TC02535

Appeal number: LON/2007/1334

VALUE ADDED TAX – input tax – MTIC – fraudulent evasion of VAT – whether appellant's transactions were connected with fraudulent evasion – yes - whether the appellant knew or ought to have known that its transactions were so connected – yes - appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

TRANS GLOBAL TRADE (EUROPE) LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE GUY BRANNAN
SUSAN LOUSADA

Sitting in public at The Royal Courts of Justice, London on 17, 19 – 21, 24 – 28 September and 1 – 4 October 2012

Martin Lonergan, Director, for the Appellant

James Puzey and Vinesh Mandalia, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. Trans Global Trade (Europe) Limited ("the appellant") appeals against the Respondents' ("HMRC") denial of a claim to input tax for the purposes of VAT in the total amount of £6,413,211.49. The denial of input tax relates to two VAT periods, April and May 2006. The sum denied in relation to April 2006 was £3,718,973.79 and 4 May 2006 £2,694,237.70. The decision denying input tax was contained in a letter from HMRC to the appellant dated 9 July 2007.

2. Also subject to the appeal is an assessment to VAT in the sum of £376,084.73 in respect of the VAT return for the period April 2006. The assessment was notified by a letter dated 2 August 2007. The assessment is consequent upon the decision to deny input tax in that period and, therefore, the assessed sum forms part of the total denied in April 2006 of £3,718,973.79 and is not a separate or additional dispute.

3. As explained below, this appeal is what is commonly known as an MTIC ("Missing Trader Intra-Community") appeal. The main issues in the appeal are whether the appellant's transactions in April and May 2006 were connected to the fraudulent evasion of VAT and whether the appellant knew or should have known that its transactions were so connected.

The evidence

4. The written and documentary evidence (comprising witness statements and exhibits) in this appeal was contained in 43 volumes of lever arch files. In addition, the following witnesses for HMRC gave oral evidence in addition to their witness statements:

(1) Douglas Armstrong – HMRC officer in respect of KEP 2004 Limited ("KEP").

(2) Roger Perkins – HMRC officer in respect of the appellant.

(3) Alan Ruler – HMRC officer in respect of evidence obtained from First Curacao International Bank ("FCIB").

(4) Andrew Letherby – and HMRC officer who gave expert evidence in respect of the retrieval of information from FCIB's computer servers.

(5) Timothy Reardon – HMRC officer in respect of Computec Solutions Limited ("Computec").

(6) Gordon Fyffe – HMRC officer in respect of Bullfinch Systems Limited ("Bullfinch").

(7) Peter Cameron-Watson – HMRC officer in respect of Oracle (UK) Limited ("Oracle").

(8) Matthew Bycroft – HMRC officer in respect of Midwest Communications Limited ("Midwest").

(9) Andrew Monk – HMRC officer in respect of XS Enterprise Systems Limited ("XS Enterprises").

(10) Kulvinder Kumar – HMRC officer in respect of Prompt Info Limited ("Prompt").

(11) Martin Evans – HMRC officer in respect of 3D Animations Limited ("3D Animations").

(12) Sheila Edmead – HMRC officer in respect of Stella Communications UK Limited ("Stella").

(13) John Cordwell – HMRC officer in respect of World of Power Limited ("World of Power").

(14) Roderick Stone – HMRC officer who gave evidence in relation to MTIC fraud generally.

(15) Laura Hartell – HMRC officer in respect of Data Solutions Northern ("Data Solutions").

5. The appellant's witnesses who gave oral evidence in addition to their witness statements were:

(1) Martin Lonergan – Director and shareholder of the appellant.

(2) Katharine Johnson – formerly an employee of the appellant.

(3) Linda White – formerly an employee of the appellant.

The legal principles applicable to MTIC transactions

6. There have now been so many appeals heard by this Tribunal in respect of alleged MTIC transactions that it is unnecessary yet again to give an explanation of how MTIC fraud is carried out. A convenient explanation is given by Christopher Clarke J in *Red 12 Trading Ltd v HMRC* [2009] EWCH 2563 (Ch) [at 2].

7. There was no dispute as to the applicable legal principles, which are as follows.

8. The legal right to a deduction for input tax is enshrined in Articles 167 and 168 of Council Directive 2006/112/EC of 28 November 2006 and in sections 24, 25 and 26 of the Value Added Tax Act 1994.

9. There is no legal right to a deduction for input tax, however, where fraud is involved. There is now extensive case-law on the subject both before the European Court of Justice and our domestic courts. The position was summarised by Lewison J in the recent decision of the Upper Tribunal in *Brayfal Ltd v HMRC* [2011] UKUT B6 (TCC) as follows:

> "While Brayfal's appeal has been making its way through the system, the law has been considered by the courts on a number of occasions. It

finds its latest authoritative pronouncement in the decision of the Court of Appeal in *Mobilx Ltd v HMRC* [2010] EWCA Civ 517. This decision was handed down on 12 May 2010, a couple of months after the revised decision of the FTT. That case examined the ramifications of the decision of the ECJ in *Axel Kittel v Belgium*; *Belgium v Recolta Recycling* Joined Cases C-439/04 and C-440/04 [2006] ECR 1-6161 ("*Kittel*"). What the Court of Appeal decided was:

> A taxable person who knows or should have known that the transaction which he is undertaking is connected with fraudulent evasion of VAT is to be regarded as a participant and fails to meet the objective criteria which determine the scope of the right to deduct. (§ 43)
>
> If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. (§ 52)
>
> The principle does not extend to circumstances in which a taxable person should have known that by his purchase it was more likely than not that his transaction was connected with fraudulent evasion. But a trader may be regarded as a participant where he should have known that the only reasonable explanation for the circumstances in which his purchase took place was that it was a transaction connected with such fraudulent evasion. (§ 60)
>
> The test is simple and should not be over-refined. It embraces not only those who know of the connection but those who "should have known". Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. (§ 59)
>
> If HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion. (§ 81)
>
> In answering the factual question, Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focusing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was. (§ 82)

I should also record that it was common ground that these principles should be applied in the light of the circumstances prevailing at the

> date of the taxable person's own transactions: C-354/03 *Optigen Ltd v Customs and Excise Commissioners* [2006] ECR I-483. "

10. We adopt Lewison J's summary of the law as a correct statement of the current position.

11. We should also add that, in relation to the issue whether a trader's transactions were connected to the fraudulent evasion of VAT, Roth J held in *Powa (Jersey) Ltd v HMRC* [2012] UKUT 50 (TCC) that it was not necessary that the trader was in privity of contract with a fraudulent trader. Instead, if a trader knows or should have known that the transactions which it entered into were part of a chain in which one or more of the earlier transactions were fraudulent, even if its immediate supplier was not fraudulent, the *Kittel* test is satisfied.

12. We also note the comments of Moses LJ in *Mobilx* in relation to questions of evidence, where he said (at page 1459):

> "The questions posed in *BSG* …by the tribunal were important questions which may often need to be asked in relation to the issue of the trader's state of knowledge. I can do no better than repeat the words of Christopher Clarke J in *Red 12 Trading Ltd v Revenue and Customs Comrs* [2009] EWHC 2563 (Ch) at [109]–[111], [2010] STC 589 at [109]–[111]:
>
> '[109] Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and "similar fact" evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.
>
> [110] To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.

> [111] Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them.'"

13. As regards whether HMRC discriminated against the appellant in denying its claim to input tax in respect of the period under appeal but did not do so in respect of the buffer traders in the relevant deal chains, it is worth noting the comments of Roth J in *POWA Jersey Limited v HMRC* [2012] UKUT 50 at [60]:

> "As to non-discrimination, this appeal concerns the decision by HMRC that the objective criteria determining the right to deduct input tax were not met as regards these claims for repayment by PJL. If that is the case, PJL were not entitled to such repayments, irrespective of the position of anyone else. The FTT's dismissal of this argument was therefore entirely correct: see at para 120. Furthermore, whether or not HMRC could have applied a similar approach to the traders who served as buffers in the chains (who would generally not be making a repayment claim to HMRC but simply crediting the input tax against the output tax received) does not affect that conclusion; and whether HMRC should have pursued those traders for an account of the output tax received is a question of policy regarding the effective enforcement of the VAT regime, with no doubt limited resources. Accordingly, I consider that the principle of non-discrimination is not engaged."

14. Finally, it is worth adding that the standard of proof is the normal civil standard of proof i.e. the balance of probabilities and that the burden of proof lies upon HMRC.

Terminology

15. In this course of numerous MTIC appeals the parties in the alleged transaction chains are usually described by certain terms. A party in the position of the appellant in this appeal who exports (technically, for VAT purposes, "dispatches") goods to a foreign purchaser is known as the "broker". A party who buys from the importer of the goods ("the acquirer") and intermediate purchasers between that party and the appellant are usually known as "buffers". We shall use these expressions in this decision simply for convenience but without in any way prejudging the issue.

Issues in dispute

16. In a Statement of Issues filed on behalf of the appellant on 9 October 2009 various issues were raised in relation to HMRC's Statement of Case. At the hearing, however, many of these issues were abandoned.

17. Mr Lonergan, the director of the appellant and its shareholder, represented the appellant at the hearing. He put HMRC to proof that, in relation to the deal chains in question, HMRC had suffered a tax loss resulting from the fraudulent evasion of VAT. After hearing the evidence given by the HMRC officers responsible for the various defaulting traders (including Data Solutions, which was a purchaser from the defaulting trader), Mr Lonergan in his closing statement accepted that HMRC had

suffered a tax loss resulting from the fraudulent evasion of VAT in respect of all the defaulting traders (including Data Solutions) in question.

18. Mr Lonergan, however, did not accept that the appellant's transactions in April and May 2006 were connected to such fraudulent evasion. This connection to fraud was, therefore, the first main question in dispute between the parties.

19. Secondly, Mr Lonergan disputed HMRC's claim that the appellant knew or should have known that its transactions in April and May 2006 were connected to the fraudulent evasion of VAT. This was, therefore, the second main issue in dispute.

Background in relation to the appellant

20. The appellant was incorporated on 18 June 1997 as Trans Global Textiles Limited. Mr Lonergan has been a director and shareholder of the appellant from the date of its incorporation. He became the sole director of the appellant on 18 June 1997 and from 11 November 1999 has been the appellant's sole shareholder.

21. The appellant was registered for VAT with effect from 1 September 1997. VAT returns were submitted on a quarterly basis, with the periods ending in December, March, June and September.

22. Initially, the appellant was incorporated to provide soft furnishings and carpets for another company with which Mr Lonergan was associated, Trans Global Solutions (Europe) Limited. Mr Lonergan had a partner in this other company but after a difference of views as to the company's future Mr Lonergan resigned as a director in October 1999.

23. The need for the appellant's services diminished greatly and on 13 June 2000 and application was made to the Registrar of Companies for the appellant to be voluntarily struck off the Register of Companies.

24. At around this time, Mr Lonergan began to trade goods with Africa. He became aware of the fact that there was a market for used and new computer equipment in Africa and he developed business contacts in that market. In early 2000 he began trading in computer central processing units ("CPUs"), finding a buyer amongst his African contacts.

25. On 30 October 2000 the application to strike off the appellant from the Register of Companies was withdrawn and the company's name was changed to its current name of Trans Global Trade (Europe) Limited on 23 January 2001. The appellant informed HMRC its change in activities by a fax dated 23 February 2001.

26. During 2001 to 2002 the business of dealing in computer parts and CPUs gradually became established and became the principal activity of the appellant. Mr Lonergan was assisted by Wendy Brooks who also dealt with administration and book-keeping. The appellant began trading in mobile telephones in the early part of 2001 and it was most probably an established business by the summer of 2002.

27. In 2001 to 2002 Mr Lonergan became aware, directly and through information passed him by Ms Brooks, that HMRC viewed the market in computer parts and mobile phones as one susceptible to practices which exposed HMRC to VAT fraud. This was reinforced by a visit to the appellant by its VAT officer, Mr Patterson, on 30 July 2002. Mr Patterson explained that the appellant was trading in goods which were vulnerable to MTIC fraud and that the appellant would henceforth be required to submit monthly deal sheets detailing goods purchased and goods sold along with the value of the transactions and the VAT numbers of its suppliers and customers.

28. By a letter dated 5 August 2002, HMRC warned the appellant about making payments to third parties stating that the appellant's claim to input tax may fail to be verified. The appellant felt this requirement was onerous and un-commercial, particularly as regards one occasion where a payment was due to be made by a factoring company which had assumed the payment obligations of the appellant's customer. After correspondence between HMRC and the appellant's adviser, the appellant did not trade with the party in question. In a letter dated 15 October 2002 from HMRC, the appellant was described as "one of the more compliant traders. They regularly verify potential suppliers…." Thereafter, the appellant did not enter into transactions involving third-party payments.

29. The letter of 5 August 2002 also contained a Notice of Direction issued by HMRC revoking the issue of quarterly returns pursuant to Regulation 25 (1) of the VAT Regulations with the result that from 1 October 2002 the appellant submitted monthly VAT returns.

30. The appellant's turnover for the financial year ended 30 June 2002 was approximately £40 million and approximately £17 million for the year ended 30 June 2003. During those years the appellant was both making VAT payments and receiving VAT repayments.

31. In February and July 2003 the appellant was notified by letters from HMRC explaining procedures for the verification of the VAT registrations of its trading partners. The July letter explained that from 4 August 2003 such verification would be dealt with by HMRC's Redhill VAT office. The letter noted that MTIC fraud was "one of the most costly current forms of VAT fraud within the EU. It is a serious problem for the UK and is Customs' top VAT fraud priority." The letter noted that the commodities regularly involved in MTIC fraud included computer chips and mobile phones.

32. During 2003 Ms Brooks dealt with HMRC's monthly reporting requirements. Mr Lonergan became aware of new rules relating to Joint and Several Liability as set out in VAT Notice 726. The appellant received detailed information and guidance on the effect of Notice 726 from its trade association, the Federation of Technological Industries ("FTI"). Mr Lonergan and Ms Brooks attended courses and seminars on the subject.

33. On 1 November 2004 Mr Lonergan met the appellant's new VAT officer, Mr Baker, to discuss the appellant's export business. Mr Baker advised Mr Lonergan that

generic descriptions of goods shown in export documentation were not sufficient for HMRC's purposes.

34. HMRC wrote to the appellant on 9 February 2005 requiring that copies of due diligence documentation and records of MSN conversations should be retained. HMRC also anticipated more frequent contact with the appellant.

35. On 23 February 2005 HMRC wrote to the appellant informing it that the repayment in respect of its December 2004 VAT return was being made on a "without prejudice" basis, noting that "problems with the supply chain" had been identified. Mr Lonergan stated that, whilst he was concerned that there had been problems with the supply chain, he did not recall hearing anything further about the issue and that he was reassured that the repayment was being made. He says he took this as confirmation that the appellant's procedures were compliant and that its immediate suppliers and customers were bone fide. This was the first time a problem with the appellant's supply chain had been identified by HMRC.

36. Mr Lonergan met Mr Lawrence and Mr Bright of HMRC on 8 March 2005 to discuss the appellant's due diligence checks in respect of one particular trading partner and, more generally, "joint and several liability." Mr Lonergan confirmed that he was aware of and had read Notice 726.

37. On 5 May 2005 Mr Lonergan attended the meeting at HMRC's offices to discuss joint and several liability and to complete a joint and several liability "aide memoire." On 20 May 2005, Mr Lawrence (who was now the appellant's VAT officer) informed the appellant by letter that his weekly visits would be reduced.

38. At around this time the appellant enlisted HMRC's help in respect of a difficulty it was experiencing with Dutch Customs. The appellant wrote to Mr Lawrence and Mr Lawrence's letter of 20 May 2005 indicated that HMRC was prepared to help the appellant.

39. We have not set out the full history of the appellant's dealings with HMRC. There were numerous visits and exchanges of correspondence and telephone calls in the years leading up to April and May 2006. Mr Lonergan was concerned that Mr Perkins's witness statement did not give sufficient detail of the appellant's relationship with HMRC over an extended period. We are satisfied that the records of visits and communications between HMRC and the appellant show that the appellant had a cooperative and business-like relationship with HMRC. The appellant readily supplied HMRC with the documentation it required.

40. The appellant held an account with Voltrex/ Barclays which it used for foreign currency transactions.

41. In September 2005 the appellant opened an account with FCIB.

42. During 2005, Linda White became more involved in the appellant's trading. She had been working for the appellant for approximately 2 years in mainly administrative tasks. She had been involved in some of the earlier meetings with HMRC.

43. In October 2005, Ms Brooks left the appellant's employment and Ms White became the principal trader. Katharine Johnson, a freelance bookkeeper who had been providing services to the appellant, also became involved in trading.

44. Mr Lonergan's evidence was that he gave Ms White and Mrs Johnson extensive training before they became involved in trading. Ms White accompanied Mr Lonergan on a number of visits to trade fairs (CeBIT in Germany in March 2005 and March 2006 and the European Brokers Meeting in Paris in December 2005). Mrs Johnson also accompanied Mr Lonergan on the last two visits.

45. On 13 January 2006, Mr Lonergan met Mr Lawrence and another HMRC officer to discuss joint and several liability questionnaires. Mr Lonergan mentioned the due diligence would now be carried out by a company called Claymore SS Limited ("Claymore"). Claymore was run by Mr Mark White, the former husband of Ms White.

46. On 1 February 2006 HMRC wrote to the appellant informing it that tax losses have been suffered in two transactions in each of the VAT returns of the appellant for July and August 2005 and that those deals had been traced to defaulting traders. The letter invited the appellant to consider what should be done to ensure that it was not connected to VAT losses in future transactions.

47. On 23 March 2006, the appellant's repayment claim in respect of its February 2006 return was approved.

48. Mr Lonergan had been involved in bitterly contested divorce proceedings. On 16 April 2006 he left the UK for, what was intended to be, a short trip to Thailand. In the event, Mr Lonergan then travelled to Australia, Japan and the United States, returning to the UK in the second week of June 2006. He explained that the impact of the divorce proceedings was so intrusive that he wanted to get away. Whilst in the United States he bought a motorcycle and biked across the country.

49. Whilst Mr Lonergan was away, Ms White continued to trade, with assistance from Mrs Johnson.

The alleged deal chains

50. Mr Perkins carried out what is known as an "extended verification" exercise on the appellant's returns for the April and May 2006 periods.

51. The April 2006 return was received by HMRC on 8 May 2006 and showed the following:

- Output tax declared: £13,312.69
- Input tax declared: £3,356,201.75
- Net tax claimed: £3,342,889.06

52. The May 2006 return was received by HMRC on 13 June 2006 and showed the following:

- Output tax declared: £nil
- Input tax declared: £2,830,459.29
- Net tax claimed: £2,830,459.29

53. We set out in Appendix 1 and 2 (Deals Traded in April and May 2006) the deal chains compiled by Mr Perkins, as a result of this extended verification process, in respect of the appellant's transactions in April and May 2006. The appellant does not accept that these deal chains are correct and argues that it is not connected with the defaulters identified in those deal chains. For present purposes, we referred to deal "chains" simply for convenience.

54. There were 46 transaction chains identified by Mr Perkins leading back to 11 defaulting traders. In fact, a number of those chains involved different goods being on-sold to the appellant's customer on the same sales invoices. For this reason, the 46 transaction chains compiled by Mr Perkins only involved 29 invoices issued by the appellant. Appendix 3 (Schedule of Deal Chains) relates the 46 deal chains to the relevant invoices. There was one transaction, April deal 3, which was not under appeal and about which we had no details. We were informed that in this transaction the appellant played the role of a buffer trader.

55. The process by which Mr Perkins had constructed the deal chains was as follows. He started with the documents supplied by the appellant. He worked back up the chain until he came to the defaulter and, where possible, its supplier (usually a foreign company). He did this by following the chain of invoices and purchase orders. He used information uploaded onto HMRC's Electronic Folder by other officers in respect of traders for whom those other officers had responsibility. The Electronic Folder was a computer database accessible to other authorised HMRC officers. Those other officers would compile spread-sheets of transactions for "their" traders which they uploaded onto the Electronic Folder. Mr Perkins used those spread-sheets to trace a transaction chain back to a defaulter. It was on the basis of this information that Mr Perkins issued his denial letter of 9 July 2007 to the appellant. Once the appellant had appealed, Mr Perkins compiled “deal packs” containing documentation for each transaction chain using invoices and purchase orders and other relevant documentation provided by the officers for the other traders and by the appellant. The deal packs were exhibited to Mr Perkins's witness statement.

56. Thus, in respect of each deal, there was a chain of documentation leading from the appellant to a defaulter. This documentation consisted chiefly of purchase orders, pro forma invoices, final invoices, supplier declarations, FCIB intra-account transfer confirmations, insurance documentation, the appellant’s export documents (e.g. airway bills and CMRs), inspection reports (for CPUs), lists of IMEI numbers and faxes between the appellant and freight forwarders. In a number of cases there was no invoice from the defaulting trader (something that is quite common in MTIC-related

deal chains) but there was a purchase order from the defaulter's customer addressed to the defaulting trader. We have noted below any exception to this general pattern. Many of the documents cross-referenced other documents eg invoices to purchase orders. Many, but not all, of the FCIB intra-account payment confirmations also referenced the invoices numbers in respect of which payment was being made of the date of the transaction. Moreover, the description and quantities of the goods contained in the various documents matched each other, with only a few very minor inconsistencies (which did not in our view undermine the integrity of Mr Perkins's analysis). Thus, through such cross-referencing, the description of the goods, the quantity of the goods, the date of the documentation and FCIB intra-account transfer records, the deal chains were, in our view, accurately reconstructed by Mr Perkins.

57. As noted, Mr Perkins's enquiries covered 46 deals (29 invoices issued by the appellant). A total of 40 deals traced back to a tax loss with the acquiring (i.e. importing) trader. The remaining 6 deals traced back to Data Solutions.

58. Data Solutions did not provide deal documentation for these six deals. It did not respond to written requests and visits to its business premises proved abortive. In June 2007 the case officer for Data Solutions was notified that the company had acted as the acquirer (i.e. importer) for a number of deals in the months of April and May 2006. Because the records for these six deals were missing, it was uncertain whether Data Solutions was the acquirer for those six deals or whether it acted in the capacity of a buffer trader. On balance, the HMRC officer responsible for Data Solutions, Laura Hartell, concluded, for the reasons set out below, that it was more probable than not that a tax loss would have occurred in respect of those six deals.

59. Ms Hartell had found release notes and freight forwarder visit reports that demonstrated that Data Solutions was acquiring goods from the EU. She observed that Data Solutions always on-sold goods it acquired on a back-to-back basis. She also noted that the vast majority of purchases made by Data Solutions were from Midwest and Bullfinch, both of which were defaulting traders. On balance, therefore, she concluded that fraudulent tax losses had occurred on the relevant deal chains. She confirmed that a fraudulent tax loss had been identified in relation to six supply chains leading to the appellant in April and May 2006. She further confirmed that output tax in relation to those six sales by Data Solutions, in a supply chain which ultimately led to the appellant, had been included in assessments issued against Data Solutions. Those assessments were still outstanding and had not been paid.

60. Mr Lonergan did not dispute that Data Solutions had fraudulently evaded VAT and we considered that Ms Hartell had been justified in reaching her conclusions and raising the assessments she had.

61. The following description of the deal chains is, except where otherwise noted, based on the evidence given by Mr Perkins. For the reasons given later in this decision, we accept Mr Perkins's evidence (including the deal chains as summarised in Appendices 1 and 2) and find it as fact.

Deal Chains: Defaulters and "Paths"

62. Mr Perkins analysed the different deal chains and, in particular, the routes by which the chain reached the appellant. These routes, which Mr Perkins described as "paths", analysed the variations in the order or identity of the intervening buffer traders.

63. As regards April deals 6, 7, 8, 13, 14, 19, 20, 21, 22 and 23, the acquirer and defaulter was Midwest. For all 10 deals (8 invoices issued by the appellant) there were three buffer companies between the appellant and Midwest, although there were six paths between the two companies.

64. As regards April deals 9, 10, 11, 12, 16, 17, 18 and 24, the UK acquirer and defaulter was Computec. In these 8 deals (5 invoices) 2, 3 or 4 buffer companies appeared between the appellant and Computec and five different paths were used between the two companies.

65. In relation to April deals 1 and 2 (1 invoice), Oracle was the acquirer and defaulter. There were three buffer companies between the appellant and Oracle.

66. In relation to April deal 15, the acquirer and defaulter was Bulfinch. There were three buffer traders between the appellant and Bulfinch.

67. April deal 4, involved Stella as the acquirer and defaulter. There were three buffer traders between the appellant and Stella.

68. In relation to April deal 5, the identity of the acquirer is uncertain because the defaulter related to a (possibly) hijacked VAT number for KEP. The tax loss was recorded under a "dummy" number. There were 5 buffer traders between the appellant and the hijacked VAT number for KEP.

69. In May deals 13, 14, 15, 16, 17, 18 and 19 (4 invoices) the UK acquirer and defaulter was Prompt. In all seven deals there were three buffer companies between the appellant and Prompt although five different paths have been used between the two companies.

70. In relation to May deals 1, 2, 3, 4, 5 and 6 (2 invoices) the deals were traced back to Data Solutions. In all 6 deals there were 2 buffer traders between the appellant and Data Solutions and only a single path.

71. For May deals 8, 9, 10, 11 and 12 (3 invoices), the UK acquirer and defaulter was XS Enterprise. In all 5 deals there were 3 buffer traders between the appellant and XS Enterprise and 3 different paths have been used between the two companies.

72. As regards May deals 20, 21, 22 and 23 (2 invoices), the acquirer and defaulter was 3D Animations. Three different paths have been used between the two companies.

73. In relation to May deal 7 the UK acquirer and defaulter was World of Power. For this deal there were 2 buffer traders between the appellant and World of Power.

74. As already noted, all 46 deals traced back to defaulting traders. 40 deals traced back to the acquirer (i.e. importer) of the goods. The remaining six deals traced back to Data Solutions which was either an acquirer or a defaulting buffer.

Mark-ups and buffers – mobile telephones

75. As regards mobile telephone deals, 26 traders acted as buffer traders. Of these 26, 18 have been de-registered for VAT purposes (and six of these 18 traders became insolvent). No taxable sales have been declared by 23 of these 26 buffer traders since December 2006 (save for one sale of £2,702). The other three buffer traders have not declared any taxable sales since 2007.

76. A total of 32 of the 46 deals related to mobile telephones. The remaining 14 deals related to CPUs and computer parts or accessories. In 24 of these mobile telephone deals, the appellant bought from Goldex and sold to Tele Audio Gruppe ("TAG") – a coincidence that Mrs Johnson agreed was remarkable. In the remaining 8 mobile telephone deals the appellant bought from one of Cell Trading, Sound Solutions or Trade Smart and in every case sold to Symbolix.

77. We set out in Appendix 4 and Appendix 5 (“Mark ups for deals traded”) the mark-ups made by the various members of the deal chains in April and May 2006 respectively. In relation to all the (24) deals where the appellant sold mobile telephones to TAG, the appellant's immediate supplier, Goldex International Plc ("Goldex") achieved a mark-up of £0.50 per unit regardless of the description of mobile telephone and quantity being sold. We shall return to this point later.

78. The second line buffer (i.e. the supplier to Goldex) in the mobile telephone deals achieved a mark-up of £0.25 per unit. Again, the same mark-up was achieved regardless of the type and quantity of the mobile telephones being sold. In 13 of the mobile telephone deals, the third line buffer achieved a mark-up of £0.25 per unit and £0.15 per unit in 11 deals.

79. In relation to the mobile telephone deals where Symbolix was a customer of the appellant, the appellant's immediate supplier achieved a mark-up of £0.50 per unit in six deals and £1 in the other two deals. The second line buffer achieved a mark-up of £0.50 per unit in seven deals and £0.20 per unit in the remaining deal. The third line buffer achieved a mark-up of £0.20 per unit in 4 deals and £0.10 per unit in 3 deals.

Mark-ups and buffers: CPUs and computer parts/accessories

80. As noted above, the 14 non-mobile telephone deals related to sales of CPUs and computer parts and accessories.

81. Of this total of 14 deals, 8 deals concerned CPUs. In these 8 deals the first-line buffer (i.e. the immediate supplier to the appellant) achieved a mark-up of between £0.20 and £0.50 per unit (April deal 1 £0.25, deal 2 £0.20, deal 4 £0.25, deal 5 £0.50, deal 6 £0.25, deal 7 £0.20 deal 8 £0.30 and May deal 7 £0.20).

82. The second line buffer traders achieved a mark-up of £0.20 per unit in 6 deals and £0.25 per unit in the remaining 2 deals. The third line buffer traders achieved a mark-up of between £.0 and £0.25 per unit.

83. In relation to the computer parts and accessories comprising May deals 1 – 6, the first line buffer achieved the following per unit mark-ups: deal 1 £400, deal 2 £148, deal 3 £35, deal 4 £188, deal 5 £10 and deal 6 £50.

Mark-ups of buffers compared with mark-ups of appellant

84. The first, second and third line buffer transactions across all 46 deals (29 invoices) amounted to 130 transactions (8 deals have only 2 buffers). Of those 130 transactions, 93 transactions achieved a mark-up of between 0.2% and 0.5% and only one transaction achieved a mark-up greater than 0.5%.

85. The mark-ups achieved by the appellant in these 46 deals were noticeably higher than those achieved by the 24 buffer traders. The lowest mark-up was 2.98% and the next lowest was 3.9%. The highest mark-up was 7.01%.

Deal chains: general

86. The deal chains also exhibited the following general characteristics:

(1) in each transaction in the chain there is a steady increase in the price paid for the goods (although very occasionally a buffer trader made no profit).

(2) None of the traders in the chains made a loss.

(3) None of the parties in the chains added any value to the goods.

(4) The buffer traders appeared to incur minimal costs.

(5) The buffer traders always added a mark-up which was a round figure, such as £0.25 p or £1.

(6) The appellant never maximised its profit by buying from the cheapest source in the UK e.g. the defaulting trader or a buffer higher up the chain.

(7) The appellant never sought to maximise its profits on sales to its overseas customers by sourcing goods from a source of supply outside the UK and procuring that the goods were delivered directly to its customers.

(8) All the transactions with the appellant's non-UK customers took place in sterling.

(9) None of the parties in the deal chains, as reconstructed by Mr Perkins, was a manufacturer, an authorised distributor, a retailer or an end-consumer (although Mr Perkins admitted that he did not trace the destination of the goods beyond the appellant’s customer).

Mr Lonergan's divorce proceedings

87. During 2005 and 2006 Mr Lonergan was involved in contested divorce proceedings.

88. Solicitors acting for Mr Lonergan's wife approached Mr Perkins requesting information concerning the subject matter of these appeals. Mr Perkins stated that he took advice from HMRC's solicitors based in Manchester and was advised to pass the matter over to them so that they would deal with it.

89. Mr Lonergan produced file notes made by his ex-wife's solicitors suggesting that Mr Perkins may have given information concerning these proceedings to his wife's solicitors.

90. Mr Lonergan had filed a complaint about Mr Perkins's behaviour with HMRC. The complaint was not upheld.

91. Mr Lonergan submitted that Mr Perkins had not carried out his investigation into the deal chains fairly. When there were two possible conclusions Mr Lonergan submitted that Mr Perkins always chose one that was unfavourable to Mr Lonergan. Mr Lonergan submitted that Mr Perkins's behaviour in relation to his wife's solicitor showed that he did not act fairly towards him.

92. In our view, the relevance of this issue is confined to the credibility and reliability of Mr Perkins's evidence. We found no basis for suggesting that Mr Perkins was biased or partial in his evidence. Instead, we considered that he investigated the deal chains in a rigorous and methodical manner.

93. In any event, Mr Perkins's evidence was that the officer for each trader in the deal chain compiled a spread-sheet for that trader's deals and it was possible for Mr Perkins to look at the relevant invoices for that trader and match it to those issued to the appellant (see paragraphs 55 and 56 above).

Tax losses and defaulting traders

94. As noted above, there were 11 defaulting traders involved in the deal chains under appeal.

95. We heard evidence from the HMRC officers responsible for those defaulting traders. Because the appellant conceded in the course of the hearing that HMRC had suffered a tax loss to the fraudulent evasion of VAT in respect of those defaulting traders, it is unnecessary for us to dwell in detail on those traders. There is no doubt, in our view, that the appellant's concession was correct. The evidence of the officers in respect of each defaulting trader was overwhelming and in each case clearly proved that the defaulting trader in question had fraudulently evaded VAT. Nonetheless, for completeness, we record the following information.

96. In relation to Midwest, HMRC raised the VAT assessment of £57,583,433. The transactions which form the subject matter of these appeals were taken into account in

that assessment. Strictly, the assessment related to the disallowance of input tax in respect of telephone card transactions undertaken fraudulently to reduce Midwest's liability to output tax (part of which related to the appealed transaction chains). The assessment has not been paid or appealed.

97. Computec had also been assessed to VAT in respect of transactions which form part of the transaction chains concerned in this appeal. There were various assessments but none of them has been paid or appealed. Computec had undertaken almost £600 million (excluding VAT) of transactions in a period of 19 days.

98. Oracle was assessed in respect of its transactions, including those transactions relevant to these appeals, on 24 July 2006 in the amount of £21,833,536. This assessment has not been paid or appealed.

99. Bullfinch was assessed in respect of the period April 2006 in the amount of £10,649,468.20. This assessment included transactions by Bullfinch which are relevant to the deal chains concerned with these appeals. The assessment has not been paid or appealed.

100. Stella was assessed in respect of its transactions, including those transactions relevant to these appeals, in the amount of £9,577,427. This assessment has not been paid or appealed.

101. KEP has been treated by HMRC as a probable hijacked trader i.e. a trader whose VAT registration has been fraudulently misused by a third party. A revised assessment relating to transactions, which include transactions relevant to these appeals, purportedly carried out on behalf of KEP was issued on 19 November 2009 in the amount of £611,089. This assessment has not been paid or appealed.

102. Prompt was assessed in relation, inter alia, to transactions relevant to the present appeals in two assessments of respectively £195,496 and £942,438. These assessments have not been paid or appealed.

103. XS Enterprises was assessed in relation to transactions relevant the present appeals in two assessments of respectively £25,206,392 and £8,428,688. These assessments have not been paid appealed.

104. 3D Animations was assessed in relation, inter alia, to transactions relevant to the present appeals in an assessment of £20,015,540. This assessment has not been paid or appealed.

105. World of Power was assessed in relation to transactions relevant the present appeals in an assessment totalling £65,726. This assessment has not been paid or appealed.

106. Finally, Data Solutions appeared in six of the deal chains relevant to these appeals. Data Solutions did not provide its documents to HMRC. As noted above, HMRC concluded that, on the balance of probabilities, it was buying from acquiring defaulting traders. £441,978.60 of undeclared output tax has been included in the

relevant assessments raised against Data Solutions. These assessments have not been paid or appealed.

107. The appellant has conceded that HMRC had suffered a tax loss from the fraudulent evasion of VAT. We agree and make a finding to this effect.

FCIB evidence

108. All parties in the deal chains reconstructed by Mr Perkins banked with FCIB – a bank based in the Netherlands Antilles. FCIB has ceased to operate and was found by the Netherlands banking authorities to be operating without the required banking licences.

109. Mr Alan Ruler, an HMRC officer, carried out an investigation of FCIB's computerised records maintained on the bank's Dutch and Paris computer servers. In addition to Mr Ruler's evidence, another HMRC officer, Mr Andrew Letherby, also gave expert evidence in respect of the integrity of the data obtained from the Dutch and Paris servers and also as regards the identification of the IP addresses used by certain participants in the transaction chains.

110. The evidence of Mr Ruler and Mr Letherby is relevant both to the question whether the appellant's transactions were connected to the fraudulent evasion of VAT and also to the question whether the appellant knew or ought to have known that its transactions were so connected. We accept the evidence of Mr Ruler and Mr Letherby and find it as fact. This evidence included the diagrams attached as Appendix 6 (headed "Trans Global Trade (Europe) Ltd April Deal 1(Invoice 101687 dated 6 April 2006)") which were exhibited to Mr Ruler's second witness statement. For simplicity, we set out our findings of fact in relation to the whole of this evidence in this section of the decision. We should also, for completeness, note that Mr Ruler's diagrams included a deal in June 2006 which was not the subject of these appeals and which we have therefore ignored.

111. Before considering the transactions which Mr Ruler examined, it is worth noting that Mr Ruler stated in his evidence that, in conducting his analysis, he had not generally used or relied on the FCIB intra-account transfer confirmations which were contained in the documentation exhibited by Mr Perkins to support the deal chains which he had constructed. Instead, Mr Ruler concentrated on the deal sheets produced by Mr Perkins and on the FCIB bank account information derived from the Dutch and Paris Servers. The transfer confirmations, which had been obtained from the traders concerned, were consistent with Mr Ruler's analysis and, in our view, provided corroboration of accuracy of his analysis.

112. The 14 relevant deals examined by Mr Ruler, which represented a sample of the appellant's 46 deals, were as follows:

- April deals 1, 6, 14 and 24
- May deals 1 – 6, 7, 9, 12 and 23

113. Mr Ruler's sample was selected by him in order to obtain a sample with as many different parties in the chains as possible.

114. The diagrams (Appendix 6) prepared by Mr Ruler show the results of his FCIB investigation. The narrative in quotation marks in the white boxes is taken directly from the narrative found on FCIB Bankmaster computer records. Mr Ruler was able to identify the time at which each payment was made. In many cases, amounts being paid into an account could easily be matched with amounts being paid out, often because there was not enough money in the account to pay the supplier until the customer had transferred the money in. In the case of Goldex, however, there were usually sufficient funds in its account to allow payments to be made.

115. The narrative in respect of the payments contained in the FCIB records (and set out by Mr Ruler on his diagrams) referred in many (but not all) cases either to the invoice number or to the type and quantity of goods set out in the documentation supporting Mr Perkins's deal chains (as regards those parties contained in those deal chains) and exhibited to Mr Perkins's witness statement (although in a number of cases the documentation does not include documents from defaulting traders).

116. It will be seen from these diagrams that the payments in respect of the deal chains examined by Mr Ruler are circular.

117. In April deal 1, Eastern Group Ltd starts the chain of payments with money leaving its account at 13:18 on 6 April 2006. Seven payment transactions transfer the money round in a circle until it returns to Eastern's account at 16:54 on the same day.

118. In April deal 6, Eastern Group Ltd starts the chain of payments. The money leaves its account at 13:18 on 6 April 2006. In a further eight transactions the money travels across four countries in less than four hours returning to Eastern Group Ltd's account at 16:54 on the same day.

119. In April deal 14, Goldex starts the payment chain and sends money at 14:06 on 27 April 2006. In eight transactions, the money travels through the UK, Germany, the British Virgin Islands, Poland and Luxembourg in eight transactions before returning once again to Goldex's account at 17:45 on the same day.

120. In April deal 24, money is paid by a company called Leriant Trading Ltd ("Leriant") on 27 July 2006 at 15:51. The money passes through six companies, including the appellant, in three jurisdictions before arriving back at Leriant's account at 17:03 on the same day.

121. In May deals 1 – 6 Fine Peace makes a payment at 12: 09 on 9 May 2006. The payment passes through eight companies, including the appellant, and arrives back at Fine Peace's account at 13:39 on 15 May 2006.

122. In May deal 7, Eastern Group Ltd pays Fine Peace on 17 May 2006 at 14:15. The next day the money then travels from Fine Peace on 18 May 2006 at 12:24 through seven different companies, including the appellant, in four jurisdictions before arriving back at Eastern Group's account at 18:03 on the same day.

123. In May deal 9, Elvissa (a company in the British Virgin Islands) pays a company called Amex in Poland on 22 May 2006 at 15:54. The money then travels through six different companies, including the appellant, in three jurisdictions before arriving back in Elvissa's account at 16:03 on 26 May 2006.

124. In May deal 12, Elvissa pays to Amex at 16:54 on 22 May 2006. The money then travels in a similar circle to that in May deal 9 (except in May deal 12 although the second line buffer, i.e. the supplier to the appellant's supplier, is a different company). In this case, the money arrives back in Elvissa's account at 17:51 on 22 May 2006 i.e. less than one hour after it left, having passed through seven companies in four jurisdictions.

125. In May deal 23, Amex pays TAG at 16:39 on 26 May 2006. The money is then paid out by TAG to the appellant at 16:42 on the same day and the appellant pays the money to Goldex at 17:18, also on the same day. There is then a delay until 3 August 2006 when the money moves from Goldex through three companies and then back to Amex in Poland within 10 minutes.

126. In April deal 24 and the subsequent deals which form part of Mr Ruler's sample, Mr Ruler was able to ascertain the log-in and log-out times as well as the IP addresses of the participants in the payment chains. These are shown in the diagrams attached at Appendix 6. This information was not available in respect of payments occurring in April 2006. The information was available in respect of April deal 24 because the payments took place on one day in July.

127. As regards the log-in and log-out times (which were available for April deal 24 and subsequent deals) the participants in the payment chain use their FCIB accounts to transfer funds once money has been received in their accounts. It appears that the recipient is logged in and is waiting for the transfer to be made before, in a number of cases, transferring the money to the next person on the payment chain.

128. For example, in relation to April deal 24, on 27 July 2006, Leriant logs in at 15:26:18 until 16:26:01 to effect a payment of £741,510 (at 15:51:09) to Sigma (Sixty) BV, Sigma (Sixty) BV logs in at 15:52:26 until 16: 08:24 to effect a payment £739,777.50 (at 16:09:08) to Symbolix, Symbolix logs in at 16:03:43 until 16:43:01 to effect a payment £738,045.50 (at 16:18:02) to the appellant, the appellant logs in at 16:28:01 until 17:05:58 to effect a payment £834,631.88 (at 16:45:03) to Tradesmart, Tradesmart logs in at 16:44:53 until 18:25:08 to effect a payment of £832,596.19 (at 16:54:22) to Stylez, Stylez logs in at 16:46:39 until 17:01:48 to effect a payment of £831,781.92 (at 17:03:05) which returns the money to Leriant (by-passing the defaulting trader Computec), one hour and four minutes after it was first paid out.

129. Mr Ruler explained that for some transactions the transaction time recorded on his diagram comes after the user had, in fact, logged off. This was because transactions took a few minutes for the bank to process and the recorded transaction time would be slightly later than the point at which the account user keyed in the transaction and, therefore, slightly later than the time at which the user logs off if the user logged off immediately. This can be seen in April deal 24, for example, where

the transaction time for the payment by Stylez to Leriant is recorded as 17:03:05 on 27 July 2006, whilst the time at which Stylez logged out is recorded as 17:01:48. Generally, however, the transaction would be recorded within 5 minutes of the user logging off.

130. In relation to the IP addresses of the participants in the payment chains, Mr Ruler produced the following table:

IP Address	**Trader**	**Deal Number**
80.227.58 .30	Sigma (Sixty) BV	April deal 24
196.206.14 5.243	Symbolix	April deal 24
81.156.177.187	The Appellant	April deal 24
212.36.35.157	Tradesmart	April deal 24
62.217.245.194	Stylez	April deal 24
62.217.245.194	Leriant	April deal 24
203.118.34.242	Eastern Group	May deal 1 – 6
203.118.34.242	Eastern Group	May deal 7
203.118.34.242	Fine Peace	May deal 1 – 6
203.118.34.242	Fine Peace	May deal 7
213.205.202.195	The Appellant	May deal 1 – 6
86.137.213.26	Trans Global Traders	May deal 1 – 6
86.137.213.26	Trans Global Traders	May deal 7
193.113 .235 .181	Star Express	May deal 1 – 6
193.113 .235 .181	Star Express	May deal 7
193.113 .235 .181	Data Solutions	May deal 1 – 6
193.113 .235 .181	Bullfinch	May deal 1 – 6

193.113 .235 .181	World of Power	May deal 7
193.113 .235 .181	Communications UK	May deal 7
193.113 .235 .181	Megatek SARL	May deal 7
193.113.235.171	Megatek	May deal 1 – 6
193.113.235.171	Megatek	May deal 7
193.113.235.171	Symbolix	May deal 1 – 6
193.113.235.171	Symbolix	May deal 7
202.128.162.210	Eastern Group	May deal 7
193.192.65.156	The Appellant	May deal 7
193.192.65 .205	The Appellant	May deal 9
69.234.45.149	Elvissa	May deal 9
69.234.45.149	Elvissa	May deal 12
69.234.45.149	Amex	May deal 9
69.234.45.149	Amex	May deal 12
69.234.45.149	Amex	May deal 23
69.234.45.149	TAG	May deal 9
69.234.45.149	TAG	May deal 12
69.234.45.149	TAG	May deal 23
88.154.85.82	Elvissa	May deal 9
88.154.85.82	Elvissa	May deal 12
88.154.85.82	Goldex	May deal 12

86.137.128.139	Goldex	May deal 9
213.42.2 .23	IH Technologies	May deal 9
213.42.2 .26	IH Technologies	May deal 12
217.41 .36 .107	IH Technologies	May deal 12
83.110.243.179	Exhibit Enterprises	May deal 9
83.110.243.179	XS Enterprise Systems	May deal 9
83.110.243.179	XS Enterprise Systems	May deal 12
62.25 4.128.7	XS Enterprise Systems	May deal 9
82.108.189.66	XS Enterprise Systems	May deal 12
213.205.197.12	The Appellant	May deal 12
193.192.65.193	The Appellant	May deal 23
86.133.36.231	Goldex	May deal 23
88.154.39.96	Goldex	May deal 23
213.42 .2 .29	MT Phoenix	May deal 12
83.110.196.142	MT Phoenix	May deal 23
83.110.196.142	Deepend Trading	May deal 23
83.110.196.142	3D Animations	May deal 23

131. Mr Letherby's evidence, which (together with Mr Ruler's table set out above) we accept, was that it was unlikely that the use of the same IP addresses was coincidental. In his words, there would have to be a degree of commonality between the methods used to access the Internet by the companies using the same IP address. Mr Letherby also vouched for the integrity of the information uplifted from FCIB's Paris and Dutch servers.

Our conclusions on "connection to fraud"

132. Mr Lonergan challenged Mr Perkins's evidence essentially on five related grounds.

133. First, Mr Lonergan noted the absence of documentation (e.g. inspection reports and IMEI numbers) from freight forwarders. Most of the documentation relating to freight forwarders involved the appellant's transactions (either its purchase or sale). Mr Lonergan argued that the absence of this documentation, particularly as regards transactions higher up the chain than the appellant's immediate supplier, meant that it could not be established that the goods which the appellant acquired were the same goods dealt in by antecedent parties in the deal chains. We reject that argument. Having reviewed the deal chain documentation in respect of each transaction in detail, we have concluded that the documentary evidence clearly supports Mr Perkins's conclusion that the goods acquired by the appellant were the same goods as those dealt in by parties higher up the deal chains. The repeated use of, inter alia, purchase order references, pro forma invoice references and final invoice references clearly established the necessary link between the various parties to the deal chains.

134. The burden of proof is on HMRC to establish connection to fraudulent evasion and not on the appellant, but we observe that Mr Lonergan failed to offer any explanation in support of his argument as to where the goods which his company acquired had originated from if not from the deal chains reconstructed by Mr Perkins.

135. Mr Lonergan's second and related argument was that the defaulting traders (e.g. Computec and KEP) dealt in huge volumes of goods over a very short period of time. Essentially, Mr Lonergan argued that the defaulters were not actually trading in goods but simply issuing pieces of paper which he described as "confetti". In so doing, he effectively highlighted the fraudulent nature of the defaulters' activities.

136. We do not accept this second argument. It was accepted by all parties that the appellant had dealt in actual goods in all the deal chains under appeal. It was inevitable, also, that the appellant's immediate supplier had also dealt in actual goods. Mr Perkins's reconstruction of the deal chains showed that the immediate supplier had acquired those goods from another trader higher up the deal chains and so on further back in the deal chain until the goods had been supplied by a defaulting trader or from Data Solutions. There was no evidence whatsoever that the goods had been introduced into the deal chains from some other source. For these reasons, we dismiss Mr Lonergan's second argument.

137. Mr Lonergan's third and, again, related argument was that, as well as an Electronic Folder, HMRC used an overall database which had an active program that would start to match transactions and thereby establish a deal chain. The underlying suggestion was that the matching process was an automated one which involved no element of judgement. We reject this submission, which we do not think was put clearly to Mr Perkins. It contradicted the evidence of Mr Perkins in relation to the Electronic Folder. For example, in relation to April deal 14, Mr Lonergan suggested to Mr Perkins that he had found documents in relation to Midwest by use of his "electronic wizardry". Mr Perkins denied this. He stated that the Electronic Folder for Midwest would have contained numerous documents. He did not concede that there was an overall database or that there was a search engine. His description of the Electronic Folder and the use he made of it was as described above.

138. The fifth point made by Mr Lonergan was that Mr Perkins had chosen to link the appellant's transaction with chains leading to defaulters when there were options available to him, as he conducted his tracing exercise, which would have resulted in the chains being traced to innocent traders. In cross-examination, Mr Perkins was asked:

> "**Mr Lonergan**: I mean, if 3000 Z9s – you don't get 3000 Z9s. 3150 it would be – came up from the defaulter to the first line buffer and then they went to the next buffer, if that buffer has something else, the same product from another defaulting line that we are not looking at today, because of the absolute wealth of invoices awash in the system, in all of your dealings, did you not on occasion find that – a 10-box deal of CPUs or 3000 Nokia 88s – that there were, the day before all the day after, an amount of goods it could perhaps have taken my path to another defaulter?
>
> **Mr Perkins**: Oh, yes. Yes.
>
> **Mr Lonergan**: I thought that would have been the case. It must have been mind-blowing, looking at it.
>
> **Mr Perkins**: Yes, vast quantities and entries. "

139. Mr Lonergan submitted that this exchange showed that Mr Perkins had various options available to him in tracing the deal chains and that Mr Perkins had chosen to link the appellant to chain which led to a fraudulent tax loss. We did not understand Mr Perkins to be making any such admission or concession. He had described in detail how he had reconstructed the deal chains from the documentation made available either by the appellant or, in relation to transactions higher up the deal chain, from the relevant officers for the traders in question. We understood him simply to be acknowledging the large quantities of goods as well as the difficulty and complexity of the task. We did not understand him to be contradicting his earlier extensive evidence as to how he had painstakingly constructed the deal chains. Accordingly, we do not accept Mr Lonergan's submission on this point.

140. Finally, Mr Lonergan sought to identify certain inconsistencies in the documentation exhibited by Mr Perkins in respect of his reconstruction of the deal chains.

141. In relation to April deal 2, Mr Lonergan drew attention to the fact that Electron (Bournemouth) Limited's purchase order addressed to its supplier Oracle, inter-alia, specified a purchase of 315 (i.e. one box) of Intel P4 3.0 GHz 800 MHz SL8 HZ CPUs whereas Oracle's invoice to Electron (Bournemouth) Limited dated 5 April 2006 specified 315 P 43.0 GHz 800 mhz SL 7Z9 CPUs. This was, in our view, a typographical error. Indeed, the same error was made on the invoice of the appellant's immediate supplier, Trans Global Traders Limited (no relationship with the Appellant), where the goods were specified as "315 Intel P4 SL 7Z 9" and "Intel P4 3 GHz 800 MHz (1 BOX*315) SL 8HZ". In other words, the invoice sent to the appellant by the appellant's supplier, and which the appellant produced as part of the documentation relating to this deal, was also inconsistent. Moreover, Electron's purchase order to Oracle refers to the goods correctly as SL8HZs and at the same per unit price (£74.35) as Oracle's invoice. Furthermore, Electron's supplier declaration in respect of this transaction also correctly identifies the one box (i.e. 315 CPUs) as SL 8HZs. In our view, in the light of the other documentation in respect of this deal chain, this minor typographical error did not undermine the reliability of Mr Perkins's tracing exercise represented by deal chain April deal 2.

142. Before leaving April deal 2 (and the same point relates to April deal 1, because the two consignments of goods were dealt with on the same documents), it is worth noting that Bond Corporation's purchase order to Electron and Electron's invoice to Bond Corporation are both dated "04/04/2006". The purchase orders and invoices higher up and lower down the chain are dated 05/04/2006. We think that nothing turns on this since the description of the goods by Electron and Bond on their documents is plainly the same as the goods traded higher and lower in the chain (including the distinctive combination of 27 boxes of SL 7Z 9s and one box of SL 8 HZs). Moreover, we note that although Bond Corporation's invoice to its purchaser, Trans Global Traders Limited, is dated 05/04/2006 Bond Corporation's release note in favour of Trans Global Traders Limited is dated the day before i.e. 04/04/2006.

143. In relation to April deal 4, Mr Lonergan pointed out in his cross-examination of Mr Perkins that PCB2's invoice to Star Express dated 28 March 2006 was internally contradictory because it referred to the Intel CPUs as being "1 Mb SL7Z9", whereas in fact SL7Z9 CPUs had a 2 Mb memory. However, on an FCIB intra-account transfer dated 24 April 2006, PCB2 is shown as making a payment to Stella in respect of 15 boxes of CPUs and (in manuscript) this payment is related to invoice number 76 i.e. the invoice reference number on the invoice from PCB2 to Star Express. In addition, the FCIB intra-account transfer dated 24 April 2006 shows Star Express making a final payment to PCB2 described as "final payment, 15 and 9 boxes, 28 March." These made it plain that PCB2 had paid for the goods that it had acquired.

144. Also, in relation to April deal 4 Mr Lonergan pointed out that the quantity of goods on an allocation note issued by Star Express to the freight forwarder, Point Logistics, was inconsistent because it referred to 4,725 CPUs whereas the other documents referred to a quantity of 5040 CPUs. It should also be noted that the payment instructions from Star Express to Trans Global Traders Limited requested payment of £442,762.03 which, at a unit price of £79.75, represented payment for 15 boxes i.e. 4725 CPUs. However, the allocation note and the payment instructions

issued by Star Express referred to Star Express's invoice which made it clear that the quantity of CPUs involved in this deal was, indeed, 5040. Thus, all the invoices in the chain referred to 5040 CPUs (16 boxes), which we take to be the correct quantity of CPUs involved in this deal. We, therefore, did not regard the Star Express allocation note and payment instructions as undermining Mr Perkins's analysis.

145. Mr Lonergan cross-examined Mr Perkins in relation to April deal 5. In particular, he drew attention to the fact that Silvereef's purchase order to 21st Trading, the appellant's purchase order to Silvereef, Silvereef's invoice to the appellant, Fine Peace's invoice to the appellant, the appellant's invoice to Fine Peace, the inspection reports, the appellant's shipping and goods release instructions, confirmation of insurance were all dated 11 April 2006. However, the other documents in relation to that deal e.g. KEP's invoice to Time Corporates, the purchase order from Time Corporates, Time Corporates's invoice to Decode Direct Marketing, Qiass's purchase order to Decode Direct Marketing, Decode Direct Marketing's invoice to Qiass, Decode Direct Marketing's supplier declaration, 21st Trading's purchase order to Qiass, Qiass's invoice to 21st Trading and 21st Trading's invoice to Silvereef were all dated 12 April 2006.

146. Mr Perkins pointed out that (pursuant to section 6 (5) VATA 1994) a trader had 14 days in which to issue a tax invoice. Therefore, the fact that the parties earlier in the chain had dated their documents the day before the appellant's documents was not determinative. In our view, the description and quantity of the goods described in the documents indicated to us, on the balance of probabilities, that the goods acquired by Silvereef from 21st Trading were the same goods as those dealt in by the appellant.

147. In relation to April deal 6, Mr Lonergan cross-examined Mr Perkins in relation to the fact that there was no invoice from the defaulting trader Midwest to Data Solutions. There was, however, a record of Midwest's sales entitled "Daily Deal Sheet" which had been provided to HMRC by Midwest and which showed 7,875 (25 boxes) Intel SL 7Z9 CPUs being sold by Midwest to Data Solutions on 11 April 2006. In addition, there was a purchase order from Data Solutions to Midwest also dated 11 April 2006 for the same quantity and type of CPUs and, also, for the same price as set out in Midwest's Daily Deal Sheet. We considered that, taken together with the other documents in the deal pack, this established that the appellant's purchase in relation to this deal was connected to the defaulting trader, Midwest.

148. As regards April deal 7, Mr Lonergan noted that Star Express's purchase order to Data Solutions was dated 21 April 2006 i.e. the day before Data Solutions's invoice to Star Express. This did not, however, indicate to us that there was anything wrong with Mr Perkins's analysis. Data Solutions's invoice and all subsequent invoices were dated 21 April 2006.

149. In relation to April deal 8, the same point arose as regards the timing of Star Express's purchase order as in April deal 7. Our conclusion is the same.

150. April deal 9 contained an unusual feature. As Mr Lonergan pointed out, there was no invoice from the defaulting trader Computec to Stylez and there was no

purchase order from Stylez to Computec. Nonetheless, exhibited to Mr Reardon's evidence was a schedule of assessments against Computec which was based on the information available to Mr Barallon, the HMRC officer who raised the assessments against Computec. In this schedule of assessments was an assessment for £194,827.5 based on a purchase order from Stylez (purchase order number 384) to Computec. This purchase order was not attached to either Mr Perkins's or Mr Reardon's evidence. However, Mr Reardon' evidence was that this assessment had not been appealed by Computec, which indicated to us that the basis on which Mr Barallon had issued his assessment was correct. We also note that April deal 10 involved exactly the same participants. Once again, Computec was the defaulting trader and supplied Stylez. In this case, Mr Perkins's evidence included an invoice from Computec which referred to a purchase order from Stylez (purchase order number 385). April deal 10 took place on the same day (24 April 2006) as April deal 9. We therefore infer that the same documentation as April deal 10 was likely to have been used in April deal 9. For these reasons, we considered that the deal chain constructed by Mr Perkins was, on the balance of probabilities, correct.

151. For the reasons set out above, we did not consider that the minor inconsistencies in respect of the documents exhibited by Mr Perkins to support his reconstruction of the deal chains undermined the reliability of his evidence.

152. In any event, Mr Perkins's evidence did not stand in isolation. In our view, the FCIB evidence of Mr Ruler (supported by the evidence of Mr Letherby) provided powerful corroboration of Mr Perkins's evidence and the accuracy of the corresponding deal chains that he had reconstructed. The chains of payments traced by Mr Ruler supported Mr Perkins's analysis of the deal chains. Mr Ruler analysed 14 deal chains (nine invoices). The narrative entered against each transaction in the FCIB accounts frequently (but not always) referred to invoice numbers or to the description of the goods being sold. Although Mr Ruler only examined a sample of the appellant's April and May 2006 deals, we consider this sample to be sufficiently representative to be a reliable indicator of what was likely to have happened in the appellant's other transactions. The accuracy of Mr Ruler's evidence was, in turn, corroborated by the FCIB intra-account transfer forms exhibited to Mr Perkins's evidence.

153. Mr Lonergan challenged the evidence of Mr Ruler on a similar basis to the third submission he made in respect of Mr Perkins's evidence. In cross-examination Mr Lonergan asked Mr Ruler about how he traced the various payments:

> "**Mr Lonergan**: So the description – it's which account number is linked to a payment to which account number, and eventually, whether it goes through one or two foreign companies or four or five foreign companies –
>
> **Mr Ruler**: I wouldn't know when I set out on that task.
>
> **Mr Lonergan**: The route where you were going.
>
> **Mr Ruler**: No, I wouldn't know.
>
> **Mr Lonergan**: Did you ever get more than one option?

Mr Ruler: Not generally, no, sir.

Mr Lonergan: But you have had occasions with more than one option?

Mr Ruler: I have, sir, where there is more than one deal, it's like a ledger, really. There could be six invoices make up one payment, but I wouldn't necessarily know when I started out on that journey."

154. We did not, however, understand Mr Ruler to be saying that he applied guess-work or arbitrariness to his analysis. He was, rather, explaining the difficulties involved in tracing payments where multiple invoices were being paid or partly paid by one payment. We did not consider that this exchange weakened the reliability of Mr Ruler's evidence.

155. In our view, the evidence of Mr Perkins, corroborated by the evidence of Mr Ruler (to the extent of the sample transactions which he examined), plainly established that all the appellant's appealed transactions in April and May 2006 were connected to the fraudulent evasion of VAT. Mr Ruler's evidence also, in our view, demonstrated the general soundness of Mr Perkins's methodology.

156. Mr Perkins had painstakingly reconstructed the deal chains from, in the first place, information available on HMRC's Electronic Folder and then, after the appellant had lodged its appeals, he obtained from the various HMRC officers responsible for traders in the deal chains the supporting documentation. This documentation satisfied us that the goods acquired by the appellant were the goods which were derived from a deal chains in which VAT fraud took place. Mr Ruler examined 14 transactions. His analysis supported the conclusion that Mr Perkins's reconstruction of the deal chains was correct. We have set out above the assessments made against the fraudulent defaulting traders in these deal chains. The tax losses represented by those assessments continue to this day.

157. For these reasons, we have concluded that all the appellant's transactions in April and May 2006 which form the subject matter of these appeals were connected to the fraudulent evasion of VAT.

Knowledge and means of knowledge

158. Having reached our conclusion in relation to "connection to fraud" the main issue which we now consider is whether the appellant knew or should have known that its transactions under appeal were so connected.

Appellant's awareness of MTIC fraud

159. In cross-examination Mr Lonergan accepted that by 2003 he was aware from communications and meetings with HMRC of MTIC fraud and that MTIC fraud was a major problem in the markets in which he traded. Mr Lonergan also accepted that he had read Customs & Excise Notice 726 which described MTIC fraud as "a systematic criminal attack on the VAT system." He also accepted that he understood from Notice 726 the essential features of how MTIC fraud worked.

160. As already noted, on 23 February 2005 HMRC wrote to the appellant informing it that the repayment in respect of its December 2004 VAT return was being made on a "without prejudice" basis, noting that "problems with the supply chain" had been identified.

161. Mr Lonergan was asked about this letter in cross-examination. He was asked what steps he had taken to find out about the "problems in the supply chain". He said that:

> "I believe it would have been reasonable that I would have asked an officer on their visit what they were referring to."

162. He admitted that he had not mentioned this in his witness statement. He did not know which officer he had spoken to and he did not know what they had told him. When pressed further, Mr Lonergan claimed that he had been told by HMRC that they could not tell him anything at that time.

163. Mr Lonergan said that enquiries "would" had been made of the supplier. When pressed he did not know the identity of the supplier. He claimed that none of the suppliers could shed any light on the matter. He admitted that there was no record of him making such an enquiry or at any answer to such an enquiry.

164. As he was being cross-examined on this point, Mr Lonergan seemed to us evasive. His account of what he did in response to the letter of 23 February 2005 seemed to us implausible. We did not consider his evidence to be truthful.

165. Also, as already noted, on 1 February 2006 HMRC sent a letter to the appellant informing it that tax losses have been suffered in two deals in each of the VAT returns of the appellant for July and August 2005 and that those deals had been traced to defaulting traders. The letter invited the appellant to consider what should be done to ensure that it would not be connected to VAT losses in future transactions.

166. Mrs Johnson and Ms White both accepted that they were aware of MTIC fraud and how it worked.

167. On the basis of this evidence, therefore, we were satisfied that the appellant was fully aware of the nature and risks involved in MTIC fraud in its industry sector.

Mr Lonergan's involvement in the April and May 2006 deals

168. In her witness statement Katharine Johnson (one of Mr Lonergan's trading assistants employed by the appellant) stated that, in the context of deals relating to Goldex and TAG, Mr Lonergan would usually give authorisation prior to commencing/finalising negotiations. In relation to other transactions e.g. involving Trade Smart and Silvereef, Mrs Johnson said that these transactions had been discussed with Mr Lonergan. She stated that both she and Linda White communicated with him as often as they could.

169. Mrs Johnson also said that the appellant received "tens of enquiries" from potential traders every day. Those that looked interesting were referred to Mr Lonergan:

> "…who has some 10 years' experience in the business. If Martin Lonergan said yes then the extended verification process would start."

170. Mrs Johnson also stated in her witness statement:

> "Subject to the responses to the due diligence enquiries final authority for the deals/new trader will be sought from Martin Lonergan."

171. In answer to a question from the tribunal as to whether Mrs Johnson was able to contact Mr Lonergan in respect of every deal, Mrs Johnson replied, having previously noted that it was Linda White who dealt with Goldex:

> "Not every deal, which is I guess why we stuck with Goldex, Tele Audio Gruppe, and things got a bit samey, because it was tried and tested. We had dealt with them, we knew he was happy for us to deal with them, so therefore we were trying to continue his business in his absence."

172. There was obviously a conflict in Mrs Johnson's evidence, having previously stated that Mr Lonergan would usually give authorisation in relation to deals concerning Goldex and TAG prior to commencing or finalising negotiations.

173. Linda White (another of Mr Lonergan's trading assistants employed by the appellant), whom according to Mrs Johnson was primarily responsible for trading with Goldex, also gave evidence about Mr Lonergan's involvement. Ms White's witness statement was in very similar terms (and in a number of places identical terms) to Mrs Johnson's witness statement: a phenomenon explained by the fact that Mr Lonergan's solicitors had drafted both statements after interviewing Mrs Johnson and Ms White. Ms White said in her witness statement:

> "Subject to the responses to the due diligence enquiries final authority for the deal/new trader would be sought from Martin Lonergan."

174. In cross-examination she was asked whether that was the case for all deals. She confirmed that it was. She was asked:

> Q. "Was that the case for all deals in April and May 2006?
>
> A. To the best of my recollection, yes.
>
> Q. So he gave you the final say-so on each deal?
>
> A. Yes.
>
> Q. So you say to him: I've got a customer looking for this, I have a supplier who is prepared to buy them –
>
> A. Sorry, can I just say, not on every single deal. Like I said, sometimes Mr Lonergan was abroad, and he wasn't contactable, so like I said, I had margins and I had an outline of what I could do, if we had a good supplier or something, then if I couldn't get hold of Mr

> Lonergan and we had had them verified before and all of our due diligence was fine, the VAT was up-to-date, then I might well enter that.
>
> Q. You were not going to enter into deals with new traders, then, whilst he is abroad?
>
> A. No."

175. Ms White and Ms Johnson both noted that Mr Lonergan had authorised them to carry out transactions provided a profit margin of between 3 – 7% could be achieved.

176. In his witness statement Mr Lonergan stated:

> "As sole director of Trans Global I took ultimate responsibility for the transactions entered into in the name of the company. Even during periods of absence from the office the traders – Wendy Brooks, Linda White and Katharine Johnson – would contact me to discuss a new supplier or customer and to establish the acceptable margins for any deal. In so far as I'm aware, no deal was accepted without my express permission."

177. Later in his witness statement Mr Lonergan said:

> "Although I was not in the office during the months of April and May I was always kept informed of the deals being done in my absence. Nothing marked the deals in April and May out as being exceptional or concerning, to my mind. Trans Global had been dealing with most of the traders for some time, had carried out due diligence, had brought them to the attention of HMRC and had been refund of the VAT on those previous deals, with no queries being raised. On 24 April 2006 Trans Global received an indication by telephone from HMRC that repayment of its March 2006 VAT reclaim would be made and the repayment was made in early May 2006. The March 2006 reclaim included traders, namely Trans Global Traders, Goldex Plc, Fine Peace and TAG, who feature in the reclaims that have been denied. Moreover three more traders, namely Cell Trading, Sound Solutions and Symbolix are included in Trans Global's February VAT reclaim that was authorised and 23 March 2006."

178. Subsequently, in his closing statement, Mr Lonergan moved away from his witness statement. He claimed that from 16 April until he returned to the UK in the second week of June, he was effectively "out of the business". He produced a number of credit card and bank statements which showed entries reflecting his travels through Thailand, Australia, Honolulu and the mainland of the United States. Mr Lonergan submitted that it would not have been physically possible for him to be in touch with his business. Mr Puzey noted that HMRC did not dispute that Mr Lonergan was travelling but that they contended he was in touch with his business.

179. Mr Lonergan's suggestion that he was not in contact with his business whilst he was travelling was inconsistent with his witness statement and with the evidence of Mrs Johnson and Ms White. Whilst the evidence of Mrs Johnson and Ms White indicated that on occasions Mr Lonergan was out of contact the thrust of their

evidence was that generally Mr Lonergan was in communication authorising transactions and particular trading partners and that, on those occasions when he was not in contact, they traded with existing trading partners whom shall they knew Mr Lonergan would authorise.

180. Moreover, when cross-examined in respect of May deals 1-6 in relation to computer parts, Mrs Johnson was asked how she was able to establish the correct price in relation to some of the stock comprised in those deals when she did not know what they were. She replied that Mr Lonergan must have advised, indicating that on those occasions Mr Lonergan was certainly in touch with Mrs Johnson. The appellant's evidence included records of MSN messages between Mrs Johnson and her counterpart at Fine Peace. These messages related, inter-alia, to May deals 1-6. It is clear from these messages that Mrs Johnson was in contact with Mr Lonergan (e.g. a message at 10:39 on 8 May 2006 where Mrs Johnson notes that she had had confirmation from "our director").

181. We find, therefore, the Mr Lonergan was in contact with Ms White and Ms Johnson whilst he was abroad from 16 April 2006 to the second week of June 2006. On those occasions when Mr Lonergan was not in contact, Ms White and Mrs Johnson traded with partners whom Mr Lonergan had previously authorised or whom they knew Mr Lonergan would authorise. They regarded themselves as authorised to trade with these partners by acting within parameters established by Mr Lonergan. We therefore consider that the transactions in April and May 2006 were carried out by Mrs Johnson and Ms White acting within the scope of their authority as laid down by Mr Lonergan. We further find that, in general, Mr Lonergan specifically authorised most of the transactions, including those with Goldex, Fine Peace, Trade Smart and Silvereef. We do not accept Mr Lonergan's rather late suggestion that he was not involved (or not closely involved) in the business during his absence in April and May 2006. On the contrary, notwithstanding occasional periods when he was incommunicado, we consider that Mr Lonergan kept in regular contact with Ms White and Mrs Johnson.

Deal chain mark-ups: buffers

182. We have set out above in paragraph 75 – 85 details of the mark-ups achieved in the deal chains which are the subject matter these appeals.

183. In our view, the consistency of mark-ups made by buffer traders plainly indicates that the transactions to which they were a party were contrived. For example, in all the mobile telephone deals in which the appellant sold to TAG the second line buffer (i.e. the supplier to the appellant's supplier) made a mark-up of £0.25 per unit. In 13 of the mobile telephone deals, the third line buffer achieved a mark-up of £0.25 per unit and £0.15 per unit in 11 deals. It is hard to credit how in genuine arm's-length trading these buffer traders could have achieved such consistent mark-ups which appear to take no account of the quantities or different mobile telephones involved. We also note that these mark-ups are so small that the profit achieved by these buffer traders, after deducting overheads and expenses such as warehousing and inspection charges, must have been minimal.

184. More pertinently, from the point of view of the appellant, we have recorded in paragraph 77 the fact that the appellant's immediate supplier (Goldex), in 24 of the 46 transaction chains, made a mark-up of £0.50 per unit, regardless of the quantity and description of the mobile telephone concerned. Goldex's mark-up self-evidently resulted from its purchase price paid to its supplier, about which the appellant presumably knew nothing, and from the price at which it agreed to sell the goods to the appellant. Each of the appellant's witnesses (Mr Lonergan, Ms White and Mrs Johnson) claimed that the price at which the appellant bought goods was settled only after negotiation on the price. It is hard to believe that in 24 purchases of consignments of mobile telephones from Goldex the appellant happened, by chance and in a negotiation at arm's-length, to agree a price with Goldex which always left Goldex with exactly the same per unit mark-up, regardless of the type or quantity of handsets. This is particularly so in the light of the evidence of Ms White and Mrs Johnson that mobile telephone prices fluctuated on a regular basis. We consider that, taken together with the other evidence in these appeals, this consistency of mark-up shows that the purchases made by the appellant from Goldex were contrived transactions.

185. In addition, as regards the 8 mobile telephone deals where Symbolix was a customer of the appellant, the appellant's immediate supplier achieved a mark-up of £0.50 per unit in six deals and £1 in the other two deals. It should be noted that in these eight transactions there were four different suppliers. Cell Trading achieved a mark-up of £0.50 in two transactions and £1 in the other two transactions. Sound Solutions achieved a mark-up of £0.50 in its three transactions and Trade Smart achieved the same mark-up in one transaction. Again, although perhaps less compelling than the mark-ups achieved by Goldex, it is hard to credit that in genuine commercial transactions being carried out on arm's-length basis the same mark-ups would be so consistently achieved by the appellant's suppliers, particularly where the identity of the supplier changes and where the mark-up is achieved regardless of the quantity and description of the goods purchased.

186. The mark-ups in relation to CPUs and computer accessories/components were more varied. In the eight CPU deals the first-line buffer (i.e. the immediate supplier to the appellant) achieved small mark-ups of between £0.20 and £0.50 per unit. The second and third line buffers similarly achieved very small mark-ups. The mark-ups in relation to the computer accessories were higher but because the volume of goods was lower, the profit achieved on these deals (May deals 1 – 6) was similarly modest.

187. As well as the consistency of the mark-ups the very small amount of the mark-ups suggests to us that these deals were contrived. Once storage, freight forwarder and any insurance costs have been taken into account it is hard to see how the transactions entered into by the buffer traders were commercially viable.

The deal chains: the IPT website and an irrational market

188. A curiosity of the deal chains is that each of the buffer traders makes a very small profit on each transaction but the appellant makes a significantly higher mark-up than the buffers. Obviously, because the appellant is exporting goods it is to be

expected that the appellant would seek a higher profit margin than the buffers. What is hard to understand is why the appellant's customers bought goods from the appellant, which was often the third or fourth UK party in the deal chain after the defaulting trader, rather than from a party higher up the deal chain. If the customer had done this it could have sourced the goods at a cheaper price. Moreover, since the goods had been imported into the UK, there was no reason why the appellant's customers should have sought the goods from a UK source. In particular, most of the mobile telephones involved in these appeals had a Central European specification. It is difficult to understand why, in a rational market, the appellant's customer should look to buy these goods from a UK supplier rather than attempting to source the goods from the party which imported them into the UK in the first place.

189. The evidence of Mr Perkins, Mrs Johnson and Mrs White was that a number of traders involved in the deal chains advertised on the IPT website. Mrs Johnson said that the availability of stock would be checked on the IPT website. Mrs White (who had the primary responsibility for dealing with Goldex) accepted that, for example, TAG and Goldex could have found each other on the IPT website. She was unable to offer any explanation as to why TAG had not bought directly from Goldex rather than from the appellant. She accepted that the appellant was not adding value to the goods and not offering anything different from that which other traders were offering.

190. In our view, the nature of the deal chains was artificial. There seems no reason why the ultimate purchaser, such as TAG, Fine Peace or Symbolix should repeatedly buy from the appellant rather than by at a cheaper price from a party higher up the deal chain. In a market given transparency by the IPT website (and its equivalent for computer products), this seemingly irrational market behaviour strongly suggests that the deal chains were contrived.

The goods

191. The goods traded in the transactions under appeal were mobile telephones, CPUs and computer equipment/accessories.

192. As regards the mobile telephones, as already noted, many of the telephones were Central European specification telephones with two pin chargers. However, in the deal documentation the description of the goods was usually very vague.

193. For example, in April deal 9, Cell Trading UK Limited ("Cell Trading") describes the goods as 3000 "Nokia 8800 central euro spec sim free" in its purchase order addressed to A-Z Mobile Accessories Limited ("A-Z Mobile"). However, A-Z Mobile, in its invoice to Cell Trading, simply refers to the goods as "NOKIA 8800". The appellant, in its purchase order addressed to Cell Trading, merely describes the goods as "Nokia 8800's". Cell Trading in its invoice to the appellant does, however, refer to the goods as "Nokia 8800 central european spec sim free." However, Symbolix's purchase order simply refers to the goods as "Nokia 8800" as does the appellant on its pro forma and final invoices to Symbolix.

194. This is reasonably typical of the mobile telephone transactions in which the appellant participated, particularly as regards the documentation generated by the appellant and its customer (although on some occasions eg April deal 20 the appellant's documents specify whether the telephones have a memory and eg May deal 8, their colour). It seems to us, however, strange that the detailed specification of the goods concerned is not set out. For example, in the documentation between the appellant and Symbolix, there is no reference to the telephones being either Central European specification or sim-free (i.e. sold without a SIM card). There is no indication about the languages for which the telephone is suitable (i.e. its code) or about its warranty coverage. This is also true as regards those transactions were the appellant sold to TAG (although the invoice from Goldex to the appellant would usually contain considerably more information). It is hard to believe, that in a genuine transaction between parties dealing at arm's-length these details would have been omitted. This is particularly the case when it is borne in mind that these transactions usually involved goods worth several hundred thousand pounds and in some cases, e.g. May deal 13, the deal value was over £1 million.

195. Mr Lonergan explained that the detailed specification of the goods would have been recorded in telephone conversations and MSN messages. However, records of these telephone conversations and the relevant MSN messages were not produced to us (save for the limited MSN exchanges with Fine Peace set out at paragraph 350 *et seq* below). We think it unlikely that in a genuine commercial transaction the detailed specifications of the products being ordered and sold would not be set out in some detail in the formal sale documentation e.g. purchase orders and invoices.

196. Although the telephones traded by the appellant were predominantly Central European specification mobile telephones, April deal 19 involved a model of telephone call the Nokia 8801. Notwithstanding the fact that Goldex's invoice to the appellant described this model as a "Full European spec. Central European Software", this model was in fact designed to be used exclusively in the North American market and not Central Europe. No queries seemed to have been raised about this either by Mrs Johnson or Ms White or, indeed, by any of the parties to the deal chain.

197. As regards May deal 5, the transaction involved a consignment of five 3Com Super Stack III Switches. Mrs Johnson had no knowledge of exactly what this stock was. Similarly, as regards May deal 6 where the product was an Intel e-commerce Director 7180e, Mrs Johnson did not know what this item was. When asked how she knew what the appellant should pay for this stock she replied that she thought she had been guided by Mr Lonergan on that particular trade. Ms White had no recollection of this transaction.

FCIB evidence

198. We have set out earlier in this decision our findings in respect of the evidence of Mr Ruler, supported by the evidence of Mr Letherby.

199. We accept that the transactions examined by Mr Ruler are a representative sample of the deals under appeal. We saw no merit in Mr Lonergan's claim that they

were not. It is obvious that Mr Ruler did not examine all the transactions under appeal. Instead, he selected the 14 transactions that he did in order to examine transactions involving a variety of parties.

200. Mr Ruler's analysis clearly shows the funds travelling in a circle via various FCIB accounts. It is true that the starting point for the funds flow varies from deal to deal. But we do not think this detracts from the obvious conclusion that this circular flow of money indicates that these deals were contrived. Moreover, the common IP addresses of a number of parties (which did not include the appellant) to the transactions plainly indicates a high degree of coordination and, therefore, contrivance. We cannot conceive of any circumstances in which such a circular flow of funds on a repeated basis could occur in genuine commercial trading between parties acting at arm's-length.

201. Mr Lonergan maintained that he knew only about the payments the appellant received and the payments that it made and knew nothing about the payments between other parties and, in particular, about the circularity of payments. He also said that the reason why Mr Ruler's evidence showed that someone from the appellant logged into its FCIB account shortly after a payment was received and immediately made the payment was because either he or one the appellant’s employees had been notified by telephone by its customer that it was making payment. The appellant would then notify its supplier that it was about to receive payment of a particular invoice. Mr Lonergan explained this as being "business etiquette." We do not accept Mr Lonergan's evidence on this point, which was challenged in cross-examination, and which, when delivered, smacked to us of desperation.

202. We note that in a number of deal chains the funds move across several jurisdictions within a matter of hours. The appellant is part of this payment chain. It would be extremely difficult, in our view, to organise such a sequence of payments unless each party in the chain was aware of the need for payments to be coordinated.

203. Secondly, in those deals (ie April deal 24 onwards) where it was possible to identify the time at which each party in the payment sequence logged into and out of its FCIB account, it appears that in many cases the parties logged in very shortly after a payment had been received, indicating they were aware or were expecting that a payment had just been made. For example, in April deal 24 the appellant logs in at 16:28, having received the payment from Symbolix (of £738,045.50 at 16:18), and made its payment to Trade Smart of £834,631.88 at 16:45. All the payments in the chain were completed within one hour 12 minutes. In May deal 12 the appellant logged on at 17:11, having received two payments from TAG (of £895,000 at 17:00 and £3,050,000 at 17:09), and made its payment to Goldex, which logged in at 17:33, (£4,997,000 at 17: 24) within 15 minutes of the payment being received. All the payments in this payment chain were completed within 57 minutes. This suggests to us that the series of payments was carefully orchestrated.

204. Finally, in order for funds to move in a circle (and to do so on a repetitive basis, ie in all of the 14 transactions Mr Ruler examined) it seems to us more likely than not that the person from whom each party in the chain bought and sold had to be pre-

arranged or contrived; otherwise it would not be possible to ensure the circularity of the movement of funds.

205. Before leaving the FCIB evidence there was one other significant feature of the funds-flow diagrams (Appendix 6) prepared by Mr Ruler, which was put to Mr Lonergan in cross-examination. Mr Puzey produced a spread-sheet which showed that the payments between the participants in the circular flows of funds in the 14 transactions which Mr Ruler examined effectively netted out to "nil" (or very nearly "nil"). In other words, some participants in the chain of payments would make a "loss" (i.e. they paid more than they received) and some would make a "profit" (i.e. they received more than they paid). Overall, however, when all the "losses" and "profits" were added together the result was they cancelled each other out (to within a few pence in some cases or exactly in others).

206. We attach Mr Puzey's spread-sheet as Appendix 7. The spread-sheet needs to be read in conjunction with Mr Ruler's diagrams at Appendix 6. Two transactions require particular comment.

207. First, as regards April deal 6, Mr Puzey's spread-sheet shows the appellant making a loss of £116,469.50. This is so only if a payment made by Fine Peace on 20 April 2006 at 11:21 am of £106,470 is ignored. If this payment is taken into account, the appellant would make a "loss" (i.e. a loss when looking solely at the chain of payments) £9999.50 and, overall, the chain of payments would not result in a nil result. Mr Puzey explained that the payment of £106,470 was part of a separate payment chain. In this separate payment chain, of which the £106,470 payment was one, other payments were made in May and therefore did not feature on Mr Ruler's chart. We were not sure that this was an adequate explanation for the discrepancy in Mr Puzey's chart and, on that basis, we have chosen to ignore April deal 6 on this point. Secondly, in relation to May deal 12, some of the figures on Mr Puzey's spread-sheet did not correspond to those on Mr Ruler's diagram. Instead of the appellant making a loss of £4,102 (per Mr Puzey's spread-sheet the appellant incurs a payment chain deficit of £1,052,000), according to Mr Ruler's diagram. Moreover, Elvissa, according to Mr Ruler's evidence, instead of making a profit of £572,609 (per Mr Puzey's spread-sheet), makes a loss of £2,477,391. When these corrected figures are taken into account the overall profit on the deal chain is a mere 50p.

208. Mr Lonergan argued that Mr Ruler's diagrams did not take account of the fact that the appellant had funds in other (non-FCIB) accounts so that the appellant would have made other payments i.e. a part payment through its FCIB account and the balance paid through one of its other bank accounts. The appellant, however, produced no evidence to demonstrate that payments had been made out of other bank accounts. Certainly, in the evidence produced by Mr Ruler of the FCIB transactions carried out by the appellant's supplier, there is no evidence that the supplier received a partial payment of the relevant invoices from a source other the appellant's FCIB account. However, we note that it was not clear that these records contained a comprehensive account of the supplier's FCIB transactions.

209. Mr Lonergan also suggested that other parties in the payment chains may have been transacting other business. Again, no evidence was produced in support of this contention.

210. It seems to us too much of a coincidence that most of the payment chains examined by Mr Ruler showed an overall neutral cash result for the parties concerned taken in combination. In our view, this is plain evidence that the payments and the underlying deal chains were contrived. Moreover, it is hard to envisage how such a neutral overall result could have occurred without the active knowing participation of the appellant.

Due diligence

211. Mr Lonergan stated that he was responsible for the conduct of due diligence checks in relation to new suppliers and customers. He said that the appellant had built up a close relationship with HMRC and had been continually updated with HMRC's requirements regarding due diligence.

212. In cross-examination, Ms White confirmed that the appellant maintained a separate file for each new customer and supplier and that all relevant information was put on the respective file of the supplier or customer. As new information became available it was added to the file. Ms White confirmed that the information contained in each file and disclosed by the appellant to HMRC was likely to be the entirety of the due diligence documentation possessed by the appellant in relation to the relevant trader.

213. We now turn to the appellant's due diligence in respect of its trading partners. We bear in mind the advice of Moses LJ in *Mobilx* that tribunals should not focus unduly on due diligence. Nonetheless, the appellant's due diligence is part of the factual matrix which needs to be taken into account.

214. Our review of the appellant's due diligence considers the appellant's six immediate suppliers and three customers in the appealed deals in April and May 2006. The suppliers were Goldex, Cell Trading, Trans Global Traders, Sound Solutions, Trade Smart and Silvereef. The appellant's customers (TAG, Symbolix and Fine Peace) were introduced to the appellant through the IPT or equivalent websites.

(a) Goldex International Plc ("Goldex")

215. Goldex was the immediate supplier to the appellant in respect of 24 of the 46 deals (14 invoices) under appeal. All the transactions related to mobile telephones. The input tax claimed on those deals was £4,305,957.25 which is 67.14% of the total input tax claimed on the 46 deals. The invoices for these deals were dated from 24 April 2006 to 25 May 2006. All the mobile telephones which the appellant acquired from Goldex were on-sold to TAG.

216. The appellant first dealt with Goldex in December 2005. The appellant requested verification of Goldex's VAT registration on 5 December 2005 and received

a response from HMRC on 9 December 2005. Goldex invoiced the appellant on 15 December 2005 in respect of the purchase by the appellant.

217. At a meeting on 13 January 2006, Mr Lonergan confirmed to HMRC officers that, apart from the above verification, he had obtained a copy of Goldex's certificate of incorporation, certificate of registration for VAT and an outline of the company profile, together with details of Goldex's FCIB account. Mr Lonergan also referred to an Equifax report dated 16 December 2005. Mr Lonergan further confirmed that contact had been made with Goldex via the IPT website and that there had been no face-to-face contact or visit made to Goldex's offices.

218. The Equifax report referred to above contains financial information for the year ended 30 September 2004. In relation to financial information, the report disclosed that there was a deficit in respect of net current assets of £493,730. The auditors (Grant Thornton) noted that they had considered the adequacy of the disclosures made in the financial statements concerning the recoverability of VAT "which is the subject of litigation and the provision for associated legal costs. The future settlement of this litigation is uncertain."

219. The appellant undertook further deals with Goldex in January, February and March 2006. The input tax reclaimed in the period December 2005 to March 2006 in relation to purchases made by the appellant from Goldex was £4,674,573.75. Notwithstanding the deals being undertaken in this period there was no evidence of any further due diligence being undertaken by the appellant until May 2006.

220. On 3 May 2006 the appellant requested verification of Goldex's VAT registration with HMRC. The request was recent on 11 May 2006. There was no evidence of a reply being sent by HMRC.

221. The appellant carried out some due diligence on Goldex after the deals under appeal had taken place. Mr Lonergan accepted that the information contained in this further due diligence would not have assisted the appellant in deciding whether to trade with Goldex in relation to the deals under appeal. Amongst the exhibits to Mr Lonergan's witness statement were photocopies of a passport and driving licence for Mr Shafqat Dad, an employee and company secretary of Goldex, which was obtained (according to Mr Lonergan's witness statement). This was obtained on 30 May 2006 on a visit by Mr Mark White of Claymore, the company retained by the appellant to carry out due diligence visits on its trading partners. Mr White was the former husband of Ms Linda White, an employee of the appellant. Save for this visit, the appellant had never visited Goldex and Goldex had never visited the appellant.

222. The appellant sent a questionnaire dated 2 June 2006 to Goldex. The questionnaire read as follows:

> "We are currently answering enquiries regarding our April repayment to HMRC, in conjunction with FTI, we have been asked to urgently provide the following information.
>
> We would appreciate your prompt response to this matter.

1. Have you been contacted by UK HMRC in order to verify your supply chain.

2. If so, when? What was said?

3. Are you experiencing any problems with your Return?

4. Have you accounted for the VAT on your supplies to Trans Global Trade (Europe) Ltd, and have HMRC collected this VAT."

223. 6 June 2006 Mr Shafqat Dad replied, using the numerical references in the questionnaire of 2 June 2006 as follows:

1. "Yes"

2. "Verification"

3. Yes"

4. "Yes"

224. Plainly, this enquiry and the response from Goldex came after the deals under appeal had been concluded.

225. On 19 June 2006, the appellant obtained a further Equifax report on Goldex.

226. Mr Perkins wrote to the appellant on 12 July 2006 requesting due diligence paperwork to be forwarded to him.

227. Further, on 19 July 2006 the appellant's trading application form was completed by Goldex and faxed back to the appellant on that date. On 20 July 2006 the appellant faxed a trade reference request relating to Goldex to Inter Communication UK Limited – the trade reference was completed and faxed back to the appellant on the same date.

228. Mr Lonergan said that he had met representatives of Goldex on a number of occasions at trade shows. When asked whether he had asked Goldex questions about their history in the mobile telephone trade as regards their relationship with HMRC and whether they had had previous denials of input tax or warnings, Mr Lonergan said that he had asked Goldex those questions but because the answers had not been negative he had not recorded them. We found Mr Lonergan's reply implausible. It would have been impossible for him to demonstrate to HMRC that he had taken reasonable steps to verify the integrity of the supply chain if he did not record answers to pertinent questions that he asked.

229. In our view, the due diligence carried out by the appellant on Goldex was inadequate. In the period December 2005 to May 2006 the appellant bought goods worth in excess of £51 million from Goldex. There seems to be an absence of any third party verification of Goldex regarding its status as a suitable supplier, save for the Equifax report dated 16 December 2005. This report should have caused concern to the appellant as to Goldex's financial position, but there is no evidence that the appellant followed up the information contained in a report. In addition, the trade

reference was completed and Mr White's visit (and other enquiries) took place after the relevant deals had taken place. They could have provided no assistance to the appellant in deciding whether to trade with Goldex.

(b) Cell Trading

230. Cell Trading supplied the appellant in four appealed deals (two invoices) with mobile telephones. The input tax claimed on those four deals was £809,077.50 i.e. 12.62% of the total input tax claimed on all the appealed deals. The purchase invoices in respect of these four deals were dated from 24 April 2006 to 25 April 2006.

231. The earliest due diligence information on Cell Trading produced by the appellant was 28 February 2005. This was a fax from Cell Trading to the appellant providing details of the company and expressing a wish to build a trading relationship.

232. The appellant obtained Cell Trading's certificate of incorporation, certificate of VAT registration, an introductory letter from Cell Trading and its bank details. The appellant verified Cell Trading's VAT registration on 1 March 2005 and this was confirmed by HMRC on the same date. Cell Trading also completed a trade application form on 1March 2005.

233. The appellant obtained an Equifax report on Cell Trading on 8 March 2005. The report contained accounts for Cell Trading of the period ended 30 June 2003. These accounts showed Cell Trading having a deficit on net current assets of £26,000. The report also contained a caution:

> "Current/previous Director (s) and/or current/previous Secretary have been recorded as being directors of a company/or companies which have been struck off the Register of Companies as a result of either a subject company voluntary application or due to non-compliance."

234. Mr Lonergan said that he did not make enquiries about this disclosure in the report.

235. The report stated that Cell Trading appeared to be of sufficient financial stability to undertake contracts to a value of £50,000 and recommended a credit limit on monthly terms of £3000.

236. The appellant verified Cell Trading's VAT registration with HMRC on 25 January 2006. Similar verification requests were made on two, 17 and 28 February 2006, 14 March 2006 and 5 April 2006. There was no evidence of a reply from HMRC.

237. The documents produced by the appellant in respect of due diligence on Cell Trading contained numerous documents dated in June (e.g. another Equifax report) and July. In other words, this documentation was obtained after the deals which are the subject matter of these appeals were concluded.

238. There were no visit reports from Claymore. Mr Lonergan claimed to have visited Cell Trading in 2005 although he did not compile a visit report. He noted that the visit was more a visit to discuss business opportunities rather than a due diligence meeting.

239. Again, we considered the due diligence carried out by the appellant in respect of Cell Trading to be inadequate. After some initial due diligence in March 2005, there was effectively little or no due diligence (apart from VAT registration verifications) before the deals under appeal took place. No enquiries appear to have been made by the appellant in respect of matters arising from the Equifax report of March 2005 which might give cause for concern. The due diligence carried out in June and July 2006 can have given the appellant no reassurance as regards entering into transactions with Cell Trading in April 2006.

(c) Trans Global Traders ("TGT")

240. Notwithstanding the fact that this company had a very similar name to the appellant, there was no connection between the appellant and TGT. Mr Lonergan also confirmed that there was no connection between the two companies and this was not challenged by HMRC.

241. TGT was the immediate supplier to the appellant in 13 deals (eight invoices). The input tax claimed in respect of these deals is £693,338.67 i.e. 10.81% of the total input tax claimed on the appealed deals. The purchase invoices in respect of these deals were dated from 5 April 2006 to 17 May 2006.

242. In all the appealed deals where TGT was the appellant's supplier, the appellant on-sold to Fine Peace.

243. The appellant first dealt with TGT in July 2005. Thereafter, the appellant and TGT dealt on a regular basis. The appellant did not visit TGT's premises but apparently Mr Lonergan had met the director of TGT.

244. The due diligence materials provided by the appellant in respect of TGT included an undated letter of introduction., a certificate of incorporation showing that all TGT was incorporated on 16 October 2003, of VAT registration certificate showing that TGT registered from January 2004 and an office accommodation invoice to TGT dated 23 June 2006. There was also included a certified copy of the passport of the director of TGT, Mr Haried.

245. In addition, there was a trading application form completed by TGT and dated, in one part of the document, 13 February 2006 and, in another part of the document, 13 June 2006. Mr Lonergan was unable to explain why the document had two different dates. There was also a "Questionnaire for Suppliers". Mr Lonergan was unable to shed any light on this form. The form indicated that TGT exported to the Far East, the USA and the Middle East.

246. The appellant obtained an Equifax report dated 9 September 2005. The report stated:

> "This company is classified as dormant by Companies House. We note the recent change in registered office may indicate the company has commenced to trade."

247. The Equifax report suggested that the credit limit should be nil and that there was insufficient information on which to base a credit rating. The report also stated that the director of TGT had been involved in a previous company that had been struck off the register of companies.

248. Mr Lonergan had marked the front of the report as follows: "Okay no credit."

249. The appellant sent a fax to TGT on 20 April 2006 requesting a letter of introduction and a utility bill for the purposes of the Appellant's due diligence requirements. There was no evidence in the papers before us that a reply had been received, although on the fax dated 20 April 2006 it was noted in manuscript that the fax had been re-sent on 4 July 2006.

250. There was a visit report from Claymore dated 13 February 2006. The report, which was signed by Mr White stated:

> "I was asked to sign in at the reception desk, my company details and vehicle registration all normal questions when you enter serviced offices.
>
> This company is moving into these premises at the end of February, the meeting with the director took place in a conference room on the second floor. At the time of my visit there was only the Director in the conference room, the new trading application and our due diligence forms was [sic] complemented [sic] in front of me by the Director.
>
> When I left the building I asked the receptionist who verified the director's explanation that they are moving in at the end of the month.
>
> I then took 1 photo of the outside of the House."

251. Mr Lonergan explained that Mr Haried had told him that TGT were going to take over another floor in the building.

252. It should be noted that the report does not give an address at which the visit took place and does not name the director that Mr White met.

253. On 7 April 2006, the appellant sent a fax to Forward Logistics requesting a trade reference. Forward Logistics replied on 11 April 2006 as follows (with Forward Logistics's comments in italics):

> "1. How long have you been dealing with this company? *19 months*
>
> 2. What credit limits have they been given? *750*
>
> 3. Are [sic] their debts been paid promptly? *No*
>
> 4. Please give your general overall feeling about the company. *N/A*"

254. Mr Lonergan accepted that this was not a "glowing reference".

255. The due diligence files also contained a certain amount of documentation relating to periods after the deals under appeal had been entered into.

256. In our view, the due diligence performed on TGT by the appellant was inadequate. Concerns should have been raised by the Equifax report dated 9 September 2005, but apparently there was no follow-up in relation to the issues highlighted by that report. In addition, the due diligence visit by Claymore was of little or no assistance. The reference from Forward Logistics did not seem to merit undertaking 13 deals with TGT.

(d) Sound Solutions

257. The appellant made three purchases from Sound Solutions on 24 and 25 April 2006. The total amount of input tax reclaimed on those deals was £388,500 ie 6.06% of the total input tax in dispute.

258. On 8 July 2005 Sound Solutions sent a letter of introduction to the appellant. The letter also contained the bank details of Sound Solutions. At this time, Sound Solutions's bankers were JP Morgan Chase in Bournemouth. This was followed by a copy of Sound Solutions's VAT Certificate of Registration and Certificate of Incorporation which were sent to the appellant on 12 July 2005.

259. The appellant obtained an Equifax report on Sound Solutions on 5 December 2005. The report noted that the business activity of Sound Solutions was "manufacturers of children's mirrors and nursery furniture." Mr Lonergan explained that the mirrors/nursery furniture business was carried on downstairs in a building owned by Sound Solutions but that the company had changed the thrust of their business by developing an electronics business in 2005.

260. The report noted that the appellant had changed address eight times since 1998. It also noted that there were two charges against the company: one charge was in favour of HSBC dated December 1999 and the second was in favour of Fimdon Finance Limited dated May 2002.

261. The Equifax analyst report stated that the company's latest accounts were filed 31 October 2003 and were considered too old for the purposes of significant analysis. Consequently the analyst was unable to suggest a credit figure and recommended the provision of suitable assurances. For credit insurance purposes credit limit was rated as nil.

262. The Equifax report also noted that a current or previous director or current or previous secretary had been recorded as having been the director of the company which had been struck off, either as a result of a company voluntary application or due to non-compliance. Mr Lonergan confirmed that he had made no enquiries in relation to that entry.

263. County Court judgments had also been registered against Sound Solutions in November 2000 (£183), March 2004 (£7,524), April 2004 (£8,049) and May 2004 (£3,492).

264. The appellant sent a request for VAT registration verification to HMRC in respect of Sound Solutions on 25 July 2005 and a Europa verification request on 19 January 2006. The appellant also received a trading application form on 21 February 2006 from Sound Solutions and a questionnaire completed by Sound Solutions.

265. The due diligence materials included copies of passports, utility bills, business cards and a trade reference dated 24 February 2006 from Forward Logistics. In this case, Forward Logistics were prepared to give Sound Solutions 21 days credit. The reference noted that Sound Solutions paid their debts promptly but Forward Logistics when asked to give their "overall feeling" about Sound Solutions simply put "N/A." In addition, the appellant was sent a reference by Sound Solutions's auditors in March 2006 stating that they had acted for the company for the last 12 months and that all invoices submitted had been paid by the company under normal credit terms.

266. The appellant had again requested HMRC to verify Sound Solution's VAT registration number on 1 March 2006 and HMRC duly verified the number on 3 March 2006.

267. Mr White of Claymore visited Sound Solutions on 21 February 2006 and completed a due diligence checklist. Mr White also completed a report addressed to Mr Lonergan. The report was dated 21 February 2006 and read as follows:

> "The office this company is based in a warehouse unit that they own; they lease the warehouse out to a company the deals in Beds. When I visited the premises I was met by the director, the new trading application and Due Diligence forms were filled in [sic] front of me. I took one photo of the outside and one of the inside of the premises."

268. In cross-examination Mr Lonergan accepted that the report told him nothing about the trading history of Sound Solutions or its relationship with HMRC. The identity of the director was vague – it was not clear whether Mr White had met Mr Hopkinson or Mr Rooney.

269. In our view, the due diligence done by the appellant in respect of Sound Solutions was inadequate. The Equifax report indicated matters of concern (e.g. the change in the nature of business, outdated financial information, the history of the director's relationship to other companies and County Court judgments) which should have given rise to further queries, but there was no evidence that any of these points had been followed up. The Claymore report gave no information about the trading history of Sound Solutions. In short, the due diligence performed by the appellant gave it no reassurance that Sound Solutions was an appropriate company with which to deal.

(e) Trade Smart

270. The appellant concluded one deal with Trade Smart on 26 April 2006. The input tax in respect of this transaction was £124,306.

271. Mr White carried out a due diligence visit the day after the transaction under appeal i.e. on 27 April 2006. The appellant filled in Trade Smart's due diligence questionnaire on 27 April 2006. The appellant gave Cell Trading as a reference.

272. A VAT verification request was sent to HMRC on 27 April 2006 and an Equifax report was obtained on the same date. The Equifax report contained no financial information about the company and noted that the company had been incorporated in May of 2005 and had not yet filed accounts.

273. In cross-examination Mr Lonergan was asked what was the point of carrying out due diligence after the deal had taken place. Mr Lonergan claimed that they would have been other due diligence carried out prior to that date (including a VAT registration verification request to HMRC) but was unable to produce any evidence to substantiate that claim.

274. Mr White's visit report was dated 2 May 2006. The report records the date of the visit as being 27 March 2006, but in the light of other documentation in relation to the visit report it appeared more likely that the visit date was 27 April 2006. Mr Lonergan accepted that 27 April 2006 was more likely date. The visit report stated:

> "This company is based in serviced offices, when I entered the building I was asked for my name and company details.
>
> I was met by Shakeel who is the director of Trade Smart, their office is based on the 33rd floor of the office block and it is approx a 50 story building with other businesses in the block of offices.
>
> It is a small office. On this visit their [sic] was no other employees present in the office. At the time of my visit the director was present, the trade application was filled in by Shakeel in front of me. Two x Photos were taken by me, one of the inside of the offices and another of the outside of the building. All other documentation was taken away by me."

275. The reference to the trade application being completed in front of Mr White led us and Mr Lonergan to conclude that the visit had taken place on 27 April 2006. Mr Lonergan accepted that the report would have been of no assistance in deciding whether to trade with Trade Smart.

276. The due diligence carried out by the appellant in relation to Trade Smart was carried out after the single deal with the appellant was concluded. It was, therefore, of no assistance in determining whether Trade Smart was an appropriate trading partner for the appellant.

(f) Silvereef

277. The appellant carried out one transaction with Silvereef on 11 April 2006. Silvereef was the immediate supplier of the appellant. The input VAT in respect of this one transaction was £92,031.19. This was the only transaction that the appellant undertook with Silvereef.

278. There was a letter of introduction from Silvereef to the appellant dated 11 April 2006 – the day on which Mr Lonergan left the country on his two-month trip.

279. Silvereef provided a certificate of incorporation, bank details, its VAT registration number, utility bill, a copy of a passport and a trading application. The trading application appeared to have been sent by the appellant to Silvereef on 19 July 2006 and was then faxed back to the appellant on 1 September 2006. The application was dated as being completed on 20 July 2006.

280. An Equifax report was obtained on 11 April 2006 at 15:01pm i.e. the same day on which the deal with Silvereef was entered into. The report stated that the business of Silvereef was that of financial leasing (although the Certificate of VAT Registration noted the trade classification of Silvereef as "other computer related activities"). There was very little financial information in the report. The report indicated that the company had recently been established because the accounts for the five months ending 31 July 2004 were the first accounts on file.

281. The appellant had requested verification of Silvereef's VAT number from HMRC on 18 April and 3 May 2006 i.e. after the date of the deal with Silvereef. The appellant also carried out a Europa VAT registration check on 18 April 2006.

282. There was no visit report from Claymore even though such visit reports were by then part of the appellant's standard procedure.

283. In our view, the appellant carried out minimal due diligence in respect of Silvereef. Almost all the due diligence was carried out after the deal had been entered into. The Equifax report received on the day of the deal itself contained very little financial information and indicated that the company had been newly established. The appellant's due diligence in respect of Silvereef was plainly inadequate.

(g) Tele Audio Audio Gruppe ("TAG")

284. TAG, a company incorporated in Luxembourg, was the appellant's customer in respect of 24 of the deals under appeal.

285. The appellant first dealt with TAG in December 2005. The appellant verified TAG's VAT registration with HMRC by fax dated 28 November 2005. The appellant obtained an undated letter of introduction, bank statements and incorporation documents (in French) from TAG. The sales invoices in respect of these deals are all dated from 24 April 2006 to 25 May 2006.

286. TAG completed the appellant's trade application form on 1 December 2005.

287. The appellant obtained an Equifax report in relation to TAG dated 27 July 2006. Mr Lonergan accepted that this was of no assistance in deciding whether to trade with TAG.

288. There was no record of a visit by Claymore to TAG. Mr Lonergan accepted that no visit had taken place and that no trade references had been obtained. Mr Lonergan stated that he had talked to TAG at trade fairs and had had discussions with them but that there had been no independent appraisal of TAG prior to July 2006.

289. In our view, the due diligence performed by the appellant in relation to TAG was wholly inadequate. The appellant obtained no independent information as regards the background a company which was its customer in relation to 24 transactions relating to mobile telephones.

(h) Symbolix

290. Symbolix, a Luxembourg company, was the appellant's customer in respect of 8 deals under appeal. The sales invoices for these transactions were dated from 24 April 2006 to 28 April 2006.

291. Symbolix sent a faxed letter of introduction to the appellant on 9 January 2006 which included bank details, a certificate of incorporation and details of its VAT number.

292. On 31 January 2006, the appellant faxed HMRC requesting verification of Symbolix's VAT registration. On 7 February 2006, HMRC requested further information before verifying Symbolix. Further verification requests were made on 31 January, 28 February, 2 March, 5 April, 19 April and 7 May 2006. HMRC verified Symbolix's VAT number on 3 March 2006.

293. The appellant ordered an Equifax report. There is no date on the order confirmation, but from the foot of the page, containing details of the order, it appears that the report was ordered on 19 July 2006 i.e. after the date of the relevant deals.

294. Symbolix completed the appellant's trading application form on 21 July 2006.

295. In our view, the appellant carried out virtually no due diligence in respect of Symbolix, other than verification requests in respect of its VAT registration number, prior to entering into the deals under appeal. We consider the appellant's due diligence in relation to Symbolix to be manifestly inadequate.

(i) Fine Peace

296. Fine Peace was the appellant's customer in relation to 14 of the deals under appeal.

297. On 6 March 2006 the appellant provided Fine Peace with its bank account details, suggesting that the two companies had not traded before that date. The first MSN message between Ms White and her counterpart at Fine Peace was dated 9

March 2006 and requested that Fine Peace resend their company documents to the appellant (apparently Fine Peace had attempted to send them the day before).

298. Mr Lonergan said that he had met them at the beginning of January and had previously met them in 2005. Mr Lonergan accepted that he had not carried out any due diligence enquiries in relation to Fine Peace in 2005. He claimed that he had had conversations with other traders in the region that dealt with them but he had made no record of those conversations.

299. On 9 March 2006 the appellant faxed HMRC requesting verification of Fine Peace's company name, address and company registration number. HMRC replied that it was unable to verify the company's details as it appeared to be based outside the EU.

300. On 9 March 2006 Fine Peace sent the appellant information on its profile, which included contact details and bank account details, certificate of incorporation and further details about an additional bank account with FCIB.

301. On the morning of 9 March 2006 Ms White contacted Fine Peace offering them stock.

302. On 1 July 2006 (i.e. after all the deals relevant to this appeal had been concluded), the appellant received a reference from Mr Dean Wilson of Comex Limited, a company based in Hong Kong. Mr Wilson described Fine Peace as a company that he had dealt with since 2004 and whom he had found to be reliable and trustworthy. Comex had traded computer parts with Fine Peace. Mr Wilson stated that he considered Fine Peace to be a reliable business and a company with good standing.

303. A second reference came from SEI Express International Limited and was dated 15 July 2006. The letter was, apart from one sentence, in almost identical terms to that sent by Comex.

304. Mr Lonergan explained the similarity as being a cultural matter and that in Hong Kong letters of good standing always took the same form. This was challenged by Mr Puzey in cross-examination. Mr Lonergan had already noted that Mr Dean had previously worked in London whereas the writer of the second reference was plainly from Hong Kong or China. Mr Lonergan suggested that Fine Peace may have provided its two referees with the wording it wished them to include in their letters of good standing. We did not find Mr Lonergan’s explanation convincing and there was no evidence to support it.

305. In addition, Fine Peace had sent the appellant an undated certified copy of the US passport of one of its directors, Mr Arnade, and some utility bills (one of which covered the month of May 2006 i.e. after the date of the April 2006 deals).

306. In our view, the appellant's due diligence in relation to Fine Peace was inadequate. It gave no assurance to the appellant in respect of the trading history of Fine Peace.

Our conclusions on due diligence

307. As we have indicated above, we consider the appellant's due diligence in respect of its six suppliers and three customers to have been wholly inadequate.

308. Concerns that arose out of what due diligence that was carried out, were not followed up. Inadequate financial information or financial information which should have created concerns, different trading activities from those which were being pursued with the appellant, County Court judgments, lukewarm references etc were matters which, to a reasonable trader, would have raised concerns. But there was no evidence that the appellant pursued any enquiries in respect of these concerns. Instead, much of the due diligence was formulaic (incorporation details, VAT registration details, names of directors etc). Claymore's reports were uninformative to the point of being almost entirely useless. Moreover, a large part of the appellant's due diligence was carried out after the deals in question were concluded and therefore could have provided no assistance in the appellant's decision whether to deal with the parties concerned.

309. In a number of cases, Mr Lonergan said that he had either met or had had business discussions with his trading partners before the dates of the first written evidence of due diligence. There was no documentary evidence to support these assertions. In any event, there was no indication or suggestion that these discussions and meetings were directed towards due diligence i.e. establishing the bone fides of his trading partners. In a number of cases, e.g. Fine Peace and Silvereef the appellant had either just begun to trade with these companies at the beginning of 2006 or the end of 2005. They were not companies with which the appellant had a long-established trading relationship.

310. At one point, towards the end of his cross-examination on due diligence, Mr Lonergan said:

> "Looking back, with hindsight, you can always be critical. Yes, there are gaps and boxes that I didn't tick. I am truly sorry. But at the time I was comfortable."

311. We thought this reply was revealing. Our impression of the appellant's due diligence was that it was very much a "tick the box" exercise rather than a genuine attempt to establish whether the appellant's suppliers and customers were companies which were involved in legitimate trading activity.

IMEI numbers and inspection reports

312. The significance of IMEI numbers was explained by the tribunal in *Mobile Export 365 Ltd and Shelford (IT) Ltd v Revenue & Customs* [2010] UKFTT 367 (TC) as follows:

> "An IMEI (international mobile equipment identification) number is unique to every mobile phone produced in Europe. The number is a string of digits recorded in the phone and in bar-coded form on the packaging of the phone. Each IMEI number is a string of digits

> identifying the reporting body (for these purposes the manufacturer), the model number, and a unique unit serial number, followed by a check digit. It is therefore a number that not only identifies the make, model and serial number of the phone but also contains a check digit to identify if a number has become corrupted…[A trader] can also check on sales from its customers. This is because a consistent record of IMEI numbers will show if the trader handles the same phone twice. "

313. Deal packs provided by the appellant in respect of the deals relating to mobile telephones, there were, for most deals, a series of multi-digit (often running to 15 digits) numbers which were IMEI numbers. May deal 17 was an exception – there were no IMEI numbers included in the deal pack. The numbers were printed out on otherwise blank sheets of paper, although it was noted in manuscript on the first page to which deal these numbers related. For example, in relation to April deal 9, the front page stated the date of the transaction and the number of handsets and contained the words "Buy: Cell Trading" and "Sell: Symbolix".

314. Mr Lonergan's evidence was that these sheets were provided either by the freight forwarder or by the appellant's immediate supplier. Once received, the numbers would be entered by Ms White's daughter, Brogan White, either manually (if the numbers had been received in hardcopy form by fax) or by "cut-and-paste" on a computer (if the numbers had been received by e-mail) onto an Excel spreadsheet. This enabled the appellant to check whether the handsets had been traded by the appellant on previous occasions. The numbers represented a 10% sample of the mobile telephones being dealt in.

315. There was no indication on the face of the lists of numbers who had compiled them and who had sent them to the appellant.

316. In a number of transactions the appellant sent shipping instructions requiring the freight forwarder to allocate the stock to its customer and to ship the goods on hold to the customer's address. The shipping instructions would also require the freight forwarder to send to the appellant a "10% IMEI inspection". For example, a request for a 10% sample the MEI inspection was included in the shipping instructions in respect of April deal 20 and May deals 8 and 9.

317. It is hard to understand why the appellant would request an inspection of 10% of a consignment's IMEI numbers at the point when it was giving instructions to the freight forwarder to ship the goods to its customer. Logically, the appellant would have obtained the IMEI numbers at an earlier stage so that if any queries arose from those numbers it could raise questions with its supplier before it had shipped the goods to its customer. It is true that the goods were shipped "on hold", but if a problem had arisen the appellant would have had to incur the costs of shipping the goods back. The appellant's witnesses gave no satisfactory explanation regarding this puzzling question of timing. Ms White suggested at one stage that a request for IMEI numbers would have been made prior to shipping but, in our view, was unable to explain satisfactorily why the shipping instructions contained a request for a 10% IMEI sample.

318. Inspection reports were generally only obtained in respect of computer accessories and CPUs (although e.g. in relation to April deals 11 and 16, the deal pack contained an A1 Inspections report addressed to Sound Solutions). The examples of inspection reports in the deal packs did not state for whose benefit the report had been carried out. Mr Lonergan stated that his staff would have verified by telephone that the report related to the stock in question. There was no record of any such conversations. In some cases (e.g. April deal 7), the inspection report did not indicate the date on which the inspection had been carried out. It is, however, clear from records of MSN conversations (referred to later in this decision) that inspection reports were sent by the appellant to Fine Peace in relation to certain transactions between the appellant and Fine Peace.

319. It was inexplicable that the appellant did not obtain inspection reports in respect of mobile telephones. The IMEI records gave no clue as to the condition of the goods e.g. whether they had been damaged in transit. Mrs Johnson and Ms White said the questions would have been asked over the telephone (presumably of the freight forwarders) about the condition of the goods, but there was no record of any such conversations. It seemed odd to us, and unconvincing, that such important confirmations would have been left unrecorded.

Volume of trading and VAT repayments

320. The appellant's average monthly turnover for the period July 2005 to December 2005 was £5,429,834 (the highest monthly average turnover was £6,714,038 and the lowest monthly average turnover was £2,709,540).

321. By contrast, the average monthly turnover for the period January 2006 to May 2006 was £15,317,211 (the highest monthly average turnover was £19,533,807 and the lowest was £9,791,340).

322. On 12 January 2006 the ECJ gave judgment against the UK tax authorities in the case of *Bond House* (C – 484/03). Prior to this decision HMRC had attempted to deny input tax credits to traders on the basis that the transaction chains were circular in nature and therefore did not involve an economic activity for VAT purposes. In *Bond House* the ECJ disapproved of this approach and held that a taxable person who did not know and did not have the means of knowing that his purchase was connected with the fraudulent evasion of VAT had the right to deduct input tax on his purchase.

323. As Mr Stone observed in his evidence, after the ECJ delivered its judgment in *Bond House*, which was regarded as a set-back for HMRC, there was a sharp increase in the export of mobile telephones.

324. Similarly, the appellant's claims for repayment of input credits rose very significantly in 2006.

325. The details of the appellant's turnover and repayment claims from the beginning of 2005 until the end of the last period under appeal (May 2006) are set out in

Appendix 8 (“Appellant's Outputs and VAT Payable/Input Tax Credit Position”). Before this period, the appellant's turnover fluctuated considerably with several quarters (at this stage the appellant was on quarterly returns) of no activity and some quarters showing high turnover (e.g. the outputs in respect of the quarters ending 03/02, 06/02 and 09/02 were £8,177,936, £21,922,476 and £14,696,844 respectively). Even in those quarters of high turnover the input repayment claims did not exceed £88,250. In respect of the periods shown in Appendix 8, the rapid growth in turnover (measured by outputs), EU supplies and repayment claims in the period from January 2006 to May 2006 is plain to see.

326. It is hard to see any commercial reason for the expansion in the appellant's trade in this period. When considered against the erratic trading pattern of the appellant from the beginning of 2000, the very marked increase in turnover, EU supplies and repayment claims from the beginning of 2006 until the end of May 2006 was inexplicable. Mrs Johnson said that Mr Lonergan in 2005 have been aggressively trying to create more business, particularly by attending trade shows such as CeBIT but we did not regard that as satisfactory explanation for the scale of the increase in turnover and it did not explain the increase in exports.

The appellant's contractual terms and conditions

327. In a number of cases the pro forma and final invoice documentation of the buffer traders indicated that title was reserved until payment has been received. Nonetheless, the goods passed from one trader to another in the deal chains (usually physical possession of the goods was with a freight forwarder and each party instructed the freight forwarder to release the goods in turn to the next party) prior to payment being made. Once the appellant's customer paid the appellant, the appellant would then pay its immediate supplier and so on up the chain.

328. It seemed to us strange in the case of consignments of such valuable goods that there seemed to be no explicit written agreement between the parties to the deal chains on when payment should be made. Moreover, we thought it was odd that each party in in the deal chain was happy to allow such valuable goods to pass out of their possession prior to receiving payment. It is true that, if the reservation of title clauses referred to in the invoices and pro forma invoices were enforceable, it would have been possible for a party having the benefit of such a clause ultimately to recover the goods. However, that party had no control over the whereabouts of the goods and in almost all the deals under appeal the goods had been exported prior to payment being made. It would be extremely complicated and undesirable for a party with the benefit of the retention of title clause to have to enforce that clause against a foreign purchaser who had the goods in its possession outside the UK.

329. Mr Lonergan's evidence was that when the appellant sold goods they were shipped "on hold" pending payment. However, in relation to April deal 12 the appellant exported a consignment of 3000 Nokia N70 mobile telephones worth £676,500 to Symbolix. The appellant's freight forwarder was Point of Logistics. The receiving warehouse was Interaction Logistics NV, based in the Netherlands. In the CMR in relation to the consignment, Point of Logistics stated: "On hold – do not

release without written confirmation from Point of Logistics Ltd." It was not clear, however, how Point of Logistics would enforce the "on hold" requirement. Mrs Johnson, when cross-examined on this point, simply said that she did not know how Point of Logistics would ensure that the goods were not released by Interaction Logistics Ltd. The same point arose in relation to April deals 9, 10 and 11.

330. These factors strongly suggested to us that the deal chains did not represent genuine commercial trading.

The appellant's manner of trading – the evidence of Mrs Johnson and Ms White

331. As already noted, the witness statements of Mrs Johnson and Ms White were almost identical. In particular, both witnesses selected April deal 20 as representative of the general manner in which most transactions were concluded.

332. Ms White's statement in relation to this deal (which was the same, *mutatis mutandis*, as Mrs Johnson's) read as follows:

> "16. This transaction involves the purchase by [the appellant] of 4100 Nokia 9500 mobile telephones from [Goldex] and [the appellant's] sale of 4100 Nokia 9500 mobile telephones to [TAG]…
>
> 17. To the best of my recollection I contacted Goldex by telephone in the morning and established that they had stock available that complied with the [appellant's] policy of only dealing in newer preferably "top end" models. Contemporaneously I looked on the IPT ("International Phone Traders") website to seek comparative information.
>
> 18. At the same time Katharine Johnson, one of my colleagues, and I were receiving telephone calls from buyers enquiring about available stock.
>
> 19. Goldex confirmed that they had 4100 Nokia 9500 available for a period of four hours (This was customary). *Goldex gave a price which I tried to negotiate.*
>
> 21 During this period TAG had telephoned enquiring about stock. Their requirement corresponded with those that were available from Goldex. The deal was built as follows: buy phones from Goldex at £391.00 per phone. Sell to TAG at £407.00 per phone. Gross Profit £16.00. Gross Margin of approximately 4%. From this insurance, freight and inspection costs of approximately £8,000 in total would be deducted. I would then "agree" price of £391.00 with Goldex. I then received the inspection reports from the freight forwarder and check them against our database referred to [above]. As we had already made requests for re-verification of the VAT numbers, on 25 March 2006 and 10 April 2006 in the case of TAG, and because each of the trading partners had had their VAT number verified previously I do not recall sending a further request for verification to HMRC Redhill on this day. Usually Martin Lonergan would give authorisation prior to commencing/finalising negotiations. *On this occasion he was overseas on a trip to the Far East and the United States and had authorised me prior to his departure to enter into transactions if they were with well-*

> *established and reliable trading partners – as was the case with this transaction. I then agreed the price with TAG and sent the inspection reports to TAG. At this point the purchase and sale transaction had been agreed.* TAG then sent their purchase order to [the appellant] for the stock. [The appellant] then issued a pro forma invoice to TAG. Once this had happened [the appellant] issued its purchase order to Goldex. Goldex then sent a pro forma invoice to [the appellant] in respect of the stock. In this particular instance all of this activity as well as the ordering of freight and insurance services took place on 26 April 2006. Attached at [page reference] is our fax request seeking such services as well is notifying the shipper – AFI Logistics – of HMRC's requirements re the labelling and shipment of the goods. [*The words in italics do not appear in Mrs Johnson's statement*]
>
> 22. As described at [above] in almost all instances [the appellant] arranged for the carriage of the goods because among other things this ensured that the "release" of the goods to the customer was always within the control of [the appellant] – thereby reducing any commercial risk involved….
>
> 23. Goldex released the goods to [the appellant] allowing us to allocate the goods to TAG and arrange for the shipment of the goods. Over the course of the succeeding days the goods were transported to TAG's chosen destination. They were shipped "on hold" i.e. they were to be held strictly to [the appellant's] order – they would only be released to TAG upon receipt by [the appellant] of payment.
>
> 24. On 4 May 2006 TAG paid [the appellant] for the goods and immediately thereafter [the appellant] paid Goldex for the goods. Upon receipt of these monies Goldex released the goods to [the appellant] and [the appellant] released the goods to TAG."

333. Mrs Johnson and Ms White blamed the appellant's solicitors for the fact that their witness statements were in such similar form. Nonetheless, they accepted that their witness statements represented their evidence.

334. Ms White confirmed that where the documentation in respect of the deal was dated on the same date the whole deal would generally be put together within one day, although there were instances where transactions took longer to arrange and document.

335. Mrs Johnson in cross-examination also said that when Mr Lonergan was abroad she and Ms White "stuck to the traders that we knew he would have authorised." These were traders:

> "…he had previously spoken to us about, that he had met, that he had had conversations over a long period of time with."

336. When pressed on this point she accepted that Trade Smart, Silvereef, Fine Peace, TAG and Symbolix were not long-established suppliers and customers. We considered that this admission undermined Mrs Johnson's credibility. It is clear, however, from the MSN messages referred to earlier in this decision, relating to May deals 1-6, that Mr Lonergan specifically authorised the terms of at least one deal with

Fine Peace. Ms White and Mrs Johnson were cross-examined at some length on their accounts of April deal 20 and, more generally, on how the appellant carried on its business. Neither witness could shed any light on why that particular deal had been selected by them in their witness statements.

337. Ms White confirmed that the appellant would not proceed with the deal without having first obtained IMEI numbers (in respect of the mobile telephones) or inspection reports (in respect of CPUs and computer components). The appellant would make a written request for an IMEI report from the freight forwarders. Once the appellant received an IMEI report it would then commit to the deal. However, in April deal 20 the IMEI inspection was requested from the freight forwarders in the shipping instructions dated 26 April 2006 instructing the freight forwarders to ship the goods to TAG i.e. at a point when the goods were about to leave the country – the CMR in respect of the export of the goods was dated 27 April. Ms White (and Mrs Johnson) could not explain why an inspection was being requested at the point that the goods were being shipped and suggested that it may have been simply a faulty template there was used in the shipping request. It was pointed out to Ms White that this was the only written request for an IMEI inspection in the documents relating to April deal 20. We, therefore, did not find Ms White and Mrs Johnson's explanation convincing.

338. Moreover, in relation to April deal 20, TAG's purchase order and confirmation of purchase specified that it required a quantity of 4,100 "N 95" mobile telephones, whereas, according to the appellant's pro forma invoice and other documentation, the appellant sold Nokia 9500 mobile telephones to TAG. Mr Lonergan informed us that the N 95 was introduced by Nokia at a later date and did not exist at the time of April deal 20. Ms White was unable to explain the discrepancy other than suggesting that it must have been a typographical error. There was no evidence it either party queried the apparent discrepancy. Again, we did not find Ms White's explanation convincing. It seems extraordinary that such a discrepancy relating to a consignment of mobile telephones worth £1,668,700 would not have been raised by one of the parties in a genuine commercial transaction between parties dealing at arm's-length.

339. The evidence of Ms White and Mrs Johnson was that April deal 20 took place, in accordance with the appellant's documentation, on 26 April 2006. This required the appellant to ascertain its supplier's ability to supply stock, its customer's requirements, to negotiate with the supplier and customer, to obtain information from the freight forwarder, to input IMEI numbers into the appellant's computerised records, obtain the supplier declaration, and to prepare all the documentation. In addition, April deal 19 was also documented as occurring on the same day. Indeed, in relation to April deals 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 (using the pro forma invoice date), 17, 18, 21, 22, 23, and May deals 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22 and 23 the documentation indicates that the appellant bought and sold the goods on the same day i.e. on a back-to-back basis.

340. Moreover, April deals 5 and 6 (2 invoices) both occurred (i.e. the appellant bought and sold the goods) on 11 April 2006, April deals 7 and 8 (2 invoices) all occurred on 21 April 2006, April deals 9, 10, 11, 12, 13, and 14 (3 invoices) all

occurred on 24 April 2006, April deals 15, 16, 17 and 18 (3 invoices) all occurred on 25 April 2006, April deals 19 and 20 both occurred on 26 April 2006 and April deals 21 and 22 both occurred on 27 April 2006. May deals 7, 8 and 9 (3 invoices) all occurred on 17 May 2006, May deals 10, 11 and 12 (1 invoice) all occurred on 18 May 2006, May deals 13 and 14 (2 invoices) both occurred on 19 May 2006, May deals 15, 16, and 17 (1 invoice) occurred on 22 May 2006, May deals 20, 21 and 22 (1 invoice) and occurred on 24 May 2006.

341. The volume of activity repeatedly occurring on the same day left us unconvinced by the evidence of Ms White and Mrs Johnson (which was challenged in cross-examination) that usually these deals were all put together on the same day, as indicated above.

342. Mrs Johnson was asked in cross-examination in relation to April deal 19 how it was possible for all the documentation in the deal chain stretching back to the defaulting trader to be completed (together with that in relation to April deal 20) on the same day if it was not prearranged. Mrs Johnson replied that she did not know

343. Mrs Johnson was also asked in cross-examination whether it was a remarkable coincidence that all the appellant's purchases from Goldex in April and May 2006 were sold to TAG. She replied that it seemed to be a coincidence.

344. The same point was put to Ms White in cross-examination. The relevant passage from the transcript reads as follows:

> "Q. Every time you buy from Goldex… You sell those goods to Tele Audio Gruppe… You would say that is coincidence?
>
> A. Obviously, we had suppliers and customers at the time that we were – we had had good on-going relationships with. If they bought the stock – if they wanted the stock and we never had any problems getting paid by them, why wouldn't we sell to them?
>
> Q. But you were no doubt undertaking these goods at arm's-length, you would say?
>
> A. Sorry, could you…
>
> Q. You were an honest trader. These aren't contrived deals, are they, would you say?
>
> A. No.
>
> Q. So it is just coincidence that every time you buy from Trans Global Traders, for example, those goods end up at Fine Peace China?
>
> A. Like I said, we offer the stock. If they decided to buy it, they bought it.
>
> Q. You didn't buy stock from Trans Global Traders, for example, and sell any of that stock to Tele Audio Gruppe.
>
> A. Trans Global Traders…no, we didn't. We were probably offered it, it was obviously when we had an offer of stock, we would put it out to all our customers, so –

Q. So the pattern that we see in there in that schedule [a schedule of all the deals under appeal] identifying your suppliers and your customers, you would say in each case is simply coincidence?

A. Yes.

Q. That's nonsense, isn't it? It's contrived.

A. Well, like I said, at the time, it's only putting them together that you have pointed that out to me that I would notice that. At the time I was trading, I have a supplier, I had a customer and I bought and I sold.

…

Q. So when you were raising your purchase orders, it would have become abundantly clear to you that all of those purchase orders were going to Goldex.

A. Well, like I said, I wouldn't have raised all the purchase orders myself. It would have been done within the company. And you've pointed it out to me; I wouldn't have even noticed at the time. I know we had some good suppliers and we had some good customers. Obviously if they always paid and we never had any problems with them, we had done our due diligence and I was satisfied that there was no risk, then I would buy and I would sell.

Q. It must have been equally clear that when you were preparing the deal documentation, after you had had all of your discussions and negotiated these deals, that all of those invoices that you were raising were being raised to Tele Audio Gruppe.

A. As I said, we had a good relationship with Tele Audio Gruppe and with Goldex, and with Find Peace, and lots of others.

Q. It didn't strike you as odd that despite all of the discussions that you were having, you were simply buying from one supplier and selling to one customer?

A. Obviously they were the viable deals at the time."

345. We found Ms White's replies on this point evasive and we did not believe them. It would have been plain to Ms White that there was a high degree of repetition in the pattern of trading and one which surely should have raised questions in her mind. Her response that she had only noticed the pattern, on having it pointed out to her in cross-examination, was simply not credible. Her replies, at the very least, indicated a completely blinkered approach to trading. She seemed to be prepared to buy from and sell to anyone that she regarded as a good supplier or customer, regardless of the circumstances in which those transactions took place. It seems to us incredible that anyone involved in genuine trading would choose to ignore this repetitious pattern of trading and seemed to us, at least, to represent wilful blindness.

346. In the light of the conclusions we have reached earlier in this decision about the mark-ups made by Goldex, we did not think that Ms White's evidence that she negotiated and price with Goldex was consistent with the evidence of the mark-ups put forward by Mr Perkins. We did not accept Ms White's evidence on this point.

347. In relation to April deal 13, it was pointed out to Ms White in cross-examination that the goods appeared to have been released to TAG (the release note was dated 24 April 2006) before TAG had paid for the goods (TAG paid the appellant ins two instalments on 27 April 2006). Ms White attempted to explain this as a typographical error saying that it may have been "left on" the release note from a previous invoice. It was pointed out to Ms White that the release note referred to the goods being released in two places i.e. the heading "GOODS RELEASE INSTRUCTION" and, after specifying the goods in question, at the end of the release note, "Please release the stock to Tele Audio Gruppe". We did not consider Ms White's reply to be credible. The release note was addressed to the freight forwarder and was plainly intended to release the goods.

348. At a number of points in their evidence Mrs Johnson and Ms White referred to the fact that various important pieces of information in relation to particular deals would have been recorded in notebooks, jotters, diaries and "post-it" notes. For example, Ms White and Mrs Johnson claimed that the specification of goods (e.g. types of mobile telephones) and conversations with trading partners and freight forwarders would have been so recorded. None of these items was produced in evidence by the appellant's witnesses. A manuscript list of stock offers was produced in evidence but this did not relate to the periods under appeal.

349. It will be apparent, for the reasons given above, that we had considerable reservations about the reliability of the evidence given by Mrs Johnson and Ms White concerning the manner in which the appellant's trading was carried on in relation to the deals under appeal. We did not find their evidence of convincing. It was clearly put them that the deals in which they had been involved were contrived. As we have indicated, some of their replies were not, in our view, credible. As a result, we do not accept their evidence that the transactions under appeal were the result of genuine arm's-length trading.

MSN messages

350. Towards the end of the hearing, while re-examining Ms White, Mr Lonergan drew our attention to the records of some MSN (a Microsoft-based messaging service) conversations that Ms White and Mrs Johnson had with a lady called "Sophia" at Fine Peace. It was unfortunate that our attention was not drawn to these records at an earlier stage. We have, therefore, reviewed these records in some detail.

351. In a letter to the appellant dated 9 February 2005, Mr Lawrence (the appellant's VAT officer) requested that the appellant to save all MSN messages on a daily basis. He considered the messages to form part of the appellant's business records.

352. The messages record the date, time, the identity of the sender, the identity of the recipient and a short narrative containing the message (which on our copy was missing the extreme right-hand margin of the message). The narrative is expressed in an abbreviated form, similar to that often used for text messages on mobile telephones. Mr Lonergan referred to MSN messages, during his cross-examination of

Mr Perkins, as a means by which the parties to a deal would argue and haggle about the price of products.

353. The conversations in which Ms White participated spanned the period 9 March to 2 August 2006. These messages, as far as we could discern, covered April deals 1, 2, 4 and 5 and May deal 7 (as well as some other deals in March 2006 which are not under appeal).

354. The messages start on 9 March 2006 the request at 9:33 am from Ms White to Sophia at Fine Peace that she re-sends Fine Peace's company documents. Apparently, these had already been sent by Fine Peace but, because of technical problems experienced by the appellant, had not been received. Within seconds, Ms White was offering stock to Fine Peace. At 9:39 am, Ms White was offering 23 boxes of Intel Z 9 CPUs. There is no discussion on price apparent from the MSN records. At 10:04 am Sophia confirms that Fine Peace wish to buy the stock.

355. The deal concluded on 9 March 2006 is not under appeal. We record its details, however, simply to observe that there appeared to be an immediate desire on the part of Ms White to conclude a deal with Fine Peace without any consideration of the corporate documents being sent by Fine Peace to the appellant as part of the due diligence process. It also appears that there was no negotiation on price, at least on the MSN records. It is possible that the price at which the stock was offered was cut off the right-hand margin of page at which we were looking, but on the other hand there appeared to be no discussion by Fine Peace offer price was offered. Again, it is possible that a negotiation may have taken place by telephone but there is no evidence one way or the other on this point.

356. April deal 4 was concluded on 28-29 March 2006. It is under appeal because it was included in the appellant's April 2006 VAT return. The deal comprised 16 boxes of Intel P4Z9 CPUs which formed part of a total consignment of 25 such boxes shipped to Fine Peace. It appears that Fine Peace wanted an additional 15 boxes but the appellant shipped an additional 16 boxes i.e. the subject matter of April deal 4. The MSN records contain no details of a negotiation on price for the 16 boxes. The records do refer to reports being sent for the boxes being shipped to Fine Peace, which we assume relates to IMEI numbers, but most of the discussion related to the shipping and delivery details. The MSN records also refer to e-mails containing invoices and purchase orders.

357. At 13:24pm on 5 April 2006, Ms White offered 27 boxes of Intel P4 Z9 CPUs and, apparently, one box of Z8 CPUs to Fine Peace. This appears to be April Deals 1 and 2. Fine Peace confirmed that it would take these goods at the offer price within 2 minutes with no negotiation on price. There was a subsequent discussion on price on 6 April 2006 where it seems that Ms White wished to raise the price charged to Fine Peace, but it appears that the increased prices were eventually not charged (although the discussion on this point was very unclear).

358. On 11 April 2006 Fine Peace asked Ms White at 12:31 pm if she had any Intel P4 Z9 CPUs to offer. At 14:18 pm Ms White confirmed that the appellant could offer

21 boxes of Intel P4 Z9 CPUs. One minute later she confirmed the price as being £84.50 per box. A few minutes later there was a discussion about the price, with Fine Peace apparently attempting to negotiate a lower price but Ms White insisted on the original offered price. At 14:28 pm Fine Peace accepted the original price offered.

359. On 17 May 2006 at 11:17am Fine Peace requested 30 boxes of Intel P4 Z9 CPUs. At 11:24am Ms White was offering 29 boxes of Intel P4 Z9s to Fine Peace at £82.50 per unit. At 11: 29am Fine Peace confirmed its order for the 29 boxes. There was apparently no negotiation on price, at least nothing recorded in the MSN messages. It seems to us that this exchange of messages represented May deal 7.

360. On 24 April 2006 Fine Peace stated that it had customers looking for memory items and Ms White said that she would see what was available and at what price. She also indicated that she was away on holiday the following week and that Mrs Johnson would then be involved in trading.

361. The MSN records of Mrs Johnson's conversations with Fine Peace appear, although we are not wholly certain, to commence on or around 26 April 2006. On that date Mrs Johnson faxes to Fine Peace details of the stock for which the appellant was waiting for certain confirmations. This appears to be a resumption of the conversation between Sophia at Fine Peace and Ms White on 24 April concerning memory items.

362. Mrs Johnson quotes a price of approximately £371,900 for all the items on 26 April 2006 and states that she cannot split the items and they are offered as a single package. Later on 26 April 2006 Mrs Johnson, when asked by Fine Peace whether the goods were on hand with the appellant, replied that they "will be in the UK in the morning" clearly indicating that she was aware that the goods were being imported into the UK.

363. On 27 April 2006 there was a further discussion as to whether it was possible to separate the goods and Mrs Johnson indicated that the appellant could not separate them.

364. There followed a delay until 5 May 2006 when Mrs Johnson confirmed to Fine Peace that "the stock is now physical in points" (which we assume was a reference to Point of Logistics). Mrs Johnson then referred to a stock offer being faxed to Fine Peace later that day. There was then a further discussion on price with Fine Peace seeking, on Friday 5 May 2006, a better price. Eventually, Fine Peace asked, if the memory items had to be priced at £226,500, whether the Light Stream 500 could be reduced by £500. Mrs Johnson said that she needed to contact her director [Mr Lonergan] in Hawaii to confirm the price. On Monday, 8 May 2006, Mrs Johnson confirmed that she had had the requisite confirmation from "our director" and the terms of the deal were finalised. It appears this deal represented all or some of May deals 1 to 6.

365. The messages exchanged by Mrs Johnson are notable for three points. First, as already noted above, they indicate that she was in contact with Mr Lonergan to

confirm the prices or the division of the prices between different goods. Secondly, there was some limited negotiation on price. Thirdly, Mrs Johnson was aware that the goods were being imported into the UK only for them to be exported almost immediately to Fine Peace in Hong Kong.

366. Overall, we are hesitant about drawing too many firm conclusions from the MSN messages exchanged by Ms White and Mrs Johnson. First, the discussion of these messages at the hearing was very limited. Secondly, the messages are in very truncated form and, as noted, part of the narrative on the right-hand margin of the page is missing. Thirdly, it is apparent from the text of the narratives that telephone calls and e-mails were also being sent and, therefore, the MSN messages represent only part of the communications between the parties.

367. That said, the MSN messages do not evidence the haggling in relation to price which each of the appellant's witnesses maintained took place. It is true that there was some negotiation, for example, in relation to May deals 1-6 but this seemed very limited in nature. Moreover, the commencement of dealing with Fine Peace on 9 March 2006 appeared to leave scant time available for consideration of Fine Peace's due diligence materials. Finally, Mr Lonergan was plainly involved in discussions relating to May deals 1-6.

Reliability of Mr Lonergan's evidence

368. As indicated above, there are number of instances in which we have felt unable to accept Mr Lonergan's evidence. For example, in his closing statement Mr Lonergan tried to distance himself from the management of the appellant's business during April and May 2006, contradicting his witness statement and the evidence of Ms White and Mrs Johnson. Although his attempt to so distance himself came in his closing statement rather than in his evidence, we considered that this cast significant doubt on Mr Lonergan's credibility.

369. Moreover, in relation to the warning letter sent by HMRC and 23 February 2006, we considered Mr Lonergan's responses to be evasive and untruthful.

370. Mr Lonergan's explanation as to why on some deals had been made in such quick succession seemed to us implausible and the manner in which it was delivered reinforced this implausibility.

371. We therefore have considerable reservations about the credibility of Mr Lonergan as a witness.

Our conclusions on knowledge and means of knowledge

372. We have decided that the appellant knew or, alternatively, should have known that its appealed transactions in April and May 2006 were connected to the fraudulent evasion of VAT.

373. We have considered all the circumstances, in combination rather than in isolation, in reaching our conclusion that the appellant knew that its transactions were connected with fraud. We have also borne in mind the guidance of Christopher Clarke J in *Red 12*, quoted above. We have also borne in mind that the appellant's relationship with HMRC in 2005 and earlier periods was generally that of a compliant trader. We have reached our conclusion for the following reasons, which should also be understood in combination and not in isolation:

(1) the appellant was well aware of MTIC fraud and how that fraud operated. This, of course, does not indicate that the appellant had knowledge that its transactions were connected to fraud but it is part of the factual matrix against which other matters must be judged.

(2) The appellant's due diligence was manifestly inadequate. Much of the due diligence material was essentially formal documents e.g. VAT registration certificates, certificates of incorporation, location and financial details, verification of the VAT numbers, copies of passports and utility bills. These would provide very limited useful information to the appellant regarding the integrity and trustworthiness of its trading partners. It was hard to avoid the conclusion that the appellant was simply going through the motions of due diligence rather than taking substantive care that it was doing business with suitable trading partners such that the integrity of its supply chain could be demonstrated.

(3) The Equifax reports obtained by the appellant did contain some useful information on the appellant's trading partners but none of the matters of concern raised by those reports appear to have been followed up. Due diligence is not simply about obtaining information but also about taking appropriate actions in the light of the information obtained. A number of the trading partners of the appellant in the periods under appeal were recent relationships e.g. Silvereef, Trade Smart and Fine Peace where minimal due diligence was carried out.

(4) In addition, a significant proportion of due diligence materials were obtained after the deals in question had been entered into and, therefore, can have provided the appellant with no assistance in deciding whether to trade with the particular trading partner.

(5) There is a significant degree of repetition in the trading partners with whom the appellant dealt in the periods under appeal. Consistent dealing with longstanding trading partners is, of course, a normal feature of business, but such repetitious dealing both as regards supplier and customer (eg Goldex and TAG) as is evident from the appellant’s transactions is not normal. For example, in every case where the appellant bought mobile telephones from Goldex, it sold to TAG. In every case, with the exception of April deal 5, where the appellant sold CPUs or computer components/software to Fine Peace it bought from Trans Global Traders. Similarly, where mobile telephones were sold to Symbolix, they were repeatedly acquired from either Cell Trading or Sound Solutions (and on one occasion from Trade Smart). The market in mobile telephones and computer components was, on the appellant's evidence, a

fast-moving and competitive market. We do not consider that such repetition was consistent with arm's length genuine trading. We did not accept the suggestion from Mrs Johnson that, in Mr Lonergan's absence, they traded with trading partners with whom Mr Lonergan had known or spoken to for a long period of time. That was plainly untrue in the case of Trade Smart, Silvereef and Fine Peace.

(6) The mark-ups in relation to the goods being traded also suggested to us that the transaction chains were contrived. As regards the appellant, however, the fact that, in every transaction with Goldex, Goldex was left with the same mark-up regardless of the type or quantity of mobile telephones concerned strongly indicated to us that the transactions with Goldex were not genuine commercial transactions. It is simply too much of a coincidence to believe that every time the appellant negotiated a transaction with Goldex for a consignment of mobile telephones (and the appellant's evidence was that they bargained on price) the price eventually struck was, unbeknown to the appellant, one which gave Goldex the same per unit mark-up as every other transaction with Goldex. We did not accept the evidence of the appellant's witnesses that they bargained on price with Goldex – the objective facts clearly contradict this. The appellant's transactions with Goldex were, in our view, contrived and the appellant was aware that they were contrived. They did not constitute genuine commercial trading but, rather, were a parody of commercial trading.

(7) In the other 8 mobile telephone deals there was, again, a high degree of consistency in the mark-up made by the appellant's supplier. In those 8 chains, the appellant's supplier achieved a per unit mark-up of 50 pence in six deals and £1 in the remaining two deals. This, again, indicated that the transactions were contrived and that the appellant knew this.

(8) The appellant, on the other hand, made a significantly higher mark-up (of between 2.98% and 7%) than the brokers. In a market where traders regularly advertised and contacted each other via the IPT (or equivalent) website there was no good reason why the appellant's customers would repeatedly buy from the appellant rather than source the goods (more cheaply) from suppliers higher up the chain. It never appears to have occurred to the appellant to ask itself why TAG and Fine Peace, for example, repeatedly bought from the appellant rather than from its supplier who advertised on the IPT (or the equivalent) website. The reason, we consider, why it did not ask itself the appropriate question is because the appellant was aware that its transactions were not genuine commercial transactions.

(9) The FCIB evidence of Mr Ruler, supported by the evidence of Mr Letherby, made it plain that in all of the deals that he examined the funds moved in a circle from one party to another. We considered that Mr Ruler's sample was reasonably representative. We consider, for the reasons given above, that such circularity was not accidental but, rather, indicated that those deal chains were contrived. We also infer, again for the reasons given above, that it was more probable than not that the appellant was aware of that contrivance. It seemed to us unlikely that those organising the circular flow of funds would risk

the inclusion of an outside party who was unaware of which supplier it had to buy from and to which customer it had to sell.

(10) The evidence of Mr Perkins and Mr Letherby in relation to IP addresses clearly indicated that the deal chains were contrived, although it did not point to collusion on the part of the appellant.

(11) The speed with which, in some deals, funds moved around the circle also suggested a considerable degree of coordination. In those deals where it was possible to ascertain the times at which the parties logged in to their FCIB accounts it was plain that each party in the chain was expecting a payment to arrive and immediately made the onward payment. It is true that often, in ordinary trading, when a customer pays its supplier it may notify the supplier that payment is on its way. But the speed with which some of these payments went round the circle suggests coordination rather than old-fashioned courtesy.

(12) The fact that (disregarding April deal 6, for the reasons given above) the payments in the transactions examined by Mr Ruler resulted in a neutral overall effect in terms of "profits" and "losses" strongly suggested to us that the payments in the deal chains were contrived. Moreover, it is hard to envisage circumstances in which this neutral result could have occurred without the knowing participation of the appellant. Mr Lonergan suggested that the payments made by the appellant may have been topped up from other (non-FCIB) bank accounts. There was no evidence to this effect. Whilst not sufficient on its own to indicate knowledge on the part of the appellant, we considered that the neutral overall effect of the payments was consistent with the appellant knowing that its transactions were contrived.

(13) Every transaction (with very few exceptions) was a back-to-back deal i.e. the parties sold the same quantity that they had bought. None of the goods was faulty, none of the goods was left unsold and none of the goods was sold at a loss (certainly not by the appellant, although in some instances buffer traders made no profit). In combination this seems to us most unusual and unlikely to occur in genuine arm's-length commercial trading. To be clear, back-to-back trading does not of itself indicate non-commercial trading, but when viewed in the context of the other facts of the case seems to us more consistent with contrived rather than genuine arm’s length transactions.

(14) The description of the goods on the invoices and purchase orders relating to the appellant's purchases and sales in relation to mobile telephones were vague and unspecific. Usually, the appellant's invoices and purchase orders simply specified the model and the quantity. These were transactions involving many hundreds of thousands (and in some cases millions) of Pounds. It would be expected that in a genuine commercial transaction the goods would have been identified in greater detail e.g. the type of software, keyboard/languages and charger. Some of these details were set out in Goldex's invoices but these details were not contained in the appellant's documentation.

(15) Inspection reports were obtained in relation to CPUs but not in relation to mobile telephones, where a list of 10% of the IMEI numbers was supplied either by the freight forwarder or by the appellant's supplier. It is hard to understand

why such valuable goods such as mobile telephones, in such large quantities, would not be inspected by the appellant.

(16) There were instances where the goods had been released before the appellant had received payment.

(17) The volume of turnover and the size of repayment claims in the period January – May 2006 increased very markedly when compared with earlier periods. There was no obvious reason either for the increase in the volume of trading or in the volume of exports (leading to the repayment claims). This increase corresponded with the timing of the decision in the *Bond House* case.

(18) Every one of the 46 transactions under appeal in April and May 2006 was, as we have concluded above, connected to the fraudulent evasion of VAT. We do not think this is just co-incidence. Each case must, of course, be judged on its own merits, but the observations, already quoted, of Christopher Clarke J in *Red 12* seem particularly apposite in this case:

> " The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. "

374. When all these factors are considered cumulatively, we are left in no doubt that the appellant was aware that its transactions which are the subject of these appeals were connected to the fraudulent evasion of VAT.

375. Our conclusion in the preceding paragraph makes it, strictly, unnecessary for us to consider whether the appellant should have known that its transactions were connected to the fraudulent evasion of VAT. For completeness, however, and in case we were wrong in our primary conclusion that the appellant did know that its transactions were connected to fraud, we also hold that the appellant should have known that its transactions were connected to fraud. We rely on the same reasons which we have given above in relation to actual awareness but in particular draw attention to paragraph 354 subparagraphs (1), (2), (3), (4), (5), (8), (11), (13), (14), (15), (16), (17) and (18).

Conclusion

376. For the reasons given above, we have concluded that all of the appellant's appealed deals in April and May 2006 were connected to the fraudulent evasion of VAT. Further, for the reasons also given above, we have concluded that the appellant knew or should have known that its deals were connected to the fraudulent evasion of VAT. We dismiss these appeals.

Costs

377. On 19 January 2010 the tribunal directed that Rule 29 of the VAT Tribunal Rules 1986 should apply to these appeals. In their statement of case dated 16 August 2012, HMRC reserved their position as to costs. Accordingly, if HMRC wish to apply for costs, an application in the normal manner must be made, in which event the matter shall be determined (in default of agreement) by a costs judge.

Appeal

378. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

GUY BRANNAN
TRIBUNAL JUDGE

RELEASE DATE: 6 February 2013