for batteries, but no batteries were in fact supplied by IRD?---Yeah. I was really – sorry.

30

MR LONERGAN: Commissioner, I object to that question. It's been established on a document that IRD did not supply batteries and battery packs.

THE COMMISSIONER: Sorry, say that again?

40

MR LONERGAN: IRD did not provide or supply batteries and battery packs as part of the process. So, Counsel Assisting is putting it that, by implication, that IRD, because they didn't charge for it, they therefore weren't ordered. I mean, if IRD don't have an, if IRD don't provide them, it's not like he can't procure batteries and battery parts elsewhere.

MS WRIGHT: I object to – there's going to be evidence from the bar table.

MR LONERGAN: Yes, apologies.

THE COMMISSIONER: Are you, do you want to make some further submissions on this, Mr Lonergan?

MR LONERGAN: No, Commissioner, just that objection.

THE COMMISSIONER: To deal with the objection, do you require Mr Thammiah to be outside?

MS WRIGHT: Well, I think there was about to be some evidence from the bar table. That was my objection. I'm not sure – I see there's an objection to the question. Perhaps if I – well, yes, if my friend wishes to put further submissions, then I - - -

THE COMMISSIONER: I don't think he does. Mr Thammiah, can you just go outside for a minute, please?---Yep. Sure.

And can we stop the streaming, please? And you're okay? We haven't cut you off? Good.

MR LONERGAN: Commissioner, it was the implication that was embedded in the question, simply being that by the question saying, "Well, IRD did not provide you with these, well, batteries or battery packs, that therefore" - - -

THE COMMISSIONER: And your point is that because I think Mr Jones's evidence was they could be bought at Bunnings, weren't, the batteries?

MS WRIGHT: Yes.

THE COMMISSIONER: Because IRD weren't providing the batteries, to put the question, "IRD did not provide batteries and the C scales in 2017," your submission is or your objection is, that's not an appropriate question where IRD was never going to provide batteries?

MR LONERGAN: Yes.

THE COMMISSIONER: Because you could have bought them at Bunnings.

MR LONERGAN: Well, necessarily bought them somewhere else, and IRD never provided.

MS WRIGHT: The question was to inform him that we'd, the Commission had made enquiries, and to say, "I will take you to that, but do you have a response to that at this stage?"

THE COMMISSIONER: All right.

MS WRIGHT: And it's open to the witness to say, "Well, that's fine, but," whatever he's going to say. It was just giving him an opportunity - - -

THE COMMISSIONER: Okay. Look, just to deal with this, Ms Wright, can you put the question again but just say, “IRD never provided you with the C scales in 2017,” so we can get Mr Thammiah’s general response.

MS WRIGHT: Sorry, Commissioner. Yes.

THE COMMISSIONER: And then we can take him to the details.

10 MS WRIGHT: That is, I’m sorry, Commissioner, to ask him what his response to - - -

THE COMMISSIONER: Yes.

MS WRIGHT: Yes. Yes.

THE COMMISSIONER: So we start generally, and then we’ll move to more specifics.

20 MS WRIGHT: Yes. I thought that’s what I was doing but I, yes, thank you.

THE COMMISSIONER: Okay. Can we bring Mr Thammiah back in – oh, look, I’d be very grateful, thank you very much. And have we pressed the button?

MS WRIGHT: Yes.

THE COMMISSIONER: And can I just check we’re fine with recording? Terrific. Thank you. Thank you, Mr Thammiah.

30 MS WRIGHT: Mr Thammiah, the Commission made enquiries with IRD. IRD has indicated that they did not provide or supply batteries to Novation. Do you understand?---Yes.

Do you have any response to that?---No.

Did you invoice RMS for batteries which you did not order from IRD?
---Yes.

40 Did you invoice RMS for batteries that you did not order from any other source?---Yes.

And did you invoice RMS for batteries that you did not supply to RMS?
---Yes.

And that was wrong, wasn’t it?---Yes.

And you did that with other parts as well, didn't you, there were other parts that you invoiced RMS for that you did not procure from IRD or from any other source?---Yes, I did find that out during this process as well.

Such as the 15C scale?---I, yeah, I'm not too sure about that 15C scale. I feel like that was an error in, in the model as opposed to ordering that scale.

And you invoiced RMS for scale parts that you did not in fact supply, deliberately, didn't you?---No.

10

Well, you knew at the time that you were not going to supply batteries at the time you invoiced RMS for those batteries?---I agree I must have known.

And so that was deliberate.---It must have been but I, I, I can only think of one explanation in regards to that whole event, but to me it just, yeah, it doesn't make any sense.

Well, you were making money from what RMS was paying you for parts, weren't you?---Yes.

20

You made about seven hundred and – well, I withdraw that. It appears you would have made about \$600,000 in profit from your spare parts business with RMS. Do you agree with that?---Yes, yes. It's not profit, but yes.

That was the reason. When you say it doesn't make sense, that was your motivation I suggest and your intention when you invoiced RMS for spare parts which you had no intention of supplying.---No, that's not the case.

30

Okay, well, I'm asking for your response, Mr Thammiah. Could you explain it?---I, I knew that there was – sorry, should I kind of break down this issue or - - -

Could you explain why you deliberately issued invoices to RMS for spare parts that you never delivered or never intended to deliver or supply?
---Yep. I thought this was related to a financial year closure issue and that it was to use up the expenditure so it wasn't forfeited and that Roads and Maritime Services could then perform their due diligence and get those spare parts in the new financial year.

40

THE COMMISSIONER: Sorry, say that again?---So if you, so I - - -

So we're charging them for a battery pack, \$600 per battery pack, total of 7,200, and we've had evidence from Mr Jones that the batteries could have been bought at Bunnings, so we're charging them, you're getting that money, you've got no intention at that time to provide those batteries, but in the new financial year your expectation is that RMS will come back to you and say, hey, we paid 7,200 for batteries and you never provided them. Was that your understanding?---No. I think what happened was, it was put

to me that there is a due diligence around the parts and that they wanted to use this money so it wasn't going to disappear as far as part of the financial year close, so after I used the POs they would still perform their yearly sort of, you know, I guess tracking and scheduling of these parts and then marry up the two and realise that there's parts needed to order. That was how it was put to me and I realise - - -

Hold on. But you've already ordered the parts. Sorry.---No, but there was - - -

10

But you've already charged them - - -?---Yes.

- - - for - - -?---Sorry, this is in regards to the remaining money on those POs, that's why it's so specific I think.

But you're making stuff up. This is, you're fabricating - - -?---Sorry, this happened at - - -

No.---Sorry.

20

What I'm putting to you, these invoices, you're fabricating them. You didn't order those goods, did you, and you're getting money for them. ---I see that now but at the time I did not see that.

And that's because it was, your evidence is that it was then beholden on RMS to come back to you and say, "Hey, you provided us with this fabrication of an invoice. We haven't received \$7,200 worth of batteries which we could have bought at Bunning for probably about \$10. When are you going to provide them?" Is that your evidence?---Sorry, no. Samer, Samer knew.

30

No, no, no, no. I'm not taking about Samer. You're talking about a due diligence.---Yeah, but he works for Roads and Maritime Services, you just mentioned that. So the organisation was part of it, as far as I could tell.

Oh, right, so it's the person working with you in Novation who was going to do the due diligence to pick up the fact that you have received \$7,200 for batteries that you never provided. That's your evidence?

40

MR LONERGAN: Commissioner, I object to that question because, you know, he's been asked a number of times whether Samer was working with him in Novation and he's denied that.

THE COMMISSIONER: Well, assuming that Mr Soliman was working with you in Novation – really. That's your evidence, that you were relying on the person who, let's assume is working with you in Novation, would come back to you, after he's got, I dare say, part of the \$7,200 and say to you, "By the way, you haven't provided those batteries." Is that really your

evidence to me, that was your understanding at the time?---(No Audible Reply)

Just tell me, is that your evidence, that's what you want me ultimately to find?---Sorry. I, I got lost again.

I give up. Please continue, Ms Wright.

10 MS WRIGHT: Mr Thammiah, at this stage your explanation appears to be patently absurd, I suggest. So I'm going to just ask you to explain again. Did you consider what you've said to be a justification for issuing false invoices? Now, first, if you could just deal with this question. You agree the invoices are false?---Yes.

Now, what is it that made you think that you were in a position to issue false invoices to RMS for spare parts?---Because it was explained to me.

By?---By Samer.

20 What did he say?---That these leftover funds on these POs are going to disappear because of the financial year close and that we needed to use them and that was his way of - - -

For what purpose? Did he tell you why you needed to use them?---Because the Department would lose the funding.

30 And why would the Department want to buy or pay for products that it didn't actually receive any value for?---I guess I saw it as a pre-purchase and that's how it was explained to me.

I've asked you what he said. You didn't say anything about a pre-purchase. What is it that Mr Soliman said to you in this topic? You need to explain to the Commission.

MR YOUNG: Well, Commissioner, I object of this because, I may be wrong, but I don't believe that this matter was put to - this whole issue - - -

THE COMMISSIONER: Well - - -

40 MR YOUNG: If you just give - - -

THE COMMISSIONER: No, no, no, no. Sorry, I'm agreeing with you, Mr Young. I anticipate you're going to say none of this was put to your client.

MR YOUNG: That's so. Now I accept that Mr Thammiah's giving some evidence in relation to matters but the general topic should have been put to Mr Soliman in relation to the alleged false invoices, these particular invoices and my particular concern is that I don't want a situation where

matters that ought to have been put to Mr Soliman while he was in the box are going to be a basis on which he's going to be sought to be recalled in relation to the evidence that's now being given.

10 THE COMMISSIONER: That's why I didn't excuse him, Mr Young, for that very reason. This is what I anticipated. If this was the case, it's not Counsel Assisting, if these were, and I assume his legal representatives would have received instructions about this. I agree with you, it should have been put by Mr Thammiah's legal representatives, it should have been put to Mr Soliman when he was giving his evidence. And I agree with you, it wasn't, and then I haven't excused him, I haven't made a determination yet as whether I will recall him, but it's just on a little list that I am – I won't say little. It's on a list I have here of issues that I am concerned about that have arisen in evidence and weren't put to Mr Soliman.

MR YOUNG: Please the Commission.

20 THE COMMISSIONER: But I take your point, that ultimately I've got to make findings. I've got to accord people fairness. And if there is evidence that I consider Mr Soliman should have an opportunity to comment upon, I will be recalling him.

MR YOUNG: Yes.

THE COMMISSIONER: But I haven't made that determination yet.

MR YOUNG: But I do – in my submission, it doesn't only go to the witness's legal representatives. It also goes to failure by Counsel Assisting - - -

30 MS WRIGHT: No.

MR YOUNG: - - - to raise the issue in relation to Mr Soliman.

MS WRIGHT: No. The issue of using purchase orders, using up purchase orders, and this very email was put to Mr Soliman, and the non-delivery of spare parts that were invoiced for was squarely put to Mr Soliman. I spent considerable time on the spare parts topic with Mr Soliman.

40 THE COMMISSIONER: I agree. Sorry, Mr Lonergan, can I just stop - - -

MR LONERGAN: Yes.

THE COMMISSIONER: Sorry, I'll come to you just in a sec.

MR LONERGAN: All right.

THE COMMISSIONER: But can I just say, that is my recollection. Where this new evidence has come from is this idea of this conversation that we're now hearing about, that my understanding is that Mr Soliman didn't give any evidence about - - -

MS WRIGHT: Certainly not.

THE COMMISSIONER: And it should have been, well, I think it should have been raised with him but, so I think that deals with the issue about - - -

10

MS WRIGHT: It's the first time the Commission's hearing the evidence.

THE COMMISSIONER: Yes. So Mr Lonergan, did you want to add something?

MR LONERGAN: Commissioner, 1609 and 1610 of the transcript, where it was raised by Ms Wright in relation to these invoices and the conversation with Mr Soliman - - -

20

THE COMMISSIONER: And your point being?

MS WRIGHT: Yes.

MR LONERGAN: Oh, it was put to Mr Soliman in relation to the invoices and overcharging, and the conversation that ensued around that. However, I accept that it wasn't addressed by me to Mr Soliman in my cross-examination. That's the only point.

30

THE COMMISSIONER: All right. Oh, look, let's move on.

MS WRIGHT: Yes.

THE COMMISSIONER: I think ultimately I've got to make a determination whether I call Mr Soliman back as a matter of fairness, but as I said, it's a matter that I'm still got to make my determination about.

MS WRIGHT: Yes, Commissioner. So move on from that topic, or - - -

40

THE COMMISSIONER: No, no, no, no.

MS WRIGHT: Oh, sorry.

THE COMMISSIONER: Sorry. Just this whole issue about whether things had been adequately put to Mr Soliman, so - - -

MS WRIGHT: Yes. Now, Mr Thammiah, is your evidence that - I withdraw that. I think I was asking you about the conversations that you had with Mr Soliman. Now, what is it that Mr Soliman said to you about

pre-purchase? You gave an answer in which you suggested that it was suggested to you that you could invoice as a means of pre-purchasing items. ---Yeah, I was - - -

Is that what you mean?---Yes.

What did he say?---It was in regards to using this money and the fact that the way things work internally, you'd, you'd lose this money. So, I guess that was, that was how the argument was put to me.

10

That says, what you've just said doesn't say anything about pre-purchase. I am asking you what he actually said to you, Mr Thammiah.---I don't remember the exact words, I'm giving you the general gist of how, of what happened, and how the - - -

THE COMMISSIONER: No, we're not interested in that. You're being asked, to the best that you can - - -?---Yes.

20

And we don't want exact words, we can have words to the effect, what did Mr Soliman say to you?---Sure. Words to the effect of, "This money will be gone and it needs to be used in this financial year. Order these random parts and it'll, we can fix it up in the new year with, with Jai's kind of sanity check or," the other word escapes me, sorry.

MS WRIGHT: What did he say, if anything further, about, "We can fix it up in the new year"?---I can't recall anything further beyond that.

30

So the pre-purchase word that you used a moment ago was your words? They weren't words that Mr Soliman used or words like them?---No, that was my word.

And you've said that that was your understanding in relation to using the balance of what was remaining on purchase orders?---Yes.

Now, there are cases, aren't there, where you invoiced falsely for parts where you weren't just using up what you had been told was left on a purchase order, correct?---Sorry, can you repeat that?

40

Well, you've said in some of your answers that you understood that you had to use up what was remaining on purchase orders.---Yes.

But there were times, weren't there, when you weren't just using up what was left on a purchase order at the end of the financial year, you were just invoicing for parts that you were not delivering?---Yes. I, I agree. That did happen but it was not intentional.

And so what you've said about Mr Soliman saying, "We need to use up these funds and it'll be fixed up next year," doesn't apply to those invoices, does it?---No, it doesn't.

And why did you think it was justified, if you did, you invoice RMS for those parts that were not delivered?---I thought that was a mistake and that I need to correct that.

10 You weren't mistakenly invoicing for parts, were you? You were, you did it knowing that you weren't delivering those parts?---No, I did not.

Mr Thammiah, it's really not making much sense. You've agreed that here were times when you invoiced falsely for parts where it wasn't a consideration that you were just using up purchase orders.---Yes, in that particular instance with those random parts comment, yes, I agree.

20 And you've suggested that it was a mistake that had to be fixed up on those occasions.---No, I suggested that was a different issue on other parts that weren't delivered, as far as I can recall, were a mistake.

How could it be a mistake to invoice RMS for something that you were never going to deliver?---Sorry, I only made that comment in regards to the random parts POs in reference to that email.

And on occasions, when you weren't just trying to exhaust a purchase order but you invoiced for things that were not delivered?---I don't believe so.

30 THE COMMISSIONER: No, you've said that did occur but you said – it did happen but it wasn't intentional. That was your evidence. These are the other times when you invoiced for parts that were not delivered, okay?
---Yes.

So forget about the random part one.---Yep.

You've given evidence that you invoiced for parts that were not delivered. That was your evidence, right?---Yes. And your comment was, "It did happen but it wasn't intentional"?---Yes. I thought that was a mistake when I found out about it.

40 MS WRIGHT: Could I have – oh, I'm sorry, if you're complete, Commissioner.

THE COMMISSIONER: No, no, no. Go on.

MS WRIGHT: Exhibit 49. Do you see this is a table, which has been prepared by the Commission, of spare parts, software and scales invoiced by Novation to RMS between 10 January and 15 May, 2017? Do you see that?---Yes.

And do you see a number of columns setting out particular items that you invoiced RMS for?---Yes.

And the quantities that you invoiced. See?---Yes.

And the prices you charged?---Yes.

And the dates of your invoices and your invoice numbers?---Yes.

10

See?---Ah hmm.

And if we just take an example of batteries for example that we've been using as an example today, you invoiced for 44 battery packs at \$600. See? ---Yes.

And you did that in four separate invoices, starting in January 2017. Do you see?---Yes.

20

And in January 2017 I suggest it couldn't have been the case that you thought you were just exhausting a purchase order in invoicing for an item which you had no intention of actually ordering from IRD or supplying to RMS.---I didn't at the time.

THE COMMISSIONER: I'm sorry, you what?---I didn't at the time.

30

MS WRIGHT: No. You were not intending to just exhaust a purchase order pursuant to something Mr Soliman had said to you about using up the available funds, were you, when you invoiced for a battery pack in January 2017?---(No Audible Reply)

When you invoiced for a battery pack – you're looking at me quizzically - - -?---Sorry.

- - - so I'll rephrase, I'll re-put it. When you invoiced for a battery pack in January 2017, you were not seeking to exhaust available funds on a purchase order, were you?---I don't know. No, I don't think I was because - - -

40

This is right at the start of you supplying parts to RMS, isn't it?---Yeah.

Mr Soliman hadn't said anything to you about there being X number of dollars left on a purchase order that had to be used up and could be fixed up later, had he?---No, I don't think so.

In fact this is your first ever invoice to RMS for parts, isn't it?---Sorry, I'm not sure, but yes, it must be.

And you included an item that you had no intention of delivering, didn't you?---No, that's not true.

It's a battery pack. You've agreed or you've given evidence rather that you didn't intend to supply battery packs or to order them from IRD.---That's - -

MR LONERGAN: Sorry, I object to that question because again we come back to the same point.

10

THE COMMISSIONER: All right. Stop. Sorry, Mr Lonergan. Ms Wright, could you just rephrase that question about the battery packs. There were two propositions in your question. Maybe if we can just break them down and if you have an objection, Mr Lonergan, leap to your feet.

MS WRIGHT: Well, there was a compendium there because he gave evidence about the battery packs where he said that he never ordered them from IRD and he never supplied them to RMS and he didn't have the intention to do either of those things, and so I was seeking to - - -

20

THE COMMISSIONER: That's why you were - - -

MS WRIGHT: Yes, I was aware there was a compendious question but I can separate it, it's just a question of shortening the examination, Commissioner.

THE COMMISSIONER: On that basis, Mr Lonergan, do you object to the question?

30

MR LONERGAN: I just don't recall the point my learned friend raises that he never supplied at all, but if, that's a question of transcript and if we presume on the basis that that is there, then the question is valid, however if it's not, then that's not a valid question.

THE COMMISSIONER: All right. Ask the question, Ms Wright.

MS WRIGHT: Mr Thammiah, you gave evidence that you never ordered batteries from IRD, you didn't intend to order batteries from IRD and you didn't deliver batteries to RMS. Now, you agree that's your evidence?

40

---Sorry, that, that was my evidence in regards to those battery packs you referred to in the random parts.

I referred to the battery packs which you invoiced RMS for. You didn't distinguish between battery packs, did you, in your answers?---I thought we were on topic for that particular issue.

What particular issue?---The random parts.

And so you say that there are only particular parts that you were aware you were falsely invoicing for, but for other parts of the same nature, what do you say?---I say that it's an error.

An error by whom?---An error by me.

So when you invoiced RMS for a battery pack, well, four battery packs in fact, on 10 January, 2017, you made an error, did you?---Yes.

10 And how did you make that error?---I think I had earlier reference lists from IRD where they had battery packs.

IRD has never given you a price for battery packs, has it?---Sorry, I'm suggesting they have on - - -

THE COMMISSIONER: Well, I don't want you to suggest.---I, I think they have.

20 So your evidence is that IRD provided you with a price list which included a price for a battery pack?---Yes, I'm sure they did,

And then you received the IRD price list that you've been taken to, which said either, "Available locally," or, "Not available"?---Yes. But we were going through different lists at, at the start of this, yeah.

Right. Where are the lists, those lists where they include battery? Are they before the Commission?---I am not sure.

30 Can you take me to them?---If I have access to my computer, I can probably look through every file I've ever been given by IRD but I do believe - - -

I didn't ask you that, Mr Thammiah. It would really help if you can listen to questions. My question is, in the brief of evidence that's before the Commission which is X number of volumes, can you point me to this IRD price list which included batteries?

40 MS WRIGHT: Commissioner, there is – I've just found some evidence but it's not responsive to the particular question I suggest, his answer, about getting a list from IRD in circumstances where the particular question is why, or the reasons for which he was invoicing for batteries in January of 2017. IRD's price, in my submission, is neither here nor there.

THE COMMISSIONER: Is irrelevant.

MS WRIGHT: In response to that particular question.

THE COMMISSIONER: Look, I take your point, Ms Wright. You continue with the questioning.

MS WRIGHT: Mr Thammiah, when you invoiced RMS for four battery packs in January of 2017, and you've said that it was an error, no one had told you that four battery packs were required or needed, had they, at that stage?---I have no idea.

Well, how is it that you can say that it was an error?---Because clearly now I can see it, it's an error, and you've taken me to that.

10 And you have acknowledged that there were times when you deliberately issued false invoices. Isn't it possible that when you invoiced for battery packs in January 2017 which you didn't order from IRD that you were also issuing false invoices?---I don't think so.

Because you were prepared to do it at a later time to exhaust available funds. So you might have done it in January as well.---No, I don't believe so.

20 Well, how can you be sure about that?---(No Audible Reply)

Or you can say it's an error but you have no idea how you made that error. ---Yeah, I agreed.

You never intended on supplying items such as battery packs which you did not order from IRD or from any other source, did you?---No.

Items which you invoiced RMS for, did you?---No.

30 And you knew that Mr Soliman would authorise or use his influence to ensure that your invoices were authorised, didn't you?---No.

And throughout this period you were giving Mr Soliman cash, weren't you? ---Yes.

And that was his reward for assisting Novation in contracts for spare parts, wasn't it?---No.

40 Now, after Novation was appointed to the Heavy Vehicle Maintenance Panel, a request for quote for spare parts was issued in late November, 2017, wasn't it?---Yes.

And Novation responded to that request for quote?---Yes.

And Novation had reduced its price, hadn't it, for parts?---Yes, but I'm not too sure though.

And that's I suggest because Mr Soliman had told you to do that on 4 September, 2017 in the WhatsApp messages I took you to in Exhibit 63.
---I don't think that's the case.

This was the first time you had had to respond to an actual tender-type process for spare parts, isn't it?---Yes, but that's not Accuweigh that I'm responding to.

10 And you knew you had to drop Novation's prices as your flagrant overpricing would be obvious, I suggest?---Sorry, I really can't recall.

And that's why you and Mr Soliman talked about it on 4 September, 2017 in the messages in which he told you the pricing at 10 times was exorbitant.
---No.

THE COMMISSIONER: So you're disagreeing with that. Is that the point of saying no?---Yeah, I thought they were totally different instances.

20 MS WRIGHT: Now, in relation to the Heavy Vehicle Maintenance Panel, Mr Soliman told you about the fact that that panel was going to be established. Do you agree with that?---He must've, yes.

You had all manner of discussion about that panel on the WhatsApp, didn't you?---Yes.

And have you read the WhatsApp messages which Mr Soliman was taken to this week in detail?---I've -- bring them up anyway, I'd appreciate it.

30 Have you, have you read them - - -?---But I have gone over them.

- - - in detail?---I have gone over them, yes.

All of them?---It was quite a lot to take in, yes.

And did you watch his evidence?---Yes.

And he told you he was creating a panel for the upcoming scales procurement tender in July 2017?---Yes.

40 And you knew that he would be involved in creating that panel?
---Yes.

And he told you that you'd be successful in that panel, didn't he, or words to the effect or you understood from his words that Novation would be successful in being appointed to that panel?---Is that in the messages? Could you bring that up?

THE COMMISSIONER: Do you agree with it or not?---I just can't recall. I can't remember that message particularly.

MS WRIGHT: Page 172 of Exhibit 63. You see he says, "Met with director to put all my years' plans in place, one of them being the scales tender, he gave it the green light."---Yes.

10 And then on page 173 you say, "Sweet." And he says, "So we're good from all sides for the next three financial years." See that?---Yes.

And so you understood that he would ensure that Novation was appointed to the panel.---No, I, I see that that's his hope and intention.

Well, he's telling you "We're good from all sides for the next three financial years," having just told you that the scales tender has been given the green light.---Yeah, I, yeah, it does kind of suggest that, yes.

20 Yes. And then down the bottom he says, "For the tender I'm speaking to other managers that are better to deal with once the time comes." You see that?---Yes.

Because you'd been complaining about some of the managers you were dealing with.---No.

30 I'll take you to that, but I suggest that that is not the case, Mr Thammiah. You'd been complaining and he said, "Well, you can deal with other managers once the time comes." And you understood "once the time comes" to mean "once you were on the panel".---Sorry, I didn't take that interpretation at all.

We'll go to a more direct reference. Page 218. Last message on 4 September, "Got to talk about the tender soon, by the way. It will be on the public eTender site soon. You need to prepare the tender to be placed on a panel of successful vendors, then we can procure all we like, no limits and no risk."---Yes.

You see that? And when he said "we can procure" he was referring to Novation.---Yes.

40 And Novation was just as much his business as yours in your mind, wasn't it?---I didn't think so at the time, but I definitely do think that now.

He frequently referred to the company in terms of "we", didn't he?---Yeah, he did.

And you understood that the company was, that he was in effect like a silent partner in the company, wasn't he?---No, I didn't think that.

Well, he was just as much part of the company as you.---I see that now, yes.

And at the time you regarded it as both his company and your company, didn't you?---Not at the time.

You shared information with him about the tax position of the company.---Yes.

10 And you talked to him about Tan doing the books.---Yes.

And working out the net profit that the company was making.---Yes.

And he advised you about when to put in tenders, didn't he?---Yes.

He assisted you with the tender documentation, that is the drafting of it.---I don't think he did. Not the first one, maybe the second one.

20 You sent him the draft Novation submission for the second tender, didn't you?---Yes, I think I did.

That's the tender that subsequently ended in the award of a \$7 million contract to Novation.---Yes, that's correct.

And he actually reviewed and assisted in drafting that tender submission, didn't he?---No, I don't think he did.

You sent him your submission and he reviewed it. Would you agree with that?---No.

30 So I have to take you to that message?---No, I agree I sent it to him, but I don't believe he actually reviewed it.

He got back to you and made comments on it, didn't he?---Yes.

And that's because he looked at it.---I don't think he did. I didn't, well, at the time, I didn't think anything of it.

Well, you weren't with him, were you?---No, I wasn't.

40 And you sent it to him so that he could review it.---I sent it to him because I had an issue with attaching a PDF file, and I thought he'd at least point that out to me if it wasn't picked up.

So are you seeking to minimise his involvement in your tender submission for the 425 scales?---No, not at all.

For the 125 scales, you discussed with each other how much profit Novation could make, didn't you?---Yes.

And that's because you knew at the time that he had just as much interest in Novation's success as you, didn't you?---He definitely had an interest, that's for sure.

And just as much interest as you.---From this perspective, I think he had more interest than me.

10 And was it the intention that you would half the takings, the net takings, after tax with him?---No. No.

I note the time, Commissioner.

THE COMMISSIONER: All right. We'll adjourn for lunch and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.00pm]