



TC03672

Appeal number: MAN/2007/01253

VALUE ADDED TAX- – MTIC-sale of mobile phones and CPUs – D S Bahia, managing director, and his witness Mr Ranjit Singh the company secretary failed to appear- Mr Bahia on the grounds of ill-health and Mr Singh because he no longer worked for the appellant- Mr Bahia appealed the appellant's two repayment claims for the periods 04/06, and 06/06 in the sums of £2,552,542.88 and £7,300,683.47 respectively-repayment refused on the basis that the appellants knew or ought to have known that the transactions were part of an MTIC fraud–appeal dismissed with costs.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

@TOMIC LIMITED

Appellants

- and –

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

Respondents

**TRIBUNAL: JUDGE DAVID S PORTER
MRS RAYNA DEAN**

Sitting in public at Alexandra House, Manchester on 13, 14, 15, 16, and 17 January 2014.

**Mr Robert Holland, a solicitor with Dass solicitors, appeared for the Appellants.
Mr Richard Chapman, of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Respondents**

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DECISION

1. Mr Harpal Singh Bahia (Mr Bahia), Managing Director of @tomic Limited (@tomic), appeals on behalf of @tomic against the decisions of the Respondents (HMRC) contained in two letters: the first dated 1 October 2007 in relation to the denial of input tax of £3,650,675 for the period 04/06; and the second dated 17 December 2008 in relation to the denial of input tax of £7,300,683.57 for the period 06/06. Mr Bahia says that he neither knew nor ought to have known on behalf of @tomic Limited that the transactions in which it was involved were connected with fraud. Nor does he accept that some of the trades arose from defaulting traders. HMRC say that, in light of @tomic's poor due diligence and the fact that many of the transactions were connected with fraud, Mr Bahia must have known, or ought to have known, on behalf of @tomic, that the transactions were connected with fraud.

2. Mr Richard Chapman (Mr Chapman), of counsel, appeared for HMRC and produced 41 bundles of evidence consisting principally of the workings of the officers from HMRC. He called the following witnesses who gave evidence under oath:-

- Joseph Baines (Mr Baines) is a member of the Missing Trader Intra Community (MTIC) Fraud team based in Birmingham and the local officer dealing with @tomic. He had taken over the case from Officer Griffiths.
- Peter Harold Davies (Mr Davies) is a Higher Officer in the MTIC fraud team at Euston Tower, London who gave evidence with regard to Anfell Trader's Limited, a defaulter.
- Stephen Sharrock (Mr Sharrock), is an officer in the MTIC team at Wigan, who gave evidence with regard to Focus Trading Limited, a defaulter.
- Vivien Barbara Parsons (Ms Parsons) is a Higher Officer working with the MTIC team in Salford, who gave evidence with regard to AAA Multilink Limited, a defaulter.
- Malcolm David Orr (Mr Orr) is a Higher Officer and from July 2005 to July 2008 he was part of the Washington MTIC team, who gave evidence with regard to Teknic Ltd.
- John Michele Christopher Cordwell (Mr Cordwell) is a Higher Officer from the National Compliance team with responsibility for MTIC based in London, who gave evidence with regard to World of Power, a defaulter.
- Pankaj Mandalia (Mr Mandalia) a Higher Officer working on the MTIC team at Wembley, London, gave evidence with regard to Apollo Communication Centre Limited.
- Nigel Ward (Mr Ward) is an officer employed in Specialist Investigations directorate as a member of the MTIC fraud team responsible for investigating the contents of the accounts at the First Curacao International Bank (FCIB), Curacao. Netherlands Antilles, who gave evidence as to @tomic's transactions through the FCIB.

Mr Robert Holland (Mr Holland), a solicitor with Dass Solicitors, appeared for @tomic but Mr Bahia and Mr Ranjit Singh (Mr Singh) @tomic's principal witnesses did not attend the hearing. Mr Bahia failed to attend due to ill-health and Mr Holland failed to produce a medical certificate providing details of Mr Bahia's condition. Mr Singh failed to attend because he was no longer working for @tomic and he was therefore unwilling to appear.

3. We were referred to the following cases:

Axel Kittel and another v Belgium [C-439/04]

Mahageben / Peter David C-80/11 and C-142/11 [2012]

Optigen Limited & Others C-354/03, C-355/03 and C-484/03

Toth C-324/11

Stoy case reference C-642/11

LVK case reference C-643/11

BLP Group Plc v Customs and Excise Commissioners [1996] 1WLR 174

Mobilx Ltd (in administration) v HMRC [2010] EWCA Civ 517

Livewire Telecom Ltd; and another v HMRC [2009] EWHC 15 (Ch)

Robert Gordon's College v Customs and Excise Commissioners [1996] 1 WLR 2001

Blue Sphere Global Ltd v HMRC [2009] EWHC 1150 Ch,STC 2239

Red 12 Trading Ltd v HMRC [2009] EWHC 2563 (CH)

Commissioners of Customs and Excise v Thorn Material Supply Limited and Thorn Resources Limited [1998] UKHL 23 [1998] 3 AET 342

Calltel Telecom Ltd; and another v HMRC [2009] EWHC 1081 (Ch)

Megtian Ltd (In Administration) v Revenue and Customs Commissioners [2010] EWHC 18 (CH)

The Commissioners for Her Majesty's Revenue and Customs v Brayfal Limited
FTC/53/2010

POWA (Jersey) Ltd v HMRC [2012] UKUT 50 TCC

POWA (Jersey) Ltd v HMRC [2013] EWCA Civ 225 (transcript)

Fonecomp Ltd v HMRC [2013] UKUT 599 (TCC)

Tarlo Worldwide Ltd v Revenue and Customs Commissioners [2012] UKFTT 85 (TC)
(Decision)

Abbey (Manchester) Limited v HMRC [2011] UKFTT 90 (TC) (Decision)

Pars Technology LTD v HMRC [2011] FTT 9 (TC) (Decision)

GSM Export (UK) Limited and Sprint Cellular Division Limited v HMRC [2012]
UKFTT 744 (TC)

Abbot International Trading Ltd v HMRC [2013] UKFTT 504 (TC)

Re B (Children) (Care Proceedings Standard of Proof) (CAFCASS intervening) [2008] UKHL 25 [2009] 1AC

Softhouse Consulting Limited v HMRC UKUT PTA/333/2013

H T Purser Limited v The Commissioners for Her Majesty's revenue and Customs TC01694

Edgeskill Limited v The Commissioners for Her Majesty's Revenue and Customs FTC/16/2012

Preliminary issues

4. Mr Chapman applied on behalf of HMRC for leave to file and serve the following documents:

- (1) Two lots of freight forwarder allocation and release notes
- (2) The witness statement of Officer Marva Harry.

On the following grounds:

5. In HMRC's opening submissions, the Tribunal's attention was drawn to the fact that HMRC's argument regarding the defaulting trader Teknic Limited was that, on the balance of probabilities, it was connected to the contra-trader Primeline (and from there to @tomic)

6. The documents set out above consist of freight forwarder allocation and release notes that demonstrate that Teknic was acquiring goods from the European Union and releasing them to United Kingdom companies.

7. Mr Holland objected to the introduction of further evidence on the basis that HMRC had been required to produce all their evidence many months before the hearing. It had had adequate time to produce the documentation which it wished to introduce to-day. If the documentation was allowed to be produced he would need to consider it and its relationship to the evidence given by Mr Bahia. He referred us to the case of *H T Purser Limited* in which Judge Cornwell-Kelly stated at paragraph 8:

“... the object of the tribunal in imposing deadlines for the submission of evidence, namely the need in the interests of procedural fairness, (is) to give each party a proper chance to examine and consider the evidence put forward and to take such steps as they chose to contest it... In our assessment of the matter, pressure should not be put on the appellant to make rapid decisions in this way“

We agree with Judge Cornwell-Kelly and we refuse the application on the basis that HMRC have had adequate time to provide such evidence and having failed to do so are now too late. Mr Chapman indicated that as a result of that decision he would not pursue his other applications.

Mr Holland explained that Mr Bahia had been ill for some time and would not be able to attend the hearing. Mr Bahia had been seeing Dr Roger Howells, a consulting psychiatrist in London, for depression. Judge Porter asked Mr Holland to obtain a medical certificate confirming Mr Bahia's state of health and why he was not fit to attend. Judge Porter indicated

that he would expect the certificate some time during the course of the hearing. No such certificate has been forthcoming. Mr Ranjit Singh would not be attending either as he was no longer working for @tomic.

8. At the end of the hearing Judge Porter gave directions with regard to the submission of written submissions for the Tribunal and the parties. Mr Chapman submitted HMRC's written closing submissions on 31 January 2014 as required by the directions. Mr Holland had advised that he was no longer instructed for @tomic and that he would not be submitting any written closing submissions which were to have been submitted by 14 February 2014. The Tribunal has therefore had to rely on his skeleton argument and the evidence available from the hearing.

9. Most readers of this decision will be familiar with the way in which Missing Trader Fraud operates. Christopher Clarke J has helpfully explained the position of the "classic way" that MTIC fraud works in *Red 12 Trading Limited v HMRC* at paragraph 2:-

"2... Trader A imports goods, commonly computer chips and mobile phones, into the United Kingdom from the European Union (EU). Such importation does not require the importer to pay VAT on the goods. A then sells the goods to B, charging VAT on the transaction. B pays the VAT to A, for which A is bound to account to HMRC. There is then a series of sales from B to C to E (to more). These sales are accounted for in the ordinary way. Thus C will pay B an amount which includes VAT. B will account to HMRC for the VAT it has recovered from C, but will claim to deduct (as an input tax) the output tax that A has charged B. The same will happen, mutatis mutandis, as between C and D. The company at the end of the chain E will then export the goods to a purchaser in the EU. Exports are zero rated for tax purposes, so that trader E will receive no VAT. He will have paid input tax but because the goods have been exported he is entitled to claim it back from HMRC. The chain in question might be quite long. The deals giving rise to them may be affected within a single day. Often none of the traders themselves take delivery of the goods which are held by a freight forwarders.

[3,4---]

5. A jargon has developed to describe the participants in the fraud. The importer is known as "the defaulter". The intermediate traders between the defaulter and the exporter are known as "buffers" because they serve to hide the link between the importer and exporter, and are often numbered buffer1, buffer 2 etc. The company which exports the goods is known as "the broker".

As to the common variant of contra-trading, this is summarised in paragraph 7 as follows:-

"7... Goods are sold in a chain ("the dirty chain") through one or more buffer companies to (in the end) the Broker ("Broker 1") which exports them, thus generating a claim for repayment. Broker 1 then acquires (actually or purportedly) goods, not necessarily of the same type, but of equivalent value from an EU trader and sells them, usually through one or more buffer companies, to Broker 2 in the United Kingdom for a mark-up. The effect is that Broker 1 has no claim for repayment of input VAT on the sale to it in the dirty chain, because any such claim is matched by the VAT accountable to HMRC in respect of the sale to

Broker 2. On the contrary a small sum may be due from Broker 1 to HMRC. The suspicions of HMRC are, by this means, hopefully not aroused. Broker 2 then exports the goods and claims back the total VAT. The overall effect is the same as in the classic version of the fraud; but the exercise has the effect that the party claiming the repayment is not Broker 1 but Broker 2, who is, apparently, part of a chain without a missing trader (“the clean chain”) Broker 2 is party to the fraud.”

10. The case law *Mobilx Ltd (in administration); and others*, which provided that an exporter will not be innocent if he knew or ought to have known that his transaction was connected with the fraudulent avoidance of tax.

11. Mr Stone, in his witness statement provided to the Tribunal, states that carousel fraud was rife from 2003 up to 2007, when the reverse charge was introduced. Any loss to the exchequer only occurs when the input tax is refunded on a repayment claim. HMRC had been repaying substantial sums of money, in many cases well in excess of £10,000,000. The total loss to HMRC during those years amounted to in excess of £15 billion. It appears that many of the frauds have been financed by third parties outside of the various transaction chains. In evidence, he stated that the difference between ‘an acquisition fraud’ and ‘a carousel fraud’ is that in the former the goods end up with a domestic consumer, a trader retaining the VAT and in the latter the fraud is a financial fraud as the goods and the money are circulated and recycled for the purposes of being reused in the fraud and do not reach an end consumer. The loss crystallises when HMRC make the repayment. He also confirmed that, in the main, in most of the MTIC cases to date it is the dispatcher, in the Companies’ position, which has its VAT repayment refused. No cases have been taken forward under the ‘joint and several’ liability. He confirmed that the implementation of the ‘reverse charge’ has removed the fraud from the United Kingdom.

12. We think it would be helpful to set out how the money flows in MTIC schemes. Mr Stone has stated that an MTIC ‘carousel’ fraud is a financial fraud and is an abuse of the VAT system that results in the fraudulent extraction of revenue from the United Kingdom Treasury. He further states in his witness statement that the fraud predominantly involved computer chips and mobile phones. The finance for the deals is often provided from an outside source and is introduced to the chain when the Broker is paid by his European customer. It then cascades down the chains, each trader withdrawing their agreed profit and paying their appropriate amount of VAT. That VAT is often very small (apart from the Brokers repayment claim) because the intermediate Buffers can set off their input tax against their output tax. The money is then returned to the original funder.

13. The participants in the chain are all seen to make a small profit. Mr Stone has indicated that this amounts to 3% of the sale price for the intermediary Buffers and 6% of the sale price for the Brokers, who take the risk of not receiving a repayment. Apart from the defaulter, who ostensibly purchases the goods from Europe, each of the traders thereafter makes appropriate VAT payments to the Revenue. However, they do not necessarily pay each other the correct amounts, either under the apparent contracts, or of VAT. The participants are required, if the transactions are fraudulent, to make an initial contribution to the scheme. As Mr Bahia has had to in this appeal. In the example below, only half the VAT liability due to their supplier has been paid, so that the participants carry some of the risk and thereby reduce the risk of the fraudsters not receiving the VAT. When the repayment is obtained by the Broker, he will have sufficient money to repay the

VAT he was required to introduce, receive his profit and to pay his outstanding VAT liability to his supplier or in the alternative, the loan he has taken to pay the VAT. That supplier will then be in a position to pay his outstanding VAT to the defaulter, who will then receive all the VAT he should have paid to HMRC, but which he intends to keep, less the contribution to the profits and VAT down the chain. A variation on the theme is for the VAT to be introduced as a loan in addition to the initial money being provided. As a result the loan is effectively repaid when the VAT loaned is returned to the person who made the loan. This may well explain why the loans are not pursued once the repayment has been refused. The vast majority of these transactions were handled by the FCIB in sterling although the participants were, in part, European. The transactions are dealt with in sterling because the United Kingdom VAT repayments are made to the Brokers in sterling. It appears from the unique numbering of each transaction in the FCIB that the cash transfers are affected in a very short time. The shortness of the time suggests that the payments are orchestrated by the fraudsters, as it is unlikely that the several traders in a chain would be available at their computer consoles to make the payments in the time scales suggested. The outsider, who financed the transaction from the beginning, is presumably repaid his original investment and the loan (if any) plus any agreed interest or charges.

14. Example

The participants are “E” the customer in Europe.

“D” the broker, who will seek the repayment from HMRC and who sells the goods to “E”

“C” a buffer who sells the goods to “D” having purchased them from “B” and who pays the net VAT to HMRC.

“B” the defaulter, who purchases the goods from Europe and charges VAT on the sale to “C”, but does not account for the VAT to HMRC.

“A” the trader in Europe sells the goods to “B” in the United Kingdom (the defaulter) and receives the money back from “B” which he or the fraudsters introduced into the chain in the first place.

15. Many of these transactions took place through the FCIB which was based in the Dutch Antilles, it appears to have been the bank of preference and has since been closed down by the Dutch Authorities. All the money appears to take a significantly short time to pass through the account, so that the initial payment, in the example £1,124,544 is only at risk for a brief period. It would appear that the account may well be manipulated by one person as all the accounts appear to be internet accounts prefaced by the number 801, which can be accessed by an agreed password. The example below indicates the way in which the fraud is constructed, but it does not represent any of the deals in the chains the subject of this appeal.

A (in the EU) sells the goods to B (the Defaulter) for	<u>£1,000,000</u>
B sells the goods to C (the Buffer) with a profit of 3 % for	£1,030,000
plus VAT on £1,030,000 at 17.5 %	<u>£ 180,250</u>
	£1,210,250
C sells the goods to D (the Broker) with a profit of 3% for	£1,060,900

Plus VAT on £1,060,900 at 17.5%	<u>£ 185,657</u>
	£1,246,557
D sells the goods to E (in the EU) with a profit of 6% (but without VAT) for	<u>£1,124,554</u>
As a result:	
E pays the full price to D (being the money introduced by the fraudsters)	<u>£1,124,554</u>
D has to introduce some of his own funds to pay C amounting to £122,003 (i.e. £1,246,557 - £1,124,554) to pay the VAT to C *	<u>£1,246,557</u>
On receipt of the VAT refund of £185,657 D can then	
Repay the funds introduced	£122,003
and take his 6% profit	£ 63,654
C then pays B	<u>£1,210,250</u>
and pays HMRC VAT of (£185,657 -£180,250)	£ 5,407
and take his 3% profit	£ 30,900
B then pays A	<u>£1,000,000</u>
keeps his 3% profit	£ 30,000
and defaults on the VAT of	£180,250

149. If D does not have any funds to introduce then he may part pay the amount owing to C and pay the balance when the VAT refund is obtained.

16. The money introduced by the third party can take various forms. It can fund the entire transactions, so that all the VAT to be reclaimed is included in the first payment by the European Buyer, even though no VAT is payable by that Buyer. Some, or all, of the necessary funds can be lent to the Broker, selling to the buyer in Europe, by one of the traders in the deal chains or a third party involved in the scheme. When the repayment is made the broker repays the loan, which represents the VAT needed to make the deals look commercial. It would seem that the VAT introduced as a loan is returned to the fraudsters as in most of these cases the lenders do not insist on the repayment of their loans. This must arise because they have already received the money back. Much of the original monies in an MTIC fraud are introduced by a third party. So long as that party is participating in the fraud, in one way or another, it is inconsequential how the money is introduced, because all his money will be repaid to the introducer as the trading occurs. The repayment represents all, or a proportion of, the VAT, which the defaulter intends to keep. As Mr Stone identified, it is not until the repayment is made that the fraud is completed and that HMRC lose the VAT. As these are financial frauds, once the financial shape of the deals has been worked out, it is simple to design the deal sheets and to confuse HMRC by a random payment of the various amounts due since the fraudsters know how much is due to each deal.

17. HMRC identified a counter measure introduced by the fraudsters in July 2005 and as a result HMRC introduced a more robust verification system. In a contra-trade the fraudsters, instead of making repayment claims in excess of £10,000,000, inserted another chain (an apparent ‘clean chain’), and the Broker appears in the new chain as well as the dirty chain. In that way the Broker was able to set off its VAT liability as described by Mr Justice Clarke above. This case relates to @tomics deals for the period 04/06 and 06/06. Mr Bahia does not accept that @tomic was aware, nor could it have been aware of any fraud in relation to the transactions with Primeline as the deals in the Primeline chain were clean, Primeline being a contra-trader. We have not considered the other defaulter chains in detail other than to satisfy ourselves that the losses have arisen as agreed by the parties.

The Legislation.

18. In view of the decision in *Mobilx Ltd (in administration)* we think it would be helpful, before considering the evidence, to identify the law as we understand it. The right to deduct is contained in sections 24 -29 of the Value Added Tax Act 1994 (the Act). Section 25 requires such a person to account for and pay any VAT on the supplies of goods and services which he makes and entitles him to a credit of so much of his input tax as is allowable under s 26: see s 25(2). Section 26 gives effect to what is now Article 168 of EC Council Directive 2006/112 (the VAT Directive) and allows the taxable person credit in each accounting period for so much of the input tax for that period as is attributable to supplies made by the taxable person in the course or furtherance of his business: see s 26(2).

19. These provisions are in mandatory terms. If a trader has incurred input tax, which is properly allowable, he is entitled, as of right, to set it against his output tax liability or to receive a repayment if the input tax credit due to him exceeds that liability. He is required to hold evidence to support his claim (see article 18 of the Sixth Directive and regulation 29(2) of the Value Added Tax Regulations 1995 (SI 1995/2518). As a result, the right to deduct or the right to a repayment is absolute, and no element of discretion is conferred on the tax authority, save that the authority may accept less evidence than normally required; it has no right to demand more evidence than that prescribed by article 18. The right is also immediate, that is it may be exercised “when the deductible tax becomes chargeable”. The only limitation is the practical one that, although deductibility is determined on a transaction by transaction basis, the mechanical process of deduction or repayment is affected by reference to prescribed accounting periods.

The Case law

20. The case law has developed from *Optigen Ltd* where it was decided that a repayment must be made to a trader, who is innocent of the fraud, even though the transaction did not amount to an economic activity, through *Axel Kittel and another* which extended the concept of knowledge to include a trader, who ought to have known that there was a fraud, to *Mobilx Ltd (in administration)*, which refers to the various cases and has refined the concept of knowledge and the evidence required to prove it. In light of that decision, we do not think it is necessary to trace the development of the concept through all of the cases we have been referred to, but rather to refer to Lord Justice Moses’ observations in the Court of Appeal. Moses LJ stated;

“...The scope of VAT, the transactions to which it applies, and the persons liable to the tax are all defined according to objective criteria of uniform application. The application of those objective criteria are essential to achieve[Ⓢ]see *Kittel* para 42, citing *BLP Group* [1995] ECRI/983 para 24) the objectives of the common system of VAT of ensuring legal certainty and facilitating the measures necessary for the application of VAT by having regard, save in exceptional circumstances, to the objective character of the transaction concerned.” [Paragraph 24]

“In *Kittel* after §55 the Court developed its established principles in relation to fraudulent evasion. It extended the principle, that the objective criteria are not met where tax is evaded, beyond evasion by the taxable person himself to the position of those who knew or should have known that by their purchase they were taking part in a transaction connected with fraudulent evasion of VAT... It extended the category of participants who fall outwith the objective criteria to those who knew or should have known of the connection between their purchase and fraudulent evasion. *Kittel* did represent a development of the law, because it enlarged the category of participants to those who themselves had no intention of committing fraud, but who, by virtue of the fact that they knew or should have known that the transaction was connected with fraud, were to be treated as participants. Once such traders were treated as participants their transactions did not meet the objective criteria determining the scope of the right to deduct...”[paragraph 41]

“A person who has no intention of undertaking an economic activity, but pretends to do so in order to make off with the tax he has received on making a supply, either by disappearing or hijacking a taxable person’s VAT identity, does not meet the objective criteria which form the basis of those concepts which limit the scope of VAT and the right to deduct (see *Halifax* § 59 and *Kittel* § 53). 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, equally, fails to meet the objective criteria which determine the scope of the right to deduct”; [paragraph 43].

21. The European Court of Justice in *Optigen Ltd* has made it clear that a trader can recover his output tax even though the transaction is outside the VAT scheme. Both *Kittel* and *Mobilx* confirm that where a trader meets the objective criteria for compliance with the VAT regime, it is not open to the Authorities to withhold any tax repayment. If, however, a trader does not comply with the objective criteria, because there is a fraud, that trader cannot recover any tax. *Moses LJ* at paragraph 30 states:

30. “The Court (The European Court of Justice when considering *Optigen*) rejected the United Kingdom’s argument that unlawful transactions fell outside the scope of VAT. Fiscal neutrality prohibits the distinction between lawful and unlawful transactions; such a distinction must be restricted to transactions concerning products which by their very nature may not be marketed, such as narcotic drugs and counterfeit currency (see paragraphs 49 and the Advocate General’s Opinion paragraph 40). By its rejection of the United Kingdom argument, the Court made it clear that the reason why the fraud vitiates a transaction is not because it

makes the transaction unlawful but rather because where a person commits fraud he will not be able to establish that the objective criteria, which determine the scope of VAT and the right to deduct, have been met.”

And at paragraph 52:

52. “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. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in Kittel. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises”;

22. As the Advocate General stated at paragraph 40:

40. “As becomes clear from the Commissioners own description of what they consider to constitute carousel fraud, its characteristic is that it makes use of lawful economic channels in order to facilitate the retention of money paid as VAT”

At paragraph 59

59. “The test in Kittel 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** (our emphasis) 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. He may properly be regarded as a participant for the reasons explained in Kittel”;

At paragraph 61

61, “A trader who decides to participate in a transaction connected to fraudulent evasion, despite knowledge of that connection, is making an informed choice; he knows where he stands and knows before he enters into the transaction that if found out, he will not be entitled to deduct input tax. The extension of that principle to a taxable person who has the means of knowledge but chooses not to deploy it, similarly, does not infringe that principle. If he has the means of knowledge available and chooses not to deploy it he knows that, if found out, he will not be entitled to deduct. If he chooses to ignore obvious inferences from the facts and circumstances in which he has been trading, he will not be entitled to deduct”;

23. Moses LJ also expressed concern that HMRC have in the past placed too much importance on a traders’ failure to carry out due diligence and not enough on the circumstantial evidence available. At paragraph 75 he stated.

“ 75 The ultimate question is not whether the trader exercised due diligence but rather whether he should have known that the only reasonable explanation for the circumstances in which his transaction took place was that it was connected to fraudulent evasion of VAT.....

24. In contra-trading cases HMRC’s ability to establish a connection between the actual tax losses in the contra-trade to the specific repayment claim in the clean chain is extremely difficult. This is not least because of the timing of the payments, where the Broker, in the clean chain, will be on monthly returns, and the transactions to which that repayment relates, will be some two or three months later, dependent on the accounting dates in the dirty chain. In *Livewire Telecom Ltd* Mr Justice Lewison stated:

Paragraph 102: “In my judgement in a case of alleged contra-trading, where the taxable person claiming repayment of input tax is not himself a dishonest conspirator, there are two potential frauds:

- i) The dishonest failure to account for VAT by the defaulter or missing trader in the dirty chain; and
- ii) The dishonest cover-up of that fraud by the contra-trader.

Thus it must be established that the taxable person knew or should have known of a connection between his own transaction and at least one of these frauds. I do not consider it is necessary that he knew or should have known of a connection between his own transaction and both of those frauds. If he knows or should have known that the contra-trader is engaging in fraudulent conduct and deals with him, he takes the risk of participating in a fraud, the precise details of which he does not and cannot know.”

25. In *Blue Sphere Global Ltd* at paragraph 44 the Chancellor held that:

“44. There is force in the argument of Counsel for BSG but I do not accept it. The nature of any particular necessary connection depends on its context, for example electrical, familial, physical or logical. The relevant context in this case is the scheme for charging and recovering VAT in the member states of the EU. The process of off-setting inputs against outputs in a particular period and accounting for the difference to the relevant revenue authority can connect two or more transactions or chains of transactions in which there is a common party whether or nor the commodity sold is the same. If there is a connection in that sense it matters not which transaction or chain came first. Such a connection is entirely consistent with the dicta in *Optigen* and *Kittel* because such connection does not alter the nature of the individual transactions. Nor does it offend against any principle of legal certainty, fiscal neutrality, proportionality or freedom of movement because, by itself, it has no effect.

45. Given that the clean and dirty chains can be regarded as connected with one another, by the same token the clean chain is connected with the fraudulent evasion of VAT in the dirty chain because, in a case of contra-trading, the right to reclaim enjoyed by C (Infinity) in the dirty chain, which is the counterpart of the obligation of A to account for input tax paid by B, is transferred to E (BSG) in the clean chain. Such a transfer is apt, for the reasons given by the Tribunal in

Olympia to conceal the fraud committed by A in the dirty chain in its failure to account for the input tax received from B.

46. Not all persons involved in either chain, although connected, should be liable for any tax loss. The control mechanism lies in the need for either direct participation in the fraud or sufficient knowledge of it.”

The Chancellor concluded at paragraph 55.

“55 .In my view it is an inescapable consequence of contra-trading that for HMRC to refuse a reclaim by E it must be in a position to prove that C was party to a conspiracy also involving A. Although the fact that C is a party to both the clean chain with E and the dirty chain A constitutes a sufficient connection it is not enough to show that E ought to have known of the fraudulent evasion of VAT involved in the subsequent dirty chain. At the time he entered into the clean chain there was no such dirty chain of which he could have known, nor was the occurrence of such a dirty chain inevitable in the sense of being pre-planned.”

26. We have also been referred to Christopher Clarke J’s comments at paragraph 109 of *Red 12 Trading Ltd* as authority for the proposition that the Tribunal may consider compelling similarities between one transaction and another and that it is not precluded from drawing inferences where appropriate, from a pattern of transactions of which the individual transaction in question forms part. Christopher Clarke J also highlighted the following as important factors in assessing the knowledge or means of knowledge of a trader:

- i. “compelling similarities between one transaction and another”.
- ii. “pattern[s] of transactions”.
- iii. “transactions all of which have identical percentage mark ups...”.
- iv. “...made by a trader who has practically no capital...”.
- v. “...as part of a huge and unexplained turnover...”.
- vi. “... with no left over stock”.
- vii. “ A Tribunal could legitimately think it unlikely that the fact that all 46 transaction in issue can be traced to tax losses to HMRC is a result of innocent coincidence”.

27. Briggs J in *Megtian V HMRC* [2010] EWHC 20 (CH) stated as follows:-

“37. In my judgment, there are likely to be many cases in which a participant in a sophisticated fraud is shown to have actual or blind-eye knowledge that the transaction in which he is participating is connected with that fraud, without knowing, for example, whether his chain is a clean or dirty chain, whether contra-trading is necessarily involved at all, or whether the fraud has at its heart merely a dishonest intention to abscond without paying tax, or that intention plus one or more multifarious means of achieving a cover-up while the absconding takes place.

Similarly, I consider that there are likely to be many cases in which facts about the transaction known to the broker are sufficient to enable it to be said that the broker

ought to have known that his transactions were connected with a tax fraud, without it having to be, or even being possible for it to be, demonstrated precisely which aspect of a sophisticated multifaceted fraud he would have discovered, had he made reasonable enquiries. In my judgment, sophisticated frauds in the real world are not invariably susceptible, as a matter of law, to being carved up onto self-contained boxes even though, on the facts of particular cases, including *Livewire* that may be an appropriate basis for analysis.”

28. In *Mobilx* at paragraph 62 Moses LJ states:

“62. The principle of legal certainty provides no warrant for restricting the connection, which must be established, to a fraudulent evasion which immediately precedes a trader’s purchase. If the circumstances of that purchase are such that a person knows or could know that his purchase is or will be connected with fraudulent evasion, it cannot matter a jot that the evasion precedes or follows the purchase. That trader’s knowledge brings him within the category of participant. He is a participant whatever stage at which the evasion occurs.”

29. It is worth bearing in mind the observation by Judge Colin Bishopp’s in *Calltell Telecom Ltd & Another –v- Revenue and Customs* [207] UKVAT V2066 in the First – tier Tribunal:

“Much will depend on the facts, but an obvious example might be the offer of an easy purchase and sale generating conspicuously generous profit for no evident reason. A trader receiving an offer would be well advised to ask why it had been made; if he did not he would be likely to fail the test set out in paragraph 51 in the judgement of *Kittel*.”

30. The Judges and members in *Softhouse, Fonecomp and Edgeskill Limited* have considered in detail the implication of the Judgements of the CJEU in the joined cases of *Mahageben KFT* (C-80/11) and *Peter David* (C-142/11); *Toth* [2013] STC 185 and *Bonik* [2013] STC 773. We can do no better than to refer the parties to those decisions and we have expanded on them in the decision at paragraph 125. It should be observed that at some points in *Mahageben, Peter David* and *Toth* the Court of Justice referred to connection to VAT fraud committed by a trader ‘ at an earlier stage in the transaction’ or ‘acting earlier in the supply chain’. Elsewhere as ‘was connected with fraud committed by the supplier or that another transaction forming part of the chain of supply prior to or subsequent to that transaction carried out by the taxable person was vitiated by VAT fraud’. Within this jurisdiction, the Court of Appeal in *Mobilx* has authoritatively interpreted the *Kittel* principle as involving this wider approach. It has been suggested that there is no ‘connection’ between the trades in relation to cases which rely on ‘contra trading’ to establish the tax loss. In *Softhouse* Judge Berner stated:

“There is therefore, in my view, nothing in *Mahageben* that can disturb the weight of authority that fraud conducted through a contra-trader can be connected with a taxable person’s transactions such that, if the taxable person knew or should have known of the fraud, the right to deduct VAT may be denied”.

31. We have decided that HMRC has to establish, to the requisite legal standard, the objective evidence which allows the conclusion to be drawn that the taxable person knew, or ought to have known, that the transactions relied on as a basis of the right to deduct are connected with fraud previously committed by the issuer of the invoice or by another

trader acting earlier or subsequently in the chain of supply. The fraud can be ‘previously’ committed in the sense that the necessary preparations have been made to enable the fraud to be brought to fruition at a later date. The appellant’s transaction or transactions must be connected to the earlier chains in such a way that the fraud could not be brought to fruition without the appellant’s participation. As a result of the proposals being put to him, an appellant would know, or ought to know, that **the only reasonable explanation** (our emphasis) for the transactions in which he was involved was that it was connected with fraud. As the right to refuse to deduct is an exemption, it has to be interpreted strictly but it does not need to be specifically expressed by statute.

Standard of Proof

32. These are civil proceedings and, as such, the standard of proof is the ordinary civil standard i.e. on the balance of probabilities. The case of *Reventhi Shah (Administratrix of the Estate of Naresh Shah Deceased) v Kelly Anne Gale; Kelly Anne Gale v Jason Grant, Mark Young, Paul Hilton, Samantha Easton* [2005] EWHC 1087 (QB) (concerning a civil action for unlawful killing) made it quite clear that there is a single civil standard of proof (i.e. on the balance of probabilities) applicable in all civil proceedings regardless of the allegations levied. Lewison J (as he then was) stated:

“In my judgment, it would be wrong to approach this case on any basis other than the balance of probability with appropriate respect paid to the need for cogent evidence to reflect the serious nature of the allegation and the inherent improbability that this 22 year old young lady of good character should involve herself in such conduct as that alleged. I simply do not accept that it is appropriate, as a matter of law, to require a higher standard of proof simply because of the nature of the allegation. If murder, why not allegations of rape or the most serious fraud.”

The facts.

33. In view of Mr Bahia’s and Mr Singh’s failure to attend, we have been obliged to consider the evidence in relation to all the transactions. There have been 60 transactions involving 49 intermediate companies. It is not practical to set out all of the transactions and we have therefore taken a sample of 6, in which we have identified the entire dealings between @tomic, its suppliers and customers. We have noted that the other transactions follow a similar pattern.

Background

34. We have been told that Mr Bahia was originally employed as a cutter at a manufacturer called New Rose Ltd. In or around 2000 he became the owner of the Red Cow Public House, through a company called Dine and Leisure Ltd. That company was dissolved a few years ago when the public house was sold. In or around July 2000, he invested £40,000 in return for a 60% share in a pizza shop trading under the name of Bradley Stoke Ltd which, on that date, was converted to a Perfect Pizza Franchise.

35. In or around May 2002, he invested approximately £47,000 in an online modelling agency called Model Hub Ltd. In or around June 2002, he invested £20,000 for a 25% share in a business called Pizza Mak Ltd, which operated 2 pizza shops under the Perfect Pizza Franchise.

He sold his shares in the business during the period ending 2003-2004. He established Premier Securities Ltd in May 2002, which is involved in the redevelopment of property.

36. @tomic is a private limited company and it was incorporated on 23 December 2000. After its formation, Mr Kuljot Singh and Mrs Eneet Walia were appointed respectively as director and company secretary. Mr Bahia was appointed a director on 20 August 2003. Around that time he bought the company for £3,000 from Mr Singh, who retired as a director. Mrs Walia also retired as the secretary and Mr Baldev Singh Johal was appointed secretary. On 5 September 2003 Mr Sukhwant Singh Bahia, Mr Bahia's cousin, was appointed secretary, but was replaced by Ranjit Singh (Mr Singh) on 19 December 2005.

37. Mr Bahia held directorships in 9 other companies of which The Federation of Technological Industries, Original Deal Limited, @tomics Limited, @tomic Europe Limited, @tomic G B Limited and @tomic UK Limited were six. Original Deal had been set up to exploit an American product produced by Hot Stuff Limited relating to the sale of ready to eat pizzas in convenience stores. The venture had not been successful. @tomic UK Limited traded as a textile wholesaler for a short time, and the other three @tomic companies had been set up to protect the name. Whilst Mr Bahia had substantial business experience he accepted that he had no previous experience in dealing in mobile phones.

38. Mr Kuljot Singh registered @tomic for VAT on 16 October 2000 and stated that its turnover would be £6,785 as IT Consultants. When Mr Bahia purchased the business he indicated that there were two £1 shares issued. Mr Bahia wrote to HMRC on 5 January 2004 indicating that he was the sole director and proprietor of @tomic. He also advised of the change of @tomic's bankers. Mr Sukhwant Singh changed the trade from IT Consultant to "other wholesale" in a letter dated 20 January 2004. In its financial statement for the year ended 28 February 2004, @tomic valued its total assets, less current liabilities, as £913. In a visit by HMRC on 4 March 2004, Mr Bahia had indicated that @tomic's business activity was the wholesale of pizza ovens and mobile phone. In his witness statement he states:

"The classification was changed because we were looking to wholesale pizza ovens. We knew nothing about software or software consulting."

The company had been unsuccessful with regard to the sale of the ovens as it had been unable to compete with Perfect Pizza.

39. @tomic operated from terraced office premises at 52 Newhall Street, Birmingham an area occupied by the professional service sector. In fact @tomic's solicitors, Dass and accountants, Ark Associates Financial Initiative, are both in Newhall Street. There are no warehouse or storage facilities at @tomic's address. Nor does it have any other accommodation. Premises at this address were occupied by Teleos PLC and Alphonics-Tech.Com Limited, both companies operating mobile phone businesses.

40. Mr Bahia confirmed that he had no previous experience trading in mobile phones and although Teleos PLC had been in the same building he denied having received any guidance from it. In any event Teleos PLC had successfully claimed its input tax when its case had come before the tribunal. @tomic was a broker. Accordingly, it did not buy stock speculatively in order to hold the stock. It only purchased stock when it knew that it had a buyer for the stock. It purchased stock with monies paid to it by its customers.

41. @tomic was, during the period under appeal, a member of The Federation of Technological Industries “FTI”. Mr Bahia was appointed a director of FTI on 18 March 2004, less than a month after @tomic’s first trade in mobile phones. He resigned as a director of FTI in November 2004 as a result of his other business commitments. FTI describes itself on its website as:

“a collective body of traders and associated businesses who understand the trading industry and meet the same challenges experienced by the majority”.

@tomic was also a member of International Phone Traders (IPT) from March 2004. As a result @tomic had a full trade entry on IPT’s website together with animated banner advertising.

42. Mr Bahia was also the Company secretary of Sygnet Computing Limited (Sygnet) between 9 May 2002 and 22 February 2006. Sygnet had been an active dealer in mobile phones and between 22 April 2005 and 27 April 2006 it sold 42,750 phones to @tomic and bought 80,490 phones from @tomic. Mr Kuldip Singh Bahia, Mr Bahia’s brother, had worked for @tomic in August 2004. @tomic paid Sygnet £100,000 under an loan agreement dated 22 April 2005. In his witness statement Mr Bahia stated :

“ Kuldip worked for the Company (@tomic between April 2004 and February 2005. During this time, he learned how to source and sell stock. He decided that he wanted to set up by himself. I said that was fine so long as he did not approach the Company’s suppliers/customers. I agreed with Kuldip that he could source stock from the Company’s suppliers so long as he had sourced the suppliers himself while working for the Company. Kuldip would always offer stock to myself and, if I had stock available, I would offer it to Sygnet.”

HMRC gave evidence of loans between @tomic and Sygnet (confirmed by Mr Bahia) and vice versa.

43. @tomic’s first mobile phone sale was on 24 February 2004 which preceded its recorded date of membership of IPT by some 12 days. The Nokia model 6600 phones, which were exported to France, were later found by HMRC to be associated to tax losses through a defaulting United Kingdom Trader, Sava Limited, and to have been involved in circularity. In a letter dated 7 July 2004 HMRC refused the repayment of the sums claimed as input tax. Mr Bahia, in his witness statement, indicated that the repayment was eventual made.

44. The VAT returns submitted by @tomic show that its turnover rose dramatically once it became involved in mobile phone trading:

•	Y/E 31/05/2003	£NIL
•	Y/E 31/05/2004	£14,700,000
•	Y/E 31/05/2005	£55,600,000
•	Y/E 31/05/2006	£252,500,000

Mr Baines stated that he had seen no evidence of any significant investment by @tomic on marketing, advertising or specialist technical staff. @tomic’s published abbreviated profit and loss account for the period 1 March 2005 (presumably 2004) to 31 August 2005 records total staff wages and salaries for the 18 month period as £71,817 yet the total sales in the same period were recorded as being over £80,000,000. The phenomenal growth in turnover appeared to have been achieved solely through ‘networking’ and membership of IPT.

45. In his witness statement at paragraph 42 Mr Bahia stated:

“Deals were funded from accumulated profits. Initially, the company was funded by two loans; these were as follows:

- £50,000 from Dearing Limited whose directors I had known for 20 years.
- £150,000 from Premier Securities Limited which I wholly own.

(No evidence of these loans has been produced to the Tribunal.)

46. We note from Mr Bahia’s evidence that the VAT repayment refused for February 2004 of £77,900.39 was ultimately paid. It would appear therefore that if the loans as above had been made there would have been sufficient money to pay the disputed VAT to the supplier. In his witness statement Mr Bahia stated that :

“The Company attempted to get in touch with potential trading contacts as follows:

- By advertising on Phone Trader Network this was free.
- By going to and advertising at Cebit in 2004, 2005 and 2006. I collected 250 business cards from potential trading partners at Cebit shows.
- By advertising at the CTS exhibition in Birmingham in 2005.
- By making contacts at FTI functions and meetings.

We do not believe that this activity would be sufficient to produce sales of £55,600,000 in the year to 31 May 2005 and £252,500,000 in 2006. These are turnover figures that major United Kingdom companies would find it hard to achieve utilising a marketing department and a large sales force.

47. @tomic was warned by Redhill on 24 February 2004 of the existence of MTIC fraud and subsequently, by a series of letters dated 10 March 2004 to 11 December 2007, of a further 50 traders with which it ought not to trade. It appears from that list that @tomic traded with nine of the companies on the list, but before HMRC had issued the warning letters. @tomic was notified of London Commodities Exchange Limited and Harlington House Ltd in May and June of 2004 and as a result would have been aware that there were several companies in the market place which were involved in the MTIC trade. Its representatives SOCVAT Consultants Limited in a letter dated 10 December 2004 requesting a change to monthly returns outlined the diligence checks being carried out by @tomic. We are satisfied that @tomic was fully aware of the risks of MTIC fraud when dealing in mobile phones and computer parts.

48. On 1 February 2006 @tomic exported 28,500 Nokia 6230i phones to Midcom International FZCO in Dubai. The phones were in London . Mr Bahia stated that flights were delayed at Heathrow and it was decided to send the phones from Manchester Airport to where they were delivered. The phone consignment was examined at the airport and HMRC custom stamps attached. It also appeared that the phones had already been custom stamped in Germany and some other custom stamps had been removed. @tomic were also advised that the phones were contained in a chain of deals, which led to a defaulting trader. Dass, solicitors to @tomic, wrote to HMRC and indicated that @tomic would look to HMRC for any loss which arose from @tomic’s customers refusing to take delivery of the phones because of the custom stamp. Mr Baines submitted that a legitimate trader would not have been concerned by the custom stamp. On 14 February 2006 @tomic issued credit notes for the goods, as did its supplier to @tomic. It

would appear that no money had changed hands, but the phones had been exported and none of the parties appear to have asked for the phones to be returned.

@tomic's deal chains

49. Mr Baines told us that for the Period 04/06:

- a. On 6 occasions @tomic 'acquired', at zero VAT, goods consigned from a business in another European member state.
- b. On 22 occasions @tomic 'dispatched', at zero rate, goods supplied to a business in another European member state there by acting as 'Broker'.
- c. On 32 occasions @tomic bought and sold goods, business to business, within the United Kingdom as standard rated VAT acting as an intermediary or 'Buffer' trader.

The trades followed an unusual pattern in that

- a. The 6 'acquisition' deals were made between 7 and 12 April;
- b. The 22 'Broker' sales were made between 13 and 20 April with all the goods sourced from within the United Kingdom; and
- c. The 32 'Buffer' United Kingdom business to business deals were made between 21 and 28 April.

50. The input tax repayment claimed by @tomic within the 22 'Broker' deals amounted to £3,650,675. In the same period @tomic accrued an output tax Liability of £1,085,875 on the onward sales which it could offset against its input tax. Taking into account @tomic's other trading the input tax on overheads resulted in a repayment claim of £2,552,542.88. Mr Baines told us that his enquiries had established that in deals 1 to 20 of the 22 Broker' sales in the period the related transaction chains commenced with one of 3 defaulting traders; Anfell College Ltd "Anfell"; Midwest Communications Limited and Apollo Communications Centre Limited

51. Mr Holland cross-examined Mr Baines with regard to deals 17, 18 to 20 in this period on the basis that HMRC could not trace them back to Anfell. We are satisfied, for the purposes of Deal 17, that there is evidence from the fax from Anfell to AS R Logistics on 19 March 2006 that the goods were to be allocated to Realtech Distributions Limited. With regard to the deals 18 to 20 we are satisfied on the balance of probabilities that the deals derived from a defaulting United Kingdom Trader.

- Gara Technologies Limited acquired phones from Apollo on 18 April 2006 which appears to have been the supplier of the phones during the period 7 March 2006 to 24 March 2006.
- Apollo is a defaulting trader in 4 other transaction chains in 04/06, 3 of which trace back to Gara.
- With exception of the Deals 18 to 22 all the other 04/06 broker transactions have traced back to a defaulting United Kingdom trader

52. Mr Holland also took issue with regard to the absence of paperwork prior to Realtech. Realtech appears to be a 'blocking' trader as documentation and information have been withheld. It appears in eight more of @tomic 'Broker' transactions where the phones were purchased from Anfell. With the exception of these deals and deals 36-41 in the period 06/06, all @tomic's other broker transactions have traced back to a defaulting acquirer. On the balance of probabilities we consider that the phones were acquired from a defaulting trader.

53. Mr Baines told us that for the Period 06/06 the deals dealt in mobile phones and central processing units:

- a. On 38 occasions @tomic purchased goods from United Kingdom suppliers at 17.5% VAT and acting as a 'Broker' 'dispatched' these goods to a European member state at zero VAT.
- b. On 3 occasions @tomic bought and sold goods, business to business, within the United Kingdom at standard VAT acting as an intermediary or 'Buffer'.
- c. On the other 3 occasion in June 2006 it bought 20,065 Intel CPU units. @tomic's transactions in CPU s were with businesses from which had previously purchased mobile phones.

54. @tomic claimed £7,300,683.47 input tax in respect of the 38 'Broker' deals its net repayment claim for the period, which including the net VAT liability for the 'Buffer' trading and the input element of its overheads and expenses amounted to £7,343,112.36. 14 of these 'broker' deals traced back to the same United Kingdom acquirer, Primeline (Europe) Limited "Primeline" HMRC were satisfied that Primeline's transactions related to 'contra trading' and that tax losses had been traced to defaulting traders through the contra trading. 18 deals in the period they had been traced back to the following defaulting traders:

- Causeway Initiatives Limited: deals 2, 3, 4, 5, 15, 16, 17, 22, 23, and 24
- Isales London limited; deals 11, 12, 13, 14, 18 and 19.
- Focus Racing Limited: deals 20 and 21.

55. Mr Baines had been unable to trace the 6 remaining 'Broker' deals 36, 37, 38, 39, 40 and 41. These were the last 6 'Broker' deals on the 9 and 12 June 2006. He said that by June 2006 traders dealing in MTIC goods were fully aware of the scope and nature of HMRC's extended verification programme. Mr Baines pointed out that it could be seen from the deal documentation for deals 37 and 41 that both transactions followed similar routes;

Deal 37	Deal 41
Atlantic	Atlantic
AW Associates	AW Associates
Xcel Solutions	Xcel Solutions
The Export Co	
@tomic	@tomic
Sigma (Sixty)	Goldphone

56. Mr Baines could find no trace of these two transactions in the Atlantic documentation held by HMRC. As 54 of the 58 deals were sold on to A W Associates it was reasonable to suppose that these deals were as well. Mr Holland suggested to Mr Baines that as the transactions with Primeline were in a clean chain, Mr Bahia, on behalf of @tomic, neither knew or could have known of the contra fraud. Mr Baines produced the deal records from Atlantic, which revealed that the suppliers to it for the following periods were;

- | | |
|-------------------------------|----------------------|
| • 5 June 2006 to 7 June 2006 | Udeil Solutions Ltd |
| • 8 June 2006 to 13 June 2006 | Universal Appliances |
| • 14 June to 30 June 2006 | J D Telecom UK Ltd. |

57 The documents from the freight forwarders Interken Freights (UK) Ltd for a similar deal on 12 June 2006 showed the following deal chain:

Macdelta (EU)
Universal Appliances Ltd
Atlantic
A W Associates ltd
Xcel Solutions Ltd
Export Company (UK) Ltd
Vantage Link Corporation Ltd (Birmingham)

We consider that it is unlikely that completely different traders would follow exactly the same sequence as @tomic. We are satisfied on the balance of probabilities that Universal Appliances were the United Kingdom acquirer. Mr Baines advised that as the proprietor of Universal Appliances denied any involvement in, or knowledge of MTIC fraud, HMRC had concluded that the company's VAT registration had been hijacked. A VAT assessment to best judgment had been issued in the sum of £200,630.59 and the amount remains in default.

58. Deals 36 and 40 have been traced back as far as Performance Specifications Limited (Performance). Both deals follow a similar pattern as the goods have been sold by Performance to Xcel Solutions Ltd and then to @tomic. Mr Baines had examined HMRC's electronic folder and noted that Performance is recorded as having purchased from various 'Buffer' but he had been unable to trace which these were. He had had the same problem with deals 38 and 39 as he had been unable to trace the source of these goods back beyond Guess Trading Limited. The goods were sold by Guess to Globalised Corporation Limited (Guess) which in turn supplied them to @tomic. HMRC has been unable to obtain trading records from Guess after May 2006. All its recorded purchases in May 2006 were sourced from Fonedalers Limited. In fact all Guess' stock sold to Globalised was sourced from Fonedalers which trace back to a United Kingdom defaulter Causeway.

59. In each and every one of @tomic deals in periods 04/06 and 06/06, where it has been possible to trace the transactions chain back to the United Kingdom source, Mr Baines said that a defaulter has been identified, either directly within the chain itself or indirectly through the contra trading. He had found no evidence to indicate that the related VAT on import or acquisition was accounted for to HMRC on any of the goods relating to @tomic's deals 36, 37, 38, 39, 40 and 41. He was satisfied on the balance of probabilities that the deals emanated from a defaulting source.

60. Mr Holland in cross-examination, suggested to Mr Baines that where HMRC did not know the source and had insufficient documentation it could not expect Mr Bahia, on behalf of @tomic, to know of the frauds in the contra chains. Nor he suggested ought it to have known. We accept, however, as Christopher Clarke J has in *Red 12 Trading Ltd* that where there is a pattern of deals, it is reasonable to believe that those same patterns occur in those deals, linked to the same periods, where no conclusive evidence appears. We consider on the balance of probabilities that this is the case with regard to those deals where HMRC have been unable to prove a direct link to a defaulter, and that such a link exists.

The deals' due diligence

61. Mr Holland confirmed that @tomic was concerned to obtain its repayments and as a result took great care over its due diligence. It was confirmed that @tomic had regularly sent to HMRC reports of its sales and purchase invoices, CRMs and its billing details. @tomic dealt with ten suppliers in the transactions, the subject of this appeal, and six European customers. In the absence of any oral evidence from Mr Bahia, we set out below the due diligence carried out by @tomic of its suppliers and customers. It should be added that very many of @tomic's trade applications and due diligence forms appeared to be in the same handwriting, with only the signatures differing, suggesting that they had been completed by @tomic rather than the businesses being verified.

61.1. **Cybacomms (UK) Ltd, (Cybacomms)**, Gor-Ray House, 758 Great Cambridge Road, Enfield, Middlesex.EN1 3PN. Deal 2, (04/06), 13 April 2006 @tomic purchased 5000 Sony Eric W9001s valued at £1,350,000 plus VAT of £236,250 totalling £1,586,250 and sold them to Nordisk Telecom APS for £1,472,500. Mr Baines stated that Cybacomms had been a supplier to @tomic since September 2004.

- a. Veracis Limited (a due diligence reporting company) visited Cybacomms on 12 January 2006 and provided a report (undated) for @tomic. The premises at Gor-Ray were formerly a clothing/garment factory now converted into service office space. Cybacomms uses two offices on the first floor and pays £1,200 per month licence fee. Mr David Whisson is the main director and has worked in the industry for 16 years. In 2002 he set up his own company, Cybacomms Limited. He dissolved that company in 2003 because of changes in legislation, particularly in relation to VAT. He had formed two other companies. This company had been formed with around £500,000 of capital and had six employees. The abbreviated accounts for the year to 30 June 2004 show a net worth of £17,585. There is no reference to an introduction of capital at the level of £500,000. .
- b. The Company does not hold any stock as it is kept at its freight forwarders on which it relies for insurance. It has two of its employees at the freight forwarders to check and control the stock.
- c. The report attached photographs of the building; Mr Whisson's passport details and Land Registry confirmation of his address; VAT Certificate amended date 26 November 2003 for quarterly returns; and details of Barclays Bank and FCIB accounts.
- d. The Company's filing report from Companies House reveals that no accounts details are shown.
- e. The introductory letter, sent by fax, indicates that

“We are a UK based distributing and export company within the mobile telecommunications industry, we trade both in the UK and Internationally and have formed strong working relations within many companies around the world”

This, from a company that does not appear to have lodged other than small accounts with 4 employees on site and which has been in business for 3 years. Mr Whisson states that he has been in business over 14 years, but told Veracis that it was for over 16 years.

- f. Europa VAT validation dated 31 March 2004 and at Redhill dated 1 and 26 March 2004, 14 April 2004, 20 May 2004, 27 September 2004, 26 November 2004, 1 March 2005, 7 and 28 June 2005
- g. Returned trading applications signed by Mr Whisson dated 15 March 2004 26 May 2005 and 2 June 2005 The first two indicate that he had heard about @tomic from a trade fair. There is no explanation as to why this application had to be made twice. On the first occasion Mr Whisson provided two trade references; Hawks of Stanwell, Middlesex and ASR Logistics of West Drayton. They do not appear to have been taken up. The third application cites Hawks and Interken Freighters (UK) Limited as references.
- h. Utility bill for Miss Michala Scott the other director and her orange Mobile account dated 10 May 2005.
- i. Site visit report from a visit on 17 March 2005 by Mr Bahia and Nick Bagri and evidence of numerous visits thereafter. It is unusual that Mr Bahia felt the needed to instruct Veracis, on 17 January 2006, to make a further site visit when he had already made a visit himself.
- j. Copy Licence Agreement dated 1 March 2006 from Gor-Ray House Limited owners of the office block allowing Cybacomms to use 586 square feet of space as shall be allocated from time to time for purpose of carrying on the Licensee's business of Telecoms. Licence term from 1 March 2006 determinable as provided in the conditions. No conditions were attached. This was hardly evidence of a substantial business when it could not even choose its own business space and it could be expected to move to another space when asked by the owners.

Mr Baines had suggested that the Veracis reports had been prepared as a general report and not specifically for @tomic. Mrs Dean (the member) asked if he considered the Veracis report for Futuristic, where Veracis indicated that there had been a previous visit in August 2005. She asked if he had read anything into that statement .Mr Baines replied that he had seen a number of Veracis reports and he believed that the reference was to an earlier visit for another client. Veracis provided reports for a large number of traders dealing in mobile phones and in the 'real world' Veracis used the information from an earlier visit in other reports.

61.2 Globalised Corporation Limited, (Globalised), Northway House, 1379 High Road, Whetstone, London.N20 9LP. In deal 1, (04/06), dated 13 April 2006 @tomic purchased 4000 Nokia 8800 for £1,600,000 and VAT of £280,000 for a total of £1,880,000 and sold to Nordisk Telecom APS for £1,748,000. Mr Baines stated that Globalised first supplied goods to @tomic in January 2005.

- a. HMRC indicated that they had not seen the Veracis Report of 30 November 2005 and a visit by Mr Bagri on 10 January 2005 . No evidence had been provided as to who had requisitioned the report from Veracis. The report indicated that the business had started trading in January 2005 and the turnover was approximately £7/8 million. The working capital was approximately £350,000. It also attached the familiar photographs of the office, personnel and computers. The owner was not listed on the electoral register at his address.
- b. Mr Bahia has annexed to his witness statement the due diligence documentation on which he relied. An undated letter of introduction from Globalised indicating that it operated in the sim free mobile phone industry

and that Mr Ashok Chahal had three years' experience in the market. They too 'work with all the leading freight forwarders in the industry, and have a strong rapport with the industry's trade bodies.'" The site visit report by Nick Bagri revealed that Globalised had been trading for 12 years.

c. VAT Certificate dated 9 December 2005; classification 'other household goods not classified.' @tomic should have been on notice as to why the company was dealing in mobile phones.

d. HMRC Redhill confirmations dated, 28 October 2004, 20 January 2005, 16 May 2005, 29 June 2005, 25 July 2005, 28 July 2005 7 June 2006 and 26 June 2006 of Globalised VAT number. Europa search 26 October 2004, 27 May 2005, 27 June 2006

e. Certificate of incorporation dated 11 June 2003.

f. Company search accounting reference date 30/06 no accounts lodged; next return overdue; nature of business none supplied. Further enquiry showing trade as 'wholesale of other household goods' and confirming the accounts were 'totally exempt'.

g. @tomic's trading application forms completed by Globalised on different dates and giving yet further different periods of trading. The earlier application suggesting two references, Cybacoms UK Ltd and Chahal & Sons Ltd. There is no evidence that the references were taken up.

H Letter of 23 May 2005 from @tomic requesting an update of their records arising from HMRC's notice 726 indicating that they could not trade with them again until they received all the information that they had asked for. Fax 27 May 2005 asking for the form to be returned. Form returned 27 May 2005

i. Globalised account & trading application form, completed by @tomic, suggesting Shelford Trading and Cybacoms UK Ltd as the references

j. Globalised's BT account for the period to 3 May 2005 showing calls amounting to £128.53. This is an extraordinarily small account for a trading company dealing in millions of pounds worth of trade by telephone. Although the traders were in the mobile business they must have used a direct line from time to time and certainly at a greater level than suggested by the account.

k. Copy passport Mr Chahal.

l. Letter from @tomic addressed to Globalised advising that HMRC had indicated that the deal chain commenced with a defaulting trader. @tomic referred to 2000 Nokia phones at £469 per phone. @tomic confirmed that as Globalised was an approved supplier they might care to check the supply chain themselves.

61.3 Primeline (Europe) Limited, Lonsdale House, 52 Blucher Street, Birmingham, West Midlands, B1 1QU. Deal 11.04/06 19 April 2006 @tomic purchased 7000 Nokia 9500 value £2,089,500 plus VAT £365,662.50 totalling £2,455,162.50 and sold them to Sigma (Sixty) B.V for £2,282,000. Mr Baines in his witness statement states that an associated company Primeline Telecom Limited was wound up by the Official receiver, because it could not pay £200,000 of corporation tax. Mr Singh said that Primeline Telecom had won a disputed case with Customs which started in 2003, when £400,000 input tax was withheld. This was eventually released, but not before the company was wound up.

- a. HMRC obtained an undated Veracis report on Primeline (Europe) indicating that Veracis visited the Primeline premises on 14 October 2005 in spite of @tomic's own visit on 25 April 2005. The report, which was not addressed to @tomic and

was not included in the verification documents exhibited by the appellant, suggested that @tomic ought to agree a schedule of stock to ensure that it was not involved with goods that were being re-circulated. The report also supplied the details of the company and its ownership. It stated that the turnover was £2 million per quarter, a level which would have required the company to prepare audited accounts and, for the second accounting year of such turnover, file full accounts at Companies House.

- b. Company details for Primeline Telecom from the internet. Company incorporated 19 October 2000 formerly known as Rizla Communications Limited. Name changed 22 May 2002. Nature of trade Telecommunications. 2002 accounts 'small'
- c. @tomic Trading Application signed by Devinder Singh 19 February 2004 for Primeline Telecom references Chahal & Sons and Shelford Trading. These were the same people that other traders referred to as references. There is no evidence that the references were taken up.
- d. Primeline Telecom Europa VAT validations 31 March 2004, 27 May 2005, 29 June 2005
- e. Primeline Telecom HMRC validation Redhill 1 March 2004, 8 April 2004, 5 August 2004 and 8 December 2004. Inclusion of the Primeline Telecom information in @tomic's Primeline (Europe) verification pack suggests to us that @tomic did not take sufficient care in carrying out due diligence.
- f. Undated letter of introduction from Primeline (Europe) Limited indicating that it "specialises in large volume telecommunication goods as well as other electronically goods".
- g. Company details Primeline (Europe) Ltd Registered 3 December 2002 as Primeline Telecom (Europe) Limited. Name changed 31 August 2004 to Primeline (Europe) Limited. Accounts 3/10/2004 overdue: Nature of business: other business activities.
- h. Primeline (Europe) Limited Certificate of registration for VAT amended 18 September 2004. mobile phones.
- i. Europa VAT validation Primeline (Europe) Limited, 29 April 2005, 6 July 2005, 1 March 2006, 10 April 2006, 24 May 2006 and 24 July 2006
- j. HMRC Redhill validation 8 November 2004, 29 April 2005, 7 July 2005, 25 July 2005, 8 November 2005, 23 November 2005, 15 December 2005, 18 January 2006, 14 March 2006 and 7 June 2006
- k. Site visits 25 April 2005 and 15 March 2006 Primeline (Europe) Ltd by Ranjit Singh.
- l. @tomic Trading Application signed by Devinder Singh 25 April 2005 for Primeline (Europe) citing the same references Chahal & Sons and Shelford Trading. These were the same people that other traders referred to as references. There is no evidence that the references were taken up
- m. Indian passport Devinder Singh and home telephone bill
- n. Further site visit dated 15 March 2006 to suite 107 with photographs. Veracis stated to be Primeline's VAT adviser. Primeline (Europe) Limited's suite was 115 but they appear to have changed offices. This is further evidenced by another visit on 5 July 2006 by Mr Ranjit to suite 201 apparently occupied by Primeline. Licence agreement dated 11 July 2006 produced. @tomic appear to have been unconcerned that Primeline had often changed its offices location particularly in view of the value of the business it was undertaking.

- o. Letter 23 May 2005 to Primeline Telecom with reference to Notice 726 and a request for update in trade application (as with Globalised above). Details provided for Primeline Telecom.
- p. Primeline (Europe) Trade Application dated 24 May 2005 gave references as Globalised Corporation Limited and Cradeone Trading Limited. A further trading application form dated 25 May 2005 gave the earlier references of Chahal & Sons and Shelford Trading. It is unclear why there were consecutive reports given that there had already been one on the day before. Again there is no evidence that the trade references were taken up.
- q. Updated trading application 12 April 2006 (references Caz Distribution and Guess Trading) and further Trading Application from Primeline dated 5 July 2006 as before but suggesting Vaghela & Co (Services) Limited and A S R Logistics as references.
- r. Tenancy Agreement Primeline (Europe) Ltd for suite 115 Lonsdale House dated 28 September 2005 12 months from 1 August 2005 rent £535 plus VAT per month. This was a service occupancy with no security of tenure, the landlord providing office facilities including reception and telephone answering and message taking services. Shared entrance and toilet areas. Service office receipt to the landlords, Citibase Birmingham, for £628.63 per month including VAT for February 2006 This appears to be a very casual arrangement for what appeared to be a substantial company and we believe that @tomic should have been put on further enquiry.
- s. 20 February 2006 note of a visit by Primeline to @tomic.
- t. Further company search showing the accounts were 'totally exempt' and that the next set of accounts was due 31 October 2006 and that the 2005 annual return was late. Nature of business still identified as other business activities. We consider that @tomic ought to have made further enquiries in view of the level of business they anticipated carrying on with Primeline (Europe) Limited.
- u. A "to whom it may concern" reference date 2 June 2006 from Vaghela & Co (Services) Limited confirming that they act for Primeline (Europe) Limited and Mr Singh and that Mr Singh is hardworking, trustworthy and reliable, and that he is capable of meeting his financial commitments. The reference does not confirm Primeline's financial status.

Mr Baines confirmed in cross-examination that HMRC had allowed Primeline (Europe) Limited to register for VAT on the payment of a security sum of £3,500. Mr Holland suggested to Mr Baines that that was the level of risk that HMRC assessed for Primeline (Europe) Limited.

61.4 Futuristic Electronics Limited. (Futuristic) 5 St. Vincent Place, Glasgow G1 2DH. Deal 9, 04/06, 5000 Nokia N70s bought for £1,085,000 plus VAT of £189,875 and sold to Brianstom Investments Limited for £1,185,000 on 18 April 2006 Mr Baines stated that @tomic first dealt with this company on 27 February 2006.

- a. Company search incorporated 3/12/2004 and registered in Glasgow. No accounts filed but due 3/10/2006. Nature of business: wholesale of other electronic parts and equipment.
- b. VAT Assistance confirmed that it acted for Futuristic and gave details, but the advice is dated 3 July 2006 although its fax refers to a telephone conversation on 3 March 2006.
- c. An undated letter from Futuristic indicating the company:

“..plays a key role as a broker within the UK and International Markets. The Company’s clientele comprises of independent dealers, professional distributors, exporters and international groups trading in consumer electronics and goods.

..specializes in Pharmaceutical Products, Medical Equipment, Toys, Plasma TV’s, Computer products, Mobile Phones ..

..company also benefits from having immediate access to making funds payments on satisfied inspection of products”

This from a company which has only been running for 12 months, has not yet put in any accounts and Mr Mohammad’s previous experience was in catering. In our opinion its language and content does not encourage a bona fide trader to enter into million pounds of business transactions.

d. Futuristic required @tomic to complete a trade application form and a due diligence declaration, which it did on 31 March 2006 (supplying only one of the two references requested), and again on 20 June 2006. @tomic do not appear to have been asked to complete the forms prior to starting to trade with Futuristic. @tomic confirmed that it had not dealt with a supplier nor been involved in a supply chain which included a missing trader. This was untrue as it had had its input tax withheld on those grounds in February 2004.

e. @tomic directors’ due diligence questionnaire confirmed that it had paid the appropriate VAT as it fell due. Whilst we have been told that @tomic had introduced capital into the business at the start its VAT liability for the deals in question exceeded £5,000,000 and it only received a contribution of less than half of the VAT from its customers. There is no possibility that @tomic could have funded that amount of money other than from the repayments from HMRC on earlier transactions or loans from its suppliers. As Mr Bahia has not attended it has been impossible to discover both how the VAT was financed and the payments made through the FCIB account.

f. Futuristic completed a trade application on 18 April 2006 indicating that it had been in the business of electronic components for over one year.

g. @tomic received details of the following as referees; Futuristic’s accountants D Grant Anderson of Glasgow; Fortwell Limited, West Midlands; and Interken Freight Ltd, Southall. There is no evidence that the references were taken up.

h. Photocopy of Ali Shafiq Mohammad’s driving licence and gas utility bill.

I Details of a site visit to Glasgow dated 25 February 2006 Mr Singh from @tomic. The visit note indicates that Mr Ranjit ‘toured the office’ and viewed the ‘boardroom’.

J @tomic provided Futuristic with referees: Team Mobile International, Barking; Edge Logistics, West Midlands.

k. Two rent receipts for Futuristics use of the premises in Glasgow showing £550 per month plus VAT plus telephone costs, receipts dated 21/7/2005 and 21/3/06 amounting to £6600 per annum.

l. A photograph of Mr Mohammad outside a building and a series of indistinct photographs of the inside of the building showing an office and a fax machine. There is no photograph of the boardroom.

m. VAT registration certificate amended certificate issued 16 December 2005 as the company went onto monthly returns on 31 December 2005.

n. Europa VAT validation details dated 20 January 2006, 23 February 2006, 17 May 2006, 6 June 2006 and 24 July 2006 confirming Futuristic’s VAT number.

- o. VAT confirmation from HMRC Redhill dated 24 January 2006.
- p. An unaddressed due diligence report from Veracis dated 24 February 2006 who also visited the service offices of Futuristic on 24 February 2006 (8 days after Mr Singh's visit. It is unusual that Veracis were paid to visit the Company when Mr Singh had already been). The report states that Mr Mohammad had previously been in the catering business and Mr Amit Arora, his other principal dealer, had been in the sector for one month. It states that on a previous visit in August 2005 Futuristic had been making third party payments, but that this practice had now ceased
- q. Details of the Company's CEBIT web details.
- r. Details of the company's FCIB account

There is no evidence that any of the trade references were taken up. In his witness statement Mr Bahia admits that he is unsure how the deals with Futuristic came about. He thought that they may have arisen from offers on the internet and subsequent telephone calls.

62. We have examined all the other due diligence evidence provided by HMRC and @tomic but we do not propose to go through it in the same detail. We have therefore highlighted those areas where there are differences.

62.1 The Export Company (UK) Limited. Unit 3, 67-69 St Johns Road, Isleworth, London Deal 6 (04/06) 1500 Nokia 7380 @tomic order dated 18 April 2006 for £364,500 plus VAT of £63,787.50 total price £428,287.50. The Export Company invoice is dated and the tax date given as 21 April 2004. @tomic invoiced the phones to Gold Phone SLU on 18 April 2006 for £397,500. Thus @tomic sold phones which it did not own. Mr Baines stated that The Export Company (UK) Limited had been a supplier of phones to @tomic since September 2004.

- a. Veracis report dated 21 March 2006. There was confusion over the ownership of the site, which was said to be freehold and owned by the director Vipal Kumar Patel's father, in the event it was let, but Mr Patel would not provide details. Many attempts were made to meet with Mr Patel. The meeting never took place and the copy of his passport was indistinct. Companies House appeared to have the wrong residential addresses and Veracis could not confirm. Dunn & Bradstreet were unable to identify the risk of trading with Export as all the information was out of date, but identified the financial strength as A in view of a net worth of £580,699.
- b. Insurance is provided by the freight forwarders. Accounts for the year to October 2003 show a substantial uninsured loss following theft of a consignment in transit to a warehouse. These same accounts show the principal activity of the business to be "service offered" in sourcing distributing and wholesale agents of telecommunication and related products, precious stones and metals. We would have expected a due diligence report to probe further on whether this loss was on telecoms or precious metals business. We note that @tomic has purported to carry its own insurance details of which appear at paragraph 68
- c. The accounts to 31 October 2004 show a turnover of £95,349,871 and a net worth of £604,666. There are only 6 employees including directors. Veracis were told the turnover was in the region of £500,000,000. We find it unlikely that such a small number of employees could create, verify and deal with all the paperwork and administration required for such a large turnover.
- d. VAT registration certificate provided.

- e. Companies house search reveals next set of accounts due 31 August 2006. and that the return for 5/3/06 was overdue.
- f. Clydesdale Bank and FCIB account.
- g. Europa validation report 10 April 2006. HMRC Redhill validation by telephone 4 April 2006. Later validations in May and June 2006 after first deal.
- h. Site visit by Mr Bahia 9 November 2006 after the deal.
- i. Letter from @tomic to Sprint Communication Services Limited (Sprint) dated 6 January 2006 asking for a business reference. No evidence of The Export Company providing this company's name. No evidence of any reply from Sprint.
- j. ~Copy of undated letter from The Export Company to Clydesdale Bank (their bankers) authorising the bank to provide a reference. No mention in the letter of any named recipient of the reference. We do not believe that any bank would action such a letter.

62.2 Barndew Enterprise's Limited. (Barndew) Studio 208, Sunbeam Studios, Sunbeam Street, Wolverhampton WV2 4NU. Deal 6. (06/06) dated 12 May 2006 @tomic purchased 2000 Nokia N70s from Barndew for £374,000 plus VAT £65,450 totalling £439,450 and it sold them to Gold Phone SLU for £408,000. Mr Baines states that @tomic first dealt with Barndew in June 2005. @tomic's due diligence files show:

- i. Introductory letter dated 6 May 2005; certificate of VAT registration; certificate of incorporation 27 February 2004. Company search shows no accounts filed. Accounts to 27 December 2005 overdue.
- ii. Europa validation 18 May 2006 after date of Deal 6. HMRC deal pack shows Europa validation 12 May 2006. HMRC Redhill enquiry 14 July 2005 all after the transaction
- iii. HMRC deal pack shows a Companies House check for Barndew on the date of the deal showing no accounts filed since incorporation on 27 February 2004.
- iv. Site visit by Mr Singh 23 June 2005 to discuss due diligence, stock and inspect premises.
- v. Usual obscure passport photograph of director Mr Sond.
- vi. Trade References for Barndew dated 24 June 2005 provided by @tomic Shelford and Globalised. BT account for Barndew dated 6 June 2005 cost of calls £9.06. In view of the fact that millions of pounds of sales and purchases appear to be carried out on the telephone this is a very small account.
- vii. Trade reference Atomic dated 28 June 2005 with references Sandwaves Ltd and Puala Freight Services Limited. No evidence of further enquiry.

62.3 Nijjers Limited (Nijjers), 3 The Quadrant, Coventry CV1 2 DY. Deal 25 (06/06). On 26 May 2006 @tomic purchased 5000 Sony Ericson W8001s for £747,500 plus VAT £130,812.50 totalling £878,312.50 and it sold them to Gold Phone SLY for £802,500. Mr Baines stated that Nijjers had been suppliers to @tomic since April 2006 and that due diligence files had not been provided. Mr Bahia, in his witness statement, has provided details of such due diligence in much the same format as before.

- i. Usual Companies House report, Accounts overdue and none filed. Trade: other retail food etc. Indicates registered office change from 3 The Quadrant on 15 March 2006 new address Unit 6, Runway Farm, Honiley, Meer End. CV8 1NQ. Further Companies search shows 30 April 2005 accounts as (Total exemption small).

- ii. Undated letter of introduction indicating trading for over 2 years although no accounts lodged. Trade application dated 18 April 2006 stating company had been trading for 3 years. Further partially completed trade application dated 20 April 2006 with a different reference @tomic notes of telephone conversations with references with responses. Further trade application dated 27 April 2006. It would appear that each time the principals met they filled out a trade application form. This duplication suggests to us that the form filling was of more significance to the parties than the information contained in the forms.
- iii. VAT certificate dated 13 December 2003
- iv. Europa VAT validation enquiry dated 4 November 2005, 26 April 2006, 19 April 2006, 25 May 2006 and 24 July 2006. HMRC Redhill dated 31 January 2006, 19 April 2006 1 and 27 June 2006 by telephone and 24 August 2006
- v. FCIB account
- vi. Visit to Unit 6 by Mr Singh 20 April 2006. Indistinct office photograph showing small room with two people at separate desks.
- vii. Indistinct passport photograph and personal phone bill.
- viii. Visit by Nijjers Limited to @tomic on 26 April 2006. @tomic attendance note dated 27 April 2006 as date of visit. It is unclear why the dates are different.
- ix. Check of trade references Sky Electronics Ltd trade with Nijjers for 4 to 5 months confirmed always paid on time and good company to deal with. Letting Solutions UK Ltd. Dealt with for 6 months similar answers.
- x. @tomic report provided to Nijjers does not disclose @tomic's earlier problem with VAT in response to enquiry with regard to the withholding of its VAT repayment claim.
- xi. Undated reference from Brindleys UK Limited Chartered Certified Accountants confirming Pardip Nijjer, the director, as trustworthy.
- xii. Standard undated Veracis report. Visit made 12 June 2006 after the deal above. Al and Hawks are its freight forwarders. The turnover is predicted at £55,000,000 for the year, but we note that no accounts have been filed. The accounts to April 2005 were totally exempt as small. There are copies of the accounts to 30 April 2005 with the due diligence documentation showing a turnover of £55,499 for 2005 and £59,833 for 2004 and a net worth of £11,607. Nijjer's forecast of a turnover of £55 million appears to be unrealistic. Veracis report says trade classification is 64200 – telecommunications, but document annexed states 5190 other wholesale – both at variance with earlier Companies House entry.
- xiii. Better photographs of single office with two desks and three people.
- xiv. Copy tenancy agreement for Unit 6, Runway Farm from 1 January 2007. The term seems to have been agreed on an annual basis. We have not seen a copy for the agreement for 15 March 2006 when they moved in. The rental for 2007 from January to December is £4,200. This does not appear to be a very large unit for Nijjer's purported turnover of £55,000,000 even though it has no warehouse facilities

62.4 Xcel Solutions Limited (Xcel). Raines House, Denby Dale Road, Wakefield. WF1 1HR. Deal 12 (06/06) dated 17 May 2006. @tomic purchased 7000 Nokia 93001s for £1,956,500 plus VAT of £342,387.50 for a total of £2,298,887.50 and it sold them to Nordisk Telecom APS for £2,135,000. Xcel has been a supplier to @tomic since April 2006. Mr Baines stated that due diligence details had not been provided, other than the Veracis report, but there are such in the evidence provided by Mr Bahia:

- i. The usual undated Veracis report confirming a visit on 13 January 2006. The premises, suite 307 of a business centre of serviced offices, are on licence on a quarterly basis from December 2005 at £491.65 per month plus telephone facilities. Photographs of building and room. Passport Mr Zafar Ramzan and BT account provided.
- ii. Certificate of incorporation on change of name 28 July 2005 company formerly TN Trading. VAT certificate showing trade classification as sales and maintenance of motorcycles. Company said to be financed by £5,000 introduced by the proprietor. It only started trading in July 2005 and has yet to build up a trade record. Goods were rarely insured, so @tomic should have been concerned that it might be buying goods that could be lost to theft. No accounts filed next due 1/01/2007. No business detail provided. @tomic does not appear to have raised any query as to the change of name, the limited amount of capital compared to the deal value, or the lack of insurance. Companies House record showing the first accounting date extended to give an 18 month period, the longest permitted.
- iii. Introductory letter date 11 January 2006, and duplicate dated 19 April 2006, indicating that they have a strong financial base in spite of the capital of only £5,000, and the fact that no accounts have been submitted.
- iv. UK bank Lloyds TSB and FCIB account. Confirmation of instructions from its accountants Lindley Adams Ltd of Halifax and from Acorn Accounting Company Limited in Bradford. It is unclear who was acting for Xcel at the time of the deals or why there should be two accountants. @tomic appear not to have raised any enquiry. Veracis stated to be their VAT adviser.
- v. Europa VAT validation 20 April 2006, 24 May 2006, 29 June 2006 and 24 July 2006 HMRC Redhill enquiry 27 April 2006 and 27 June 2006 by telephone and 22 June 2006
- vi. Usual photograph of buildings.
- vii. Both trade applications dated 22 April 2006 and site visit by Mr Ranjit 22 April 2006 although Veracis had already visited the premises in January 2006.

62.5 **Owl Ltd**, Claybrook Court, Binley Industrial Estate, Herald Way, Coventry.CV3 2NY, Deal 10, (04/06), @tomic purchased 3000 Nokia 9300s from Owl Ltd on 19 April 2006 and paid £510,000 plus VAT of £89,250 totalling £599,250 and it sold them to Sigma (Sixty) B.V for £556,500. Due Diligence details are principally in Mr Bahia's exhibits:

- i. VAT certificate; incorporation certificate for 1st HRC Limited dated 16 November 1998.certificate on change of name 2001. Usual trading applications. FCIB account.
- ii .Europa VAT validation 19 April 2005, 23 June 2005, 8 November 2005 HMRC Redhill validations.
- iii. @tomic's trading application to Owl signed by Nick Bagri as Secretary – this is not the case and is an instance of @tomic's disregard for correct paperwork.
- iv. Numerous Companies House reports on different dates all showing no accounts lodged. Appears to be an all monies debenture in favour of Micky Nayyar dated 31 October 2005. @tomic would want to know what this is given the very small financial value of the company
- v Unaddressed Veracis report 6 December 2005 on both Owl Limited and Owl Import & Export Limited. Owl Limited's Registered Office, Mr Sharma's (Director) home. Large warehouse currently being converted to

hold phone stock. Turnover estimated at £50 million. Accounts to 30 April 2004 show net worth of £2,495. Veracis states there was substantial cash held of £104,955 but the accounts show that more than this is required to pay off creditors of £235,930 if debtors do not pay. Stock held by freight forwarders in spite of large warehouse. Usual photographs. Veracis are advisers to Owl Limited.

vi. 6 Year lease of premises. Unsigned copy of business terms for Owl as the buyer. Not the contract for this deal as @tomic was the buyer .Blank standard forms.

63 Customers due diligence.

63.1 **Belcom AB.** c/o First-in-West AB,Box 85,76040 Vaddo. Sweden Deal 20. (06/06). On 19 May 2006 @tomic purchased 4000 Nokia N80s from Primeline for £1,392,000 with VAT of £243,600 totalling £1,635,600 and it sold them to Belcom for £1,490,000. Mr Baines stated that HMRC had had a letter from Dass, Mr Bahia's solicitors, confirming a due diligence site visit and a Veracis report. Mr Bahia in his evidence has produced the following documents:

- a. Undated introductory letter in English indicating 11 years' experience and signed Peter Linuzon not Linusson as on passport.
- b. Europa VAT validation report 21 October 2005, 20 January 2006, 23 January 2006, March 2006, 10 April 2006, 29 June 2006 and 24 July 2006 . HMRC Redhill validation 24 October 2005, 25 October 2005, 13 December 2005, 18 January 2006, 24 January 2006, 19 May 2006 (telephone) 24 May 2006 and 1 June 2006 (telephone), 7 June 2006 and 26 July 2006 (telephone).
- c. VAT Certificate in Swedish? Pricewaterhousecoopers in Stockholm letterhead confirming Belcom's address, although not in the form of a letter and not addressed to anyone.
- d. Trading application in English to Belcom for Peter Linusson, who provided Oman Trading LLC in Dubai and Mobile Export 365 Ltd in Cambridge as references. No evidence references taken up.
- e. Visit to premises by Mr Bahia 25 January 2006 .Photograph of what appears to be a television shop. Passport photograph and details of Jan Peter Mikael Linusson (not Lawson as provided by Mr Bahia).
- f. Discount flight ticket Mr Bahia £760 to KLM dated 25 January and hotel booking. Return 26 January and taxi receipt same date .
- g. Office rental invoice in Swedish?
- h. Series of documents in Swedish not translated. Unclear what they are. Goods sent to Freight Connections in the Netherlands.
- i. Letter from Belcom saying they had been trading since 1998. No reference to 1998 in any of the Swedish documents

No financial information has been provided. Veracis did not carry out a report.

63.2 **Brianstom Investments Ltd (Brianstom),** Elpinikis Street. (The previous company address and home address of the director) PO Box 50380 Limassol 3603. Deal 9. (04/06) dated 18 April 2006 @tomic purchased 5000 Nokia N70s from Futuristic for £1,085,000 plus VAT of £189,875 totalling £1,274,875 and it sold them to Brianstom for £1,185,000. The goods were shipped to Aventer Logistics SL in Spain. Mr Bahia stated that @tomic had been very busy and it had not been possible to visit Cyprus. Mr Baines in his witness

statement states that @tomic first dealt with Brianstom on 23 February 2006. He had been supplied with due diligence documentation:

- i. Europa VAT validation 17 February 2006, 3 March 2006, 7 April 2006, 24 July 2006, 29 June 2006, 24 May 2006, 25 May 2006 HMRC Redhill validation 20 February 2006, 7 June 2006.
- ii. Mr Singh and Mr Johal two discounted flights for visit 13 May 2006 booking dated 11 May 2006. Trip after first deal. Photograph of office at 201 Apollo Court, 232 Archbishop Makarios Avenue, Limassol and two personnel.
- iii. Lease (in English) 1 February 2006 for 2 years from 1 February 2006 rent 260 C.P. per month. Passport photograph of Mr Marios Doritis director.
- iv. letter of introduction (in English) Mr Doritis has 15 years' experience.
- v. Assorted documents in Greek not clear what they are.
- Vi Translated copy of certificate of incorporation 30 April 2001.
- Vii Trading reference taken up by telephone from Megtian Ltd same answers as other references in other deals.
- Viii Certificate from Lakia Bank, Limossal confirming satisfactory conduct of the account.
- ix. Web information from Exporters 17 February 2006 showing phones available from Brianstom no Nokia N70s referred to.
- x. The phones were delivered to Aduanas Y Logisitcs SL in Spain.

There do not appear to have been any financial checks at all.

The Brianstom due diligence package includes a "Dear Sir/ Madam document from @tomic faxed on 17 February 2006 which states "With substantial capital invested in the company...". @tomic's share capital is £2 and there are no significant shareholder's funds or loan capital,

63.3 **Nordisk Telecom APS**, Damstien 4, 2720 Vanloese, Denmark. Deal 1 (04/06) dated 13 April 2006 @tomic purchased 4000 Nokia 8800 from Globalised for £1,600,000 plus VAT of £280,000 totalling £1,880,000 and it sold them to Nordisk telecom APS for £1,748,000. Mr Bahia has produced evidence of @tomic's due diligence:

- i. Europa VAT validation 28 February 2006, 24 May 2006, 7 April 2006, 24 May 2006, 29 June 2006, 24 July 2006 and 30 August 2006. HMRC Redhill validation 28 February 2006 (telephone), 9 March 2006, 1 June 2006 (telephone), 7 June 2006, 27 June 2006 (telephone), 26 July 2006 (telephone)
- ii. Veracis report 29 March 2006, Director Mr Kamur had moved the company from an office address to his home so that he could be near to his family. Trading started in July 2005 therefore little reliable information. In spite of that its brochure states that it has a strong foundation base that has been created though is worldwide customers and product knowledge. As with all the other traders, the stock is held with the freight forwarders. Serial numbers and IMEI numbers are requested and retained. Usual premises and personnel photographs provided. The deal pack shows that @tomic have not requested IMEI inspection from ASR Logistics their freight forwarder, and so would have been unable to supply these to Nordisk. Nevertheless the deal was completed, with the goods being shipped to Freight Connections in the Netherlands.

- iii. Assorted documents in Danish.
- iv. Bland response to reference on 20 April 2006 saying company had been trading with Nordisk for one year (conflicts with Veracis report), usual 'good with payments; paper work very good and always correct; are recommended from us to anyone'.
- v. Site visit from Nordisk to @tomic 29 June 2006.

63.4 **Goldphone SL Unipersonal**, C/San Andres n-70, Local 1, 08923, Sta Coloma De Gramanet, Barcelona, Spain. Deal 4, (04/06). @tomic has been a customer since 20 March 2006. It sold 300 Nokia 9300i phones for £1,992,000 on 18 April 2006. The due diligence details provided by @tomic reveal:

- i. The Company had been trading for 4 years. Company detail in Spanish. Standard response to references in English (ie) never a problem; always pay on time, very good company to deal with. Trading application indicates that Goldphone is a sole trader. @tomic's response to trade application from Goldphone (which is all in English) says that @tomics turnover was £50 million, with just 2 employees.
- ii. Europa Validation 13 March 2006, 24 May 2006. 28 and 20 June 2006, 24 July 2006. HMRC Redhill validations appear to have been done by telephone on 14 March 2006, 1 and 7 June 2006 and 26 July 2006
- iii. Visit, after deal, by Mr Singh and Amandip Sahota 29 April 2006 to Tenerife Central office, but the goods were sent to Freight Connections in the Netherlands. Flight tickets etc to Tenerife 29 April and return 30 April 2006. Usual photographs of personnel and office in Tenerife. Business names photographed include 3C computers, but not Goldphone. It is unclear why Mr Bahia was not concerned that whilst the registered office was in Tenerife all the trading and documentation appears to have been with Barcelona. We would expect Mr Singh to have visited Barcelona.

63.5 **Sigma (Sixty) B.V (Sigma)**. Weena 290,3012 NJ Rotterdam. Deal 10. (04/06). @tomic sold Sigma 3000 Nokia 9300s for £556,500 on 19 April 2006. The due diligence in Mr Bahia's file contains:

- i. Introductory letter from Sigma in English with details of registration. The sole shareholder is Kenneth Clevernon Thorne from Cardiff now living in Dubai. Some of the information is in Dutch and not translated. Its freight forwarders were Interaction Logistics B.V in the Netherlands. The company employed 2 staff.
- ii Photocopy British passport. Comprehensive letter of introduction by @tomic indicating its substantial knowledge of the market, its capital reserves and liquidity @tomic could provide stock on a daily basis which its clients could inspect. This is all untrue as Mr Bahia had little knowledge of the market and nowhere to house stock.
- iii Europa VAT validation 29 March 2006, 24 May 2006, 29 June 2006 and 24 July 2006.
- iv HMRC Redhill validation 29 March 2006 (telephone) 4 April 2006
- v June 2006 (telephone) and 7 June 2006. Trade references apparently taken by telephone, with answers inserted on a pre-prepared proforma.

Vi Opal 53 GmbH had known Sigma for 4 months; very good with payments and pays correct amount. The response to all trade reference appears to use exactly the same words “Very good company to be dealing with”. This is exactly the same wording as from Compagnie Internationale de Paris and Opal. We would have expected the answers to the questions to vary and be recorded accurately. We believe that the references as presented do not provide the type of assurance necessary before entering into high value transactions on a commercial basis.

vii. The office premises no 16 of a Regus business centre (serviced offices) have been let from 7 April 2006 to 31 January 2007.the rent is payable monthly

viii. Goods sent to Freight Connections in the Netherlands.

Freight Forwarders

65 @tomic did not employ its own freight forwarders but utilised those required by its customers. No due diligence evidence has been provided to Mr Baines prior to the hearing with regard to the three other freight forwarders. In the exhibits to his witness statement Mr Bahia has produced some information with regard to:

- Peat UK Limited t/a Two Twins which only includes confirmation of its VAT registration and incorporation.
- Secure Freight Management Limited, which includes a site visit on 17 May 2006, after the deals the subject of this appeal, on which date the company had been trading for 4 months; details from a brochure of its business activities; Certificate of change of name and of its VAT registration; photograph of the owner (?) and the front of the building; details of the company from Companies House revealing no accounts filed and incorporation on 21 January 2006.
- Pallet Network (UK) Limited incorporated 9 December 2005; no accounts filed; only started trading in January 2006. Passport of owner and utility BT account for the company showing £5.91 as the cost of calls for July 2006

65. The goods appear to have remained at a freight forwarders all the time and were allocated to different customers by the parties allocating the goods appropriately, as can be seen from the deal sheets at paragraph 66 below. We are surprised, when there are meant to be a series of independent transactions, that all the goods passed predominantly through ASR Logistics Limited and that they all, except for the supply to Aduanas Y Logisitcs SL in Spain, went to Freight Connections in the Netherlands. There is no logical reason for the goods to be have been sent to the Netherlands :

- When they were sold from the Netherlands they would incur VAT
- The recipients of the goods were in a different country and they would have to rely on inspection and a report from Freight Connections before they could agree to pay for the goods.
- If @tomic had not been paid, it would have had considerable difficulty in having the goods returned.
- The advantage, if the schemes were fraudulent, is that all the goods could easily be moved back to the United Kingdom.

65.1 ASR Logistics Limited, Stockley Close, West Drayton, Middlesex.UB7 9BC (ASR) is approximately 2 miles from Heathrow Airport. We have been told that the goods were stored at its warehouse, where inspections took place, and there is a note of an @tomic site visit to West Drayton on 10 February 2006 which says “A1 Inspection team present

inspecting stock” Moreover on 14 March 2006 another @tomic site visit report records @tomic as inspecting stock. All the CRMs identify the goods as being at Heathrow, London although ASR have signed the CRMs at West Drayton. It is unclear how the goods could have been at Heathrow. ASR is approximately 25 miles from the Eurotunnel across London.

65.2 ASR was incorporated on 9 January 2002 and was dormant up to 31 January 2005 when its accounts were not required to be ‘full accounts’ which indicated that the company had a small turnover. It had changed its names to Global Star Logistics Limited on 12 March 2004, and to Bananis Trans Limited on 23 January 2004. The report does not say when it changed its name to ASR Logistics Limited. @tomic checked its VAT status with HMRC Redhill on 15 July 2005, 11 January 2006. There are similar validation reports through Europa on 6 January 2006, 28 February 2006, 25 May 2006 and 14 July 2006. It is unclear why @tomic carried out the checks as it was not trading with the company and merely needed to know that it could recover its VAT on ASR’s invoices. It suggests that Mr Bahia had been advised that he must always carry out Europa and, if possible, Redhill enquires on a regular basis. This is something he has done in all the due diligence, but it would appear to be unnecessary where ASR were concerned.

65.3 There is an attendance note dated 11 August 2005 of a visit by Mr Bahia discussing the charges raised on four invoices and a similar meeting on 9 November 2005. That note has ‘235 miles’ written at the bottom, which is presumably the distance from Birmingham to West Drayton. There appear to have been further visits on 10 February 2005 to inspect the stock, when AI Inspection were also present, 7 March 2006 and 14 March 2006. The latter visit was to discuss due diligence and security.

65.4. The Trading Application completed by Mr P Mallouride, a director, indicated that the company had been trading for 2 years. As the application is dated 7 September 2006 and the company was dormant until after 31 January 2005 that was untrue.

65.5. There are the usual grainy photographs, but surprisingly none of the inside of the warehouse showing stacks of mobile phones.

66 Sample Deals

Deal 2 period 04/06, 13 April 2006

Trader	Unit price	Net value	VAT	Total	Profit and %
Multimode market SL					
PZP ENA D.O.O.					
Anfell	£268.55	£1,342,750	£234,981.25	£1,577,731.25	
Realtech	£268.75	£1,343,750	£235,156.25	£1,578,906.25	£1000 0.07%
RK Brothers	£268.80	£1,344,000	£235,200.00	£1,579,200.00	£250 0.02%
Guess Trading	£269.00	£1,345,000	£235,375	£1,580,375.00	£1000 0.07%
Cytbacomms.UK	£227.00	£1,350,000	£236,250	£1,586,250.00	£5000 0.37%
@tomic	£294.50	£1,472,500		£1472,500.00	£122,500 9.1%
Nordisk Telecom A			Cash flow funded by @tomic		£113,750

Due Diligence

- See above at paragraph 61,62 and 63 above.

TRANSACTION PURCHASE FROM CYBACOMMS UK LIMITED

- **Supplier declaration** dated 13 April 2006 sent by @tomic to Cybacomms confirming title and ownership of the goods and returned with all the boxes ticked, signed and dated by Cybacomms same date. Document was to be completed and returned by fax but there are no fax legends on the copy. Interestingly, in deal 3 for the same period Globalised Corporation, which is @tomic's supplier, appears to have used exactly the same Supplier Declaration with exactly the same wording as @tomic save that it did not include reference to G, H, I and J on @tomics declaration but the type face and the position of the boxes are identical. We would not have expected the same format with disparate companies, which leads us to believe that the documentation is contrived.
- **Purchase order** dated 13.4.06 5000 Sony Ericsson W9001, Sim Free, CES, Never Locked from Cybacomms in Enfield, Middlesex. Conditions of purchase
 - All goods must be brand new and original
 - Must include 2 pin charger
 - Subject to Redhill line check
 - IMEI clearance required
 - Payment after inspection
 - No customs stamps or markings
 - Never locked.
- **Invoice** Cybacomms 13.4.06 indicating 'Stock bought & sold in UK VAT Invoice. Stock remains property of Cybacomms until payment has been made in full. No European specification requested, but phones supplied were European specification
- **Letter requesting inspection** dated 19 April 2006 to ASR Logistics for full inspection report of 3 lots of phones numbering 11500 in total including this deal. In his witness statement Mr Bahia indicated that it took 4 men between 12 and 15 minutes to inspect 1000 phones. It would appear that that inspection did not include inspecting the IMEI numbers. As was requested on some occasions. Further, the boxes had to be unpacked, the phones checked and returned to their boxes and then to the package. The pallets had to be shrink wrapped and @tomic needed to know that no evidence as to the mobile content of the palletised goods was on sight, as required by its insurance see paragraph 67. We do not believe that the phones could be inspected and packaged on the basis suggested by Mr Bahia. 11,500 phones would have taken almost 3 hours to inspect using 13 minutes as the average. Moreover, this request was included in the same @tomic fax to ASR as the Commercial Invoice and Shipping Instructions to Nordisk. This demonstrates that the sale was made without the need for inspection to be completed.
- **Report ASR Logistics** dated 13 April 2006 advising 100% inspection, but no IMEI detail. English manual. Stamped Nordisk telecom ApS.
- **FAX allocation note** dated 13 April 2006 from Cybacomms to ASR Logistics asking them to allocate the phones held for them from Guess to @tomic.
- **Fax Ship on Hold** from @tomic dated 13 April 2006 timed before @tomic inspection request. Goods to remain in full control of Cybacomms until paid for.

- **Fax release dated** 13 April 2006 to ASR Logistics for release to @tomic. The goods were not paid for until 20 April 2006 so that title would still be with @tomic's supplier as indicate on the supplier's invoices. It is unclear on what basis @tomic were permitted to part with the goods before they had paid their supplier.

TRANSACTION WITH NORDISK TELECOM ApS.

- **Purchase order** from Nordisk telecom ApS based in Vanlose, Denmark for 5000 Sony Ericsson w900i limited description goods to be delivered to Freight Connection BV in the Netherlands.
- **Commercial Invoice** 13 April 2006 from @tomic same specifications as to Cybacomms and indicating the goods remained @tomic's property until paid for. However, these goods were not @tomic's property as they had not paid Cybacomms for them (see FCIB Account details below).
- **Allocation Note** dated 13 April 2006 allocating the phones to Nordisk.
- **Ship on hold** dated 13 April 2006 authorizing ship on hold to Nordisk goods not to be released until a signed release received from @tomic.
- **Shipping instructions** from @tomic to ASR Logisitcs to go to Freight Connections Ulithoorn, Netherlands the expected date of arrival being 14 April 2006. Goods not to be released until @tomic confirmed.
- **CMR** 18 April 2006 3 lots of phones including this deal. The place and date of taking over the goods Heathrow London. Hauliers vehicle number OOMH 7825. Marked 'On hold ASR Logisitcs'.
- **Eurotunnel ticket** 19 April 2006 vehicle OOHM 7825 at 02.04. It is unclear why there is a Eurotunnel ticket as the goods went to Heathrow. The goods were said to be at ASR which is approximately 2 miles from Heathrow. We would have expected the goods to be at West Drayton. Either way, the goods were down for delivery on 14 April 2006 and appear to have been going through the tunnel on 19 April 2006. This appears to have occurred on all the 4 deals in this month.
- **Release note** 19 April 2006 addressed to ASR Logistics releasing goods to Nordisk.
- **Certificate of Shipment** dated 4 May 2005 (reason for this unknown but strongly suggesting the document is bogus) clearly confirms that the phones were collected from Heathrow on 18 April 2006 on a vehicle owned by Loughview Transport from County Derry Ireland. The vehicle number was OOHM 7825 .The vehicle ties up with the vehicle ostensibly going through the tunnel. It is unclear why the phones were at Heathrow.
- **Export invoice. 19 April 2006** ASR Logistics' bill to @tomic for handling the goods amounting to £15,539.38, asking for payment by 30 April 2006.
- **Faxsimile Transmittal Sheet** dated 20 April 2006 addressed to Nordisk asking for confirmation of delivery. Signed and faxed back to @tomic on 20 April 2006 confirming delivery and payment.
- **FCIB Account** showing @tomic with £1,716,622.60 in the account on 18 April 2006 immediately before paying Cybacomms on 19 April 2006 two payments one for £900,000 and the other for £686,250 totalling its invoice for £1,586,250. It is unclear why two payments were made when there was sufficient money in the account to pay the invoice in full by one payment. It is even more extraordinary that the payment to Cybacomms was made before @tomic had received £1,472,500 from Nordisk. The payments for many of the other supplier deals also appear to have been paid before the

money was received by @tomic from its customer, which indicates that @tomic must have known it was certain to be paid.

Deal 17 Period 04/06 dated 19 April 2006

Trader	Unit price	Net value	VAT	Total	Profit and %
Multimode marketf SL					
PZP ENA D.O.O.					
Anfell	£148.05	£444,150	£77,726	£5212,876.25	
Realtech	£148.25	£444,750	£77,831.25	£522,581.25	£600 0.14%
RK Brothers	£148.30	£444,900	£77,857.50	£522,757.50	£150 0.03%
Guess Trading	£148.50	£445,500	£77,962.50	£523,462.50	£600 0.13%
Primeline	£149.50	£448,500	£78,487.50	£526,987.50	£3000 0.67%
@tomic	£164	£492,000		£492,000	£43,500 8.84%
Nordisk	Telecom A		Cash flow to be funded by @tomic		£34,9897.50

Note: The details with regard to Multimode Marketing SL, PZP ENA D.O.O. and Anfell have been obtained from @tomic's freight forwarders ASR Logistics Ltd which show-

- Stock allocation from Multimode to PZP ENZA 3000 Nokia 6111 (the phones dealt with in this deal).
- Fax Allocation/release PZP ENA D.O.O.(Slovenia) request to ASR Logistics for phones to be transferred to Anfel Traders Ltd (Anfell incorrectly spelt). Timed at 18.38 (date illegible)
- Anfell Allocation/release to Realtech
- Fax Release note Realtech Distribution Ltd addressed to ASR Logisitcs requesting the release to RK Brother Ltd.). Timed at 17.59 (date illegible)
- RK Bolton Brothers Ltd fax release note to Guess Trading Limited indicating that the phones can be picked up from ASR Logistics Ltd.. Timed at 17.50 (dated Mar 2006)Guess Trading Ltd faxed stock allocation and ship on hold allocating the stock at ASR Logistics to Primeline (Europe) Limited.). Timed at 16.52, 19 April 2006

The fax times of these transactions lead us to believe that they were not carried out in the sequence necessary to match the deal chain. The deal chain is the same as deal 2 save that Primeline is substituted for Cybacomms UK Ltd. Primeline also features in the Contra trades.

The following documents were provided to the tribunal at bundle at Bundle 33 page 73

PURCHASE FROM PRIMELINE (EUROPE) LIMITED

Due diligence.

See paragraph 61, 62 and 63 above

Transaction details

- **Supplier Declaration** as before. (There are no fax legends on the copy)

- **Purchase Order** dated 19 April 2006 to Primeline for 3000 Nokia 6111, Sim Free, CES, never locked. Primeline's VAT number 831 4030 74. Conditions of purchase as deal 2
- **Sales Invoice** from Primeline to @tomic dated 19 April 2006 confirming that it banked with the FCIB. The invoice indicates that the goods remain the property of Primeline until payment is received in the dedicated bank account.. It will be noted below that the goods were allocated to @tomic on 19 April 2006 before Primeline had been paid.
- **Inspection report request** dated 19 April 2006, fax timed 19.25 from @tomic addressed to ASR Logistics requesting a full inspection report and identifying a list of 32,000 phones including the 3000 Nokia 6111. Unclear what a full inspection means but we would have expected it to include a check of the IMEI numbers, which were not recorded
- **Allocation notice** from @tomic to Nordisk faxed by @tomic timed at 19.37.
- **Report** undated indicating that a full inspection had been carried out. The report is stamped by Nordisk Telecom, @tomic's customer. It is unclear why unless this is the inspection for Nordisk as well and ASR Logistics have sent the form back to @tomic after it had carried out both inspections. There is no evidence that the IMEI numbers have been checked, indeed the box IMEI Scan Quantity has been marked N/A.
- **Fax note** dated 19.4.06 from Primeline addressed to ASR Logistics timed 20.25 allocating 25,500 phones to @tomic including the 3000 Nokia 6111.

@TOMIC'S TRANSACTION WITH NORSDISK TELECOM Aps

Due diligence

See paragraph 61, 62 and 63 above.

Transaction details

- **Purchase Order** dated 19 April 2006 from Nordisk to @tomic for the phones for delivery to Freight Connection BV in the Netherlands.
- **Commercial Invoice** @tomic to Nordisk requesting payment via its account Swift RABONL2U Netherlands to @tomics FCIB account. The invoice also indicates that the goods remain @tomic's property until full payment received. Given the condition on Primeline's invoice @tomic did not own the property at the time of this invoice.
- **Allocation note** addressed to ASR Logistics' allocating the 3000 phones to Nordisk
- **Ship on Hold** dated 19 April 2006 from @tomic to ASR Logistics authorising to "ship on hold" but not to release the goods until @tomic confirmed to ASR that they could do so.
- **Shipping instructions** from @tomic to ASR Logistics to Freight Connections in the Netherlands showing the value of the goods as £492,000. The shipping terms were CIF (with insurance).
- **Certificate of shipment** issued 28 April 2006 from ASR Logistics by Loughview Transport its address is Magherafelt, County Derry. Goods collected from London Heathrow for delivery to Uithoorn in the Netherlands. As before, we understood that the goods were at ASR Logistics premise in West Draughton, Middlesex.
- **CMR** for 3000 Nokia 6111 and two other sets of phones indicating that they were 'on hold' Vehicle OY 520 UB. Again the reference is Heathrow. It is understood that the phones were at ASR Logistics at West Drayton, Middlesex. It is unclear why the CMR

would refer to Heathrow when there is documentation (see next entry confirming that the phones went via the Eurotunnel on the 20 April 2006 at 00.24 in the morning.

- **Euro Tunnel ticket** for vehicle OY 52O UB dated 20 April 2006 (8 days before certificate of shipment) at 00.24 in the morning, which would have been correct, save that the goods appear to have gone from Heathrow. The goods appear to have been transported by Loughview Transport County Derry. Whilst we appreciate that Loughview might have a return journey or a London depot, we have had no detail as to where they were based and we cannot believe that they came from Ireland to make the deliveries.
- **ASR Logistics' Export Invoice** for transport of 19,800 phones, including the 3000 Nokia 6111 for £14,863.75 requesting payment by 30 April 2006.
- **@tomic facsimile transmittal sheet** dated 28 April 2006 addressed to Nordisk asking for confirmation that the goods have been received. Nordisk has replied that it has received the goods and that the goods have been paid for. Nordisk had not received the goods as Nordisk are based at Vanlose, Denmark and the goods were delivered to Freight Connections Uithoorn, in the Netherlands.
- **FCIB @tomic** paid Primeline £526,987.50 on 21 April 2006 before it received from Nordisk, on the same day, the contract price of £492,000, which indicates that it must have been expecting a payment from Nordisk in any event, although it is unclear how it could be sure of that. The account shows a running total of £854,967.80 immediately before the payment to Primeline. We have not been advised of the VAT repayments that @tomic has received on its earlier transactions. As @tomic has paid Primeline in full, utilising its profit of £43,500 received from Nordisk, it needs to find a further £34,987.50 to cover the balance of the VAT-inclusive purchase price. It recognises that it will only make a profit and cover its costs if it gets the VAT refund from HMRC. There appears to have been no provision to cover the payments should anything go wrong as it now has.

Deal 21 Period 04/06 dated 20 April 2006

Trader	Unit price	Net value	VAT	Total	Profit and %
<i>Notional values</i>	£264.95	£529,900	£92,732.50	£622,632.50	
Realtech Dis	£265.15	£530,300	£92,802.50	£623,102.50	£400 0.08%
Fonedealers	£265.30	£530,600	£92,855	£623,455	£300 0.06%
Kingfisher	£265.50	£531,000	£92,925	£623,925	£400 0.08%
Globalised	£266.50	£533,000	£93,275	£626,275	£2000 0.38%
@tomic	£292.00	£584,000		£584,000	£51,000 9.57%
Brianstom			Cash flow to be funded by @tomic		£42,275

The following documents were provided to the Tribunal at Bundle 33 page 343

PURCHASE BY @TOMIC FROM GLOBALISED;

Due Diligence

See paragraph 61, 62 and 63 above.

Transaction details

- **Supplier declaration** 20 April 2006 on @tomic letterhead requesting that it be faxed back so that the deal could continue. (There are no fax legends on the copy). Globalised appear to have completed the contents which include various confirmations as to the VAT having been paid and due diligence having been taken against its customer. The consent boxes are regularly ticked and suggests that they may have been done all at the same time.
- **Purchase order** from @tomic to Globalised Corporation Limited in London on 20 April 2006 for 2000 Sony Ericsson W900i, sim free CES, never locked, for £533,000 VAT £93,275 total £626,275. Unit cost £266.50
- Delivery to @tomic's freight forwarder ASR Logistics Limited, West Drayton, Middlesex.
- Conditions of purchase required
 - i. All goods must be brand new and original
 - ii. Must include 2 pin charger
 - iii. Subject to Redhill line check
 - iv. IMEI clearance required
 - v. Payment after inspection
 - vi. No customs stamps or markings
 - vii. Never locked.
- **Invoice** from Globalised dated 20 April 2006 for phones as purchase order indicating that the stock was at ASR Logistics, London. All the phones were to remain the property of Globalised until such point where they are released by authorised personel (incorrectly spelt)

@TOMIC'S SALE TO BRIANSTOM

Due Diligence

- See paragraph 61, 62 and 63 above

Transaction details

- **Purchaser order** Brianstom Investments Limited 2000 Sony Ericsson W900i unit price £292 (mark up 9.57%)
- **Invoice** 20 April 2006 2000 Sony Ericsson W900i New, Never locked, CES. No customs Stamps. Sim free sold to Brianstom Investments Limited in Limassol Cyprus for £584,000.
- Condition of sale required 100% IMEI clearance. There is no evidence that an IMEI inspection was carried out. In describing what action ASR took to inspect the phones Mr Bahia makes no reference to IMEI inspections or the additional time that the inspection might have taken. The ASR inspection certificate states no IMEI inspection.
- Delivery for 21 April 2006 to Freight forwarders ASR Logisitcs Limited at Uithoorn Netherlands. It is unclear why the phones were sent to the Netherlands when the customer is in Cyprus. If they were moved from the Netherlands there could be a VAT consequence.

- Payment terms 100% after delivery. There would be a considerable risk in allowing the goods to leave the United Kingdom for the Netherlands when they had not been paid for.
- Payment was to be to @tomic's FCIB account from Rabobank Netherlands.
- The invoice states that the goods are to remain the property of @tomic until they are paid for. @tomic expected Brianstom to inspect the goods at the freight forwarders as no responsibility could be accepted after the goods had left.
- **Allocation note** 20 April 2006 from @tomic to ASR Logistics the freight forwarders to allocate the phones to Brianstom Investments Limited.
- **Ship on hold** faxed to ASR Logistics Limited asking them to hold the goods ship on hold, to Brianstom and only to release them when they receive a signed release note from @tomic. (Neither the allocation note nor the ship on hold note carry a fax legend).
- **Release note** dated 28 April 2006 (fax, but no legend on the copy) authorising the release of the phones to Brianstom.
- **ASR Logistics Limited Inspection report.** The report is very faint and undated. In spite of the requirement for an IMEI inspection none was done. . A company stamp from Brianstom Investments Limited marked (authorised) appears on the report it is unclear why. Presumably the report would have been faxed back to @tomic arising from the inspection it requested of the goods before they were sold to Brianstom. Brianstom would then have the goods inspected and we assume ASR Logistics Limited would have sent the inspection report they prepared for @tomic to Brianstom who must have sent that report back marked 'authorized' to confirm to ASR Logistics Limited that it was satisfied with the phones. It is unclear how @tomic had the copy.
- **Shipping instructions** from @tomic to ASR Logistics Limited dated 20 April 2006 requiring the goods to be shipped to Freight Connections in the Netherlands indicating that the expected date of arrival to be 21 April 2006 and identifying that the goods were valued at £584,000.
- **Certificate of shipment** dated 5 May 2006 from ASR Logistics Limited from London Heathrow 17 Pallets. The reference is correct as HE 3120, but it is unclear why it is dated 5 May 2006 when the deal took place in April. The registration number of the vehicle is HLZ3566 indicating that once again it came from Northern Ireland.
- **Export invoice** for freight, inspection and warehouse handling charges from ASR Logistics Limited for £8,783.12 dated 28 April 2006 asking for payment by 30 April.
- **Faxed confirmation** sent by @tomic to Brianstom on 28 April 2006 asking that Brianstom acknowledge that the goods have been delivered. Brianstom confirmed delivery and that the goods had been paid for in full and presumably faxed the document back to @tomic on 28 April 2006. The document is headed 'facsimile transmittal sheet' but the copy carries no fax legends. The goods were paid for on 27 April 2006
- **CMR completed** by ASR Logistics and stamped by freight forwarder in the Netherlands. 2 loads the 2000 Sony Ericsson phones the subject of this deal and 4500 Nokia N70 from deal 20. The CMR is dated for 21 April 2006 delivery to Heathrow. The vehicle number plate was HLZ3566. It is unclear why the phones were at Heathrow, as all the other deals, when we understood that they were inspected at and retained by ASR Logistics in Middlesex.

- **Copy Eurotunnel ticket.** The ticket is dated 21 April 2006 at 23.35.. All the deals 16 to 21 refer to Heathrow in the CMR, presumably an airfreight depot, but appear to have gone through Eurotunnel. They could not have done both.
- **FCIB account details.** There is a running book balance of £563,768.70 as at 27 April 2006. The account shows that a part payment of £500,000 was made to Globalised on 27 April debited to the account before the payment received from Brianstom. There was a subsequent payment of £126,275 on the same date the balance of the £626,275 due in full to Globalised. The payment to Globalised made before the receipt from Brianstom indicates that @tomic was expecting to be paid on 27 April 2006.

Deal 20 Period 06/06 19 May 2006

Trader	Unit price	Net value	VAT	Total	Profit and %
PZP ENA					
Partner marketing					
Focus Racing	£346.65	£1,366,600		£1,386,600	
Easyway (London) Ltd	£346.75	£1,387,000	£242,725	£1,629,725	£20,400 1.49%
Sundial International Stock Traders	£346.85	£1,387,400	£242,795	£1,630,195	£400 0.03%
Livewire Electrical ltd	£347	£1,388,000	£242,900	£1,630,900	£600 0.04%
Primeline (Europe) Ltd	£348	£1,392,000	£243,600	£1,635,600	£4000 0.29%
@tomic	£372.50	£1,490,000		£1,490,000	£98,000 7.04%
Belcom AB			Cash flow to funded by @tomic		£145,600

PURCHASES FROM PRIMELINE

Due Diligence.

See paragraph 61, 62 and 63 above

Transaction details

- **Supplier Declaration** addressed to Primeline as before and signed by Primeline. (There are no fax legends on the copy) Interestingly, the Supplier Declaration for Easyway (London) which is 4 traders above @tomic carries almost identical wording to that of @tomic in its preamble and the identical wording to items A,B,C,E and F in the same order, but numbered 1,2,3,4,and 5. The Supplier Declaration for The Export Company (UK) Ltd in deal 18 of 06/06 carries exactly the same detail as A.B.C.D and E as @tomic,
- **Purchase order** to Primeline (Europe) Ltd dated 19 May 2006 for 4000 Nokia N80, Sim Free, CES. Never Locked. Same conditions as before. £1,392,000 plus VAT £243,600. Delivery Address Secure Freight Management of Harmondsworth, Middlesex. Signed and faxed back by Primeline. (There are no fax legends on the copy)

- **Sales Invoice** dated 19 May 2006 indicating goods belonged to Primeline until paid for in full into the specified FCIB bank account. **Allocation** in Primeline's documents – allocation of 4000 Nokia N80's to @tomic addressed to Secure Freight

SALE TO BELCOM AB in Norrtälje Sweden

Due diligence

See paragraph 61, 62 and 63 above.

Transaction details

- **Purchase order** dated 19 May 2006 for 4000 Nokia N80s no specification, but delivery to Freight Connection in the Netherlands. Value £1,490,000
- **Commercial Invoice** 19 May 2006 identifying phones as Nokia N80s, new, Never locked, CES, No Customs Stamps, Sim free to Freight Connections Uithoorn .payment terms 100% after delivery. IMEI Clearance 100% pay FCIB though Swift RABONL2U . Also states Goods to remain property of @tomic until paid for in spite of the payment terms
- **AI Inspection** of Greenford, Middlesex the report is dated 20 May 2006 (after purchase) and in a different format from those for the 04/04 deals reviewed.. No IMEI scan in spite of a request for same. Colour Smooth silver (not specified). Language English, Arabic, French, German. Italian, Spanish, Portugese.(misspelt). This is not “Central European” as was specified in the @tomic order.
- **Allocation note** addressed to Secure Freight Management allocating phones to Belcom AB
- **Ship on Hold** note to Secure Freight Limited not to be released until notified by @tomic.
- **Shipping instructions** to Secure Freight Limited dated 19 May 2006 to Freight Connections Uithoon, Netherlands expected date of arrival 22 May 2006 Value of goods identified CIF (with insurance)
- **CMR Haulier** Loughview International County Derry vehicle OY 52O UB from London. HMRC Birmingham stamp dated 20 November 2006 document dated 21 May 2006
- **Certificate of Shipment** issued by Secure Freight confirming delivery from London and dated 21 May 2006
- **Sea France ticket** vehicle OY 52O UB at 20 . 30 on 21 May 2006 Dover to Calais
- **Secure Freight Export Invoice.** Raising an account for £9,047.50 for Freight and Inspection (not warehousing).
- **Facsimile transmittal sheet** from @tomic to be signed and returned by Belcom AB as evidence of delivery Belcom AB confirmed receipt of several phones including the 4000 the subject of this transaction and that they were fully paid for. The note is dated 6 June 2006
- **FCIB account records** payment £1,490,000 received from Belcom AB 24 May 2006. Stated to be “balance payment from Belcom invoice number 1441” but is the full amount. @tomic appears to have paid Primeline by two instalments

on the same day one for £850,000 the other for £785,600 totalling £1,635,600 the full sale price due to Primeline from @tomic. It can be seen from the table above that @tomic had to find a further £145,600 from its own money to be able to pay all the VAT-inclusive purchase price due to Primeline.

Deal 22 Period 06/06 19 May 2006

Trader	Unit price	Net value	VAT	Total	Profit and %
Multimode marketing					
PZP ENA D.O.O					
Causeway Initiatives L	£509.10	£1,527,300	£267,277.50	£1,794,577.50	
Realtec Distributions	£509.15	£1,527,450	£267,303.75	£1,794,753.75	£150 0.01%
Fonedalers Ltd	£509.30	£1,527,900	£267,382.50	£1,795,282.50	£450 0.03%
Caz Distributions	£509.50	£1,528,500	£267,487.50	£1,795,987.50	£600 0.04%
Barndew Enterprios	£510.00	£1,530,000	£267,750.00	£1,797,750.00	£1500 0.10%
@tomic	£545.00	£1,635,000		£1,635,000.00	£105,000 6.86%
Belcom AB			Cash flow to b funded by @tomic		£162,750

Purchase from Barndew Due diligence

See paragraph 61, 62 and 63 above

Sale to Belcom BA

Transaction

- **General Comments.** In order for the transaction to have been completed in the given timescale, documents must have been faxed. Many of them print the fax number. None of the documents in the deal pack have any fax headers, leading us to conclude that these have been deliberately suppressed, or never existed.
- **Supplier** declaration dated 19 May 2006 confirming VAT confirmation made with HMRC 19/5/06.signed and faxed back to @tomic
- **Stock allocation**, undated, at Harmondsworth, Middlesex, for the 'phones to be allocated from CAZ Distribution Services Ltd to @tomic.
- **VAT validation** 19 May 2006 Europa. Number SE 556556250001.This number also appears on the invoice from Belcom and appears to be correct.
- **Commercial invoice** dated 19 May 2006 same specification save 'No Customs Stamps' added, value £1,635,000. Freight Connection Winhelminakada 69 in the Netherlands. Delivery due 22 May 2006. The conditions of sale require 100% IMEI clearance. No such inspection has been made.
- **A1 Inspection report** carrying Belcom AB stamp, but dated 20 May 2006.No IMEI scan although 100% requested.
- **Allocation note** 19 May 2006 addressed to Secure Freight Management allocating the phones to Belcom AB.

- **Ship on hold** 19 May 2006 addressed to Secure Freight Management indicating the goods are not to be released until they receive a signed release note.
- **Shipping instructions** dated 19 May 2006 from @tomic addressed to Secure Freight Management expected date of delivery 22 May 2006.
- **CMR** dealing with 3 consignments including the 3000 Nokia 8800 black dated 22 May 2006. The haulier was Loughview International from Magherafelt, County Derry, N Ireland. Vehicle PLZ 2119 from London. Secure Freight is based at Harmondsworth, Middlesex some miles from London.
- **Eurotunnel receipt** 22 May 2006 vehicle PLZ 2119 at 23.48
- **Certificate of shipment** identical to CMR but headed Secure Freight.
- **Export invoice** for Freight and Inspection for £10,500 from Secure Freight dated 23 May 2006. Payment due by 22 June 2006..
- **Facsimile transmittal sheet** sent 24 May 2006 from @tomic to Belcom confirming conclusion of the deal and payment and signed and acknowledged by Belcom on 6 June 2006
- **FCIB payment** detail 24 May 2006 payment by Belcom AB
- **Release note** dated 24 May 2006 (note delivery was meant to be 22 May 2006) confirming risk and title to Belcom BA

Deal 40 Period 06/06 12 June 2006

Trader	Unit price	Net value	VAT	Total	Profit and %
Performance	£74.60	£352,485.00	£61,684.88	£414,169.88	
Xcel Solutions Ltd	£74.75	£353,195.75	£61,808.91	£415,002.66	£710.75 0.2%
@tomic		£373,275.00		£373,275.00	£20,079.25 5.69
Gold Phone SLU			Cash flow to be funded @tomic	£41,729.66	£41,729.66

Xcel Solutions Ltd sale to @tomic.

Due diligence

See paragraph 61, 62 and 63 above.

Transaction

- **Supplier declaration** 12 June 2006 from @tomic to Xcel Solutions returned 12 June 2006 indicating VAT registration checked 25/6/06. (There are no fax legends on the copy). Point J states “A supplier site visit has been conducted by us/third party (delete as applicable)” but there is no such deletion.
- **Purchase order** 12 June 2006 specification as invoice. Delivery to ASR Logistics Limited West Drayton, Middlesex. Date of delivery 12 June 2006 .Included in Conditions of Purchase is a requirement for IMEI Clearance, even though computer chips do not have IMEI numbers.
- **Invoice Xcel to @tomic** dated 12 June 2006 for 4725 Intel Pentium 4 SL7Z9 3.0 GHz. Price £353,193.75 with VAT £61,808.91 totalling £415,002.66.

- **Release note** addressed to ASR Logistics from Xcel dated 12 June 2006 releasing 4725 Intel Pen 4 to @tomic having been held for @tomic when delivered to Xcel by Performance Specification Ltd.

Sale to Gold Phones SLU in Spain

Due diligence

See paragraph 61, 62 and 63 above

Transaction

- **Commercial invoice** 12 June 2006 specification as above. IMEI clearance 100% (none would be required for this product). Delivery to Freight Connections Winhelminakada Netherlands. Gold Phone SLU is in Barcelona Spain. FCIB account.
- **Inspection report** 12 June 2006 from ASR Logistics. 15 boxes Intel P4. The boxes have been opened and inspected by ASR Logistics. Report identifies box as good.
- **Allocation note** 12 June 2006 from @tomic to ASR Logistics Ltd allocating 4725 Intel Pen to Gold Phone.
- **Ship on hold** 12 June 2006 from @tomic to ASR Logistics Ltd requesting that the goods are not released until signed release sent to them from @tomic.
- **Shipping instructions** 12 June 2006 from @tomic to ASR Logistics Ltd in relation to goods going to Freight Connections, Netherlands with request not to release goods until told to do so by @tomic.
- **CMR** two lots of goods including 4725 Intel Pen vehicle number KP55 AYO Goods appear to be at Heathrow. Not ASR Logistics Ltd.
- **Freight ticket.** 12 June 2006 Harbour Shipping Limited vehicle KP55 AYO Dover (Eastern) 21.20pm
- **Certificate of shipment again** identifying Heathrow.
- **FCIB report** Payment £373,275 from Gold Phone 2 August 2006. Goods were delivered 12/13 June 2006 to the Netherlands. Payment to Xcel Solutions Ltd 7 August 2006 of £265,002.66 being a part payment Purchase Order 1471. Full price £415,002.66 leaving £150,000 outstanding
- **Release note** dated 2 August 2006, nearly 2 months after shipping from @tomic to ASR Logistics releasing the goods to GoldPhone SLU spelt incorrectly name joined up.
- **Export invoice** £1,598 from ASR Logistics to @tomic dated 22 June 2006
- **Facsimile Transmittal sheet** requesting confirmation from Gold Phone SLU of delivery of goods signed and dated 9 August 2006.

Inspection and Insurance

67. In his witness statement paragraph 103A Mr Bahia states

“ASR’s warehouse manager, Rikki, has informed me that it takes 4 men between 12-15 minutes to inspect 1000 pieces. He also told me that every box was opened to ensure

that it contained a telephone. He has also told me that the stock was inspected when it arrived at ASR's warehouse. Accordingly an inspection report could be produced very quickly by ASR as the inspection had already been carried out. Rikki has also said that a 100% inspection meant that every individual phone box was opened."

The insurance policy required the goods to be packed so that they did not indicate that they were mobile phones and shrink-wrapped. There were 24 pallets with the order for Deal 17. and we imagine preparing the goods for onward transportation would have taken further time. We note that for deal 17. (04/06 referred to above) the CRM indicates:

2000 x Nokia 8800
6000 x Samsung D800
3000 x Nokia 6111

a total of 11000 phones, which would have taken between 2 hours 12 minutes and 2 hours 45 minutes to examine. This assumes that there were four men available and that they all worked non-stop. It appears that IMEIs were not checked although the Commercial Invoice prepared by @tomic for Nordisk states 'IMEI Clearance 100%'. In addition there is no record of any IMEI numbers in any of the documents we were referred to. It would appear that the phones were delivered to and remained at ASR until they were shipped. All the CRMs indicate that delivery was taken from Heathrow. As the ASR warehouse is some distance from Heathrow we do not understand why the CRMs are so noted. The CRM refers to 11000 phones. It would appear that these must have been inspected when they first arrived. We do not understand how ASR could deal with individual inspection requests, especially as Nordisk required IMEI inspections, if all the inspections were carried out initially. On the balance of probabilities, it would appear that there was a generic inspection used for the companies involved in the transactions.

68. It appears that @tomic had had some difficulty in obtaining insurance. It had been told by underwriters that as @tomic did not have title to the goods it did not have an insurable interest as the goods were held 'ship on hold'. Mr Bahai produced to the Tribunal details of insurance provided through Hillier & Buchan commercial and specialist risk insurers from Bexley, Kent. The cover note produced, and dated 17 August 2006, confirmed insurance for the period 1 May 2006 to 11 July 2007. It did not cover the goods for the first 22 transactions in April. The cover note refers to a limit of £1,500,000 on any one vehicle and £4,000,000 to any one location. We note from deal 17 that the total value of the load was £2,398,000. It would appear that this deal was not insured.

69 .Mr Bahia has provide details of the insurance policy and the Marine Cargo Policy Slip. Mr Baines submitted that as the cover note was dated 17 August the insurance must have been effected retrospectively. We note from the Marine Cargo Policy slip that it refers to :
"Warranty. Warranted written confirmation has been received of no claims or any possible claims for the period 1 May -11 July 2006"

If that is correct then that information would only have been available after the event and marine were never on risk. The policy requires specific security measures if a claim is to be made. These include:

- Goods to be packed in neutral boxes and the consignment shrink-wrapped.
- Unless customs regulations otherwise stipulate, shipping documents (e.g. delivery notes, **CRM notes**, air waybills) should not indicate the goods as being "mobile phones" nor shall they bear any other description indicating the nature of the goods e.g. "Nokia". Note:

it is acceptable to state “electrical equipment” or similar description such as model number.

As all these details appear on all the CRMs for all the deals, the insurance would be invalid. There is no evidence that @tomic took issue on the point with Marine Cargo. On the balance of probabilities we believe the insurance detail is no more than window dressing.

Contractual documentation

70. During his verification of @tomic’s repayment claims by Mr Baines, a copy of @tomic’s ‘Supplier – Company. Terms and Conditions of Purchase document was found within Barndew’s records. The contract for Barndew is undated but has a handwritten note on it which reads:

“Date Any date in February. Post original back to us immediately Thanks.”

In any event Brianstom was a customer not a supplier so that the incorrect contract appears to have been used. Mr Bahia in his statement states that Mr Singh said that he had asked Barndew to sign another copy as he had misplaced the earlier one. Mr Singh makes no reference to this in his statement. Three further Supplier Contracts have been produced signed for:

- Sygnet Consulting dated 12 February 2006
- Primeline dated 21 February 2006
- Globalised 00 00 00 07/02/06

Tax losses.

71 .Mr Sharrock confirmed his witness statement and gave evidence under oath. He was cross-examined as to part of his statement by Mr Holland, to which we refer later. We have extrapolated the necessary facts from his statement. He stated that on a visit on 5 June 2006 he had established that Mr Daren Cooper acquired Focus Racing Limited (Focus) and acted as secretary to the company. Mr Stephen Musson was the director and that the company employed one full and one part time member of staff. It started trading in CPU’s in May 2006. £3.8 million of stock had been purchased from PZP ENA D.O.O of Slovenia and sold to two United Kingdom Companies.

74. Mr Sharrock had visited Focus again on 14 June 2006 but Mr Cooper could produce no records, which he said were with his accountant. There was no evidence of substantial financial payments because the company did not have a bank account opened. Mr Cooper continued to complain that Focus had been de-registered and it had always been trading, even though it had no Bank account. Mr Sharrock produced a substantial list of invoices raised by Focus amounting to more than £6 million of deals. Mr Cooper and Mr Musson produced no substantial details of their knowledge of the sales and the assessment has never been paid.

75. Mr Sharrock gave evidence with regard to Focus, which was incorporated on 3 April 2002 and registered for VAT on 8 July 2002. It operated from Unit 16 of Penketh Business Park in Warrington from 15 January 2003 until it was de-registered on 10 April 2006 as a missing trader when mail was returned from its address without any forwarding address.

76. In cross-examination Mr Holland pointed out that Focus had changed its address; that HMRC had made no attempt to contact Focus there and that the debt of £680 had never been recovered. Mr Sharrock confirmed that that was correct. Mr Holland referred Mr Sharrock to a

letter from Focus Trading dated 24 February 2006 advising that in order to increase the company's turnover it was going to trade in general wholesale, telecommunications equipment and products and electrical equipment and other commodities. Mr Sharrock confirmed that HMRC had not been prompted to make a visit as a result. Mr Sharrock confirmed that although the Company should have registered for VAT by the time that HMRC discovered that Focus had gone missing again.

77. Mr Holland took issue with regard to the absence of invoices or purchaser orders between Focus and Easyway London Limited (Easyway). He referred to a series of Focus invoices issued from Unit 4 in Penketh Business Park and submitted that some were not valid invoices as they did not carry a VAT number. He suggested that HMRC could have disallowed the VAT which Easyway had claimed on the purchase, but HMRC had not done so. Mr Holland noted that there had been a further visit suggesting that the company's affairs could be regularised, when it was registered, but it had never been re-registered. Mr Sharrock confirmed that HMRC had written to Focus (letter undated) reclaiming £1,191,680.70 being VAT it was not entitled to. Focus had never been re-registered and HMRC had never been paid. We note that there is a release note from Focus addressed to the Freight Forwarders Secure Freight Management Ltd, requesting that Secure released the 4000 and 2000 Nokia N80 to Easyway in deals 20 and 21 on 18/19 May 2006. We are satisfied on the balance of probabilities that Focus is a defaulting trader and VAT of at least £1,191,680.20 has not been paid.

78. Ms Parsons gave evidence under oath and confirmed her witness statement. (She had made a second statement on 21 December 2013, which Mr Chapman had not taken her to but of which we accept the contents). She was cross-examined as to part of her statement by Mr Holland, to which we refer later. Ms Parsons gave evidence as to the defaulter AAA Multilink Ltd, which was incorporated on 16 September 2005 and was registered for VAT on 1 October 2005 when it indicated that its business was 'on-line furniture and wine'. Its director was Maximillian Stummer and its secretary Charlotte Schofield. On 10 February 2006 it changed its application to 'Furniture, lighting equipment and household articles retailing' and suggested a turnover of £300,000. Its first VAT return was an application to a repayment of £4,483.10. No further declaration had been submitted and a central assessment was raised for the period 03/06.

79. She visited the company with her colleague, Paul Cooke, on 26 May 2006. The company had been identified as an acquirer of goods from Europe and as a result it would therefore have a large output liability. During the visit she established that the business address was a residential address and that Mr Stummer had moved house in February 2006. As a result the company was de-registered on 26 May 2006.

80. On 7 June 2006 she had visited the Company's accountants' offices and met with Mr Stummer and Ann Long the accountant. At the meeting, Mr Stummer was adamant that, although he had intended to deal in mobile phones, he had not done so. Mr Stummer failed to supply the listing of suppliers and on 12 September 2006 a manual assessment for £7,343,514.96 was raised. The assessment had been based on records obtained from a purported customer, Fonedalers Limited. Mr Stummer continued to allege that he had not traded and eventually HMRC decided that his number had been 'hijacked' and withdrew the assessment. A pseudo registration number was allocated to the taxable person purporting to be AAA Multilink Ltd and assessments raised against that registration.

81. Ms Parsons confirmed, under cross-examination by Mr Holland, that the company had not lodged any further returns and that a central assessment for £615 had been raised for the period 03/06 but remained unpaid. She had raised an assessment against the company as information had

been discovered from the freight forwarder as to deals with Fonedalers Limited. As stated above, the assessment was ultimately withdrawn and a pseudo VAT number provided. Ms Parsons could not recall having enquired of Mr Stummer whether he had dealt with Fonedalers Limited.

82. Mr Orr gave evidence under oath. He was cross-examined as to part of his statement by Mr Holland to which we refer later. Mr Orr gave evidence with regard to Teknic Ltd, which had been involved in the clothing industry and had changed to the wholesale purchase and sale of belts and sunglasses with around £1.3 million trading declared. It had registered for VAT on 1 May 2004. Mr Orr had visited the company on 5 June 2005 because he had received information in the form of stock allocation notes, when the company appeared to have acquired 14,800 mobile telephones from Premisten based in Estonia.

83. He had eventually met with Mr Salam, the director, and it became clear that his company's VAT numbered had been hijacked. The documentation produced by Mr Salam was different to the documentation HMRC had from Teknic Ltd, the subject of the mobile phone deals. Mr Salam had readily made his records available to HMRC. As a result, assessments were raised by various HMRC officers against a taxable person purporting to be Teknic Ltd. The total debt assigned to the hijacked number was in excess of £5.5 million.

84. Mr Orr had been unable to answer most of the questions raised in cross-examination by Mr Holland as he had not had first-hand information, which he could make available to Mr Holland. Mr Orr confirmed to Mr Chapman that his involvement had been fairly minimal and that he had provided information for other officers. He had raised the assessment as a hijacked liability because he had been satisfied that Mr Salam had not been involved in the purchase of mobile phones.

85. Mr Cordwell gave evidence under oath as to World of Power Ltd, a defaulting trader. He provided two statements. He was cross-examined as to part of his statement by Mr Holland to which we refer later. World of Power Ltd was incorporated on 4 September 2003 and registered for VAT on 8 October 2005. It operated from Chelmsford, Essex and declared its business to be the retail of electrical goods, kitchens and bathrooms. Mr Nasir Mahmood Sharif was the principal employer helped out by his family from time to time, of which at least 3 were seen working at the premises.

86. On 25 May 2006 Mr Cordwell visited World of Power Ltd's premises with Mr Monk. Mr Sharif gave him permission to enter the rear of the building where he found more business records. As a result of that visit and the enquiries made thereafter, he advised Mr Sharif that the company had purchased £11,689,127.93 worth of CPUs and that the company's sales invoices only showed £7,675,263.62 worth of sales. Mr Sharif had been unwilling to say what had happened to the remaining £4,013,864.31 worth of CPUs.

87. He had asked Mr Sharif to print out details of the company's FCIB account. Even though he had advised that he operated the account, Mr Sharif had needed to obtain details to access the account from his wife. Mr Sharif's mobile rang and he was asked, by Mr Orr, to speak in English which he did not do. Mr Cordwell suspected that Mr Sharif's wife had not given the details for access to the account. Mr Sharif printed off the FCIB details. Mr Cordwell had asked to see purchase orders, but these had not been available. World of Power Ltd was de-registered on 12 August 2006.

88. Mr Cordwell had been unable to obtain any response from the solicitors or accountants for World of Power. Assessments were raised against World of Power Ltd in relation to those transactions relating to acquisitions from Europe. Mr Cordwell had been able to compare World of Power Ltd's invoices and supplier declarations with those in Star Express' documents. The details for each set of invoices etc, although for exactly the same goods, appeared to have been completed differently and possibly by different people. We have checked Mr Cordwell's references to those documents and they are different in the packs of each company. On the balance of probabilities we believe that that documentation was fabricated and that it was window dressing. Mr Cordwell's second statement indicates that the total tax due from World of Power Ltd is £1,453,324.83.

89. In cross-examination Mr Holland asked Mr Cordwell whether World Of Power Ltd had submitted any VAT returns. Mr Cordwell said he did not know and Mr Holland stated that he had not seen any. Mr Holland noted that Mr Sharif and his associated companies appeared to have a history of non-compliance going back to 2005. Mr Holland raised no further questions.

90. Mr Mandalia gave evidence under oath in relation to Apollo Communications Centre Limited (Apollo). He was cross-examined as to part of his statement by Mr Holland to which we refer later. Apollo was incorporated on 11 February 2004 and is currently in liquidation. The company's officers were Mr Ali Rahmann as a director and Mr Pankaj Sharma as company secretary. Registration for VAT purposes was submitted on 23 February 2004 for the purposes of running a business in mobile phones, HMRC advised that Apollo had been registered as an intended trader from 1 February 2004. The company operated from Upper Richmond Road, East Sheen, London, but advised HMRC on 9 September 2005 that it had moved to 26 Church Street, Twickenham. The company moved again on 1 February 2006 to Maple Grove Business Centre, Hounslow.

91. Its total net VAT turnover from 1 February 2004 to the period ending February 2006 was £200,999.00. However, from 1 March 2006 to 25 April 2006 the date of de-registration, no returns had been submitted but assessments have been raised in excess of £50 million. In an email dated 20 April 2006 Mr Rahmann revealed 26 purchases worth £16,943,778.65 together with associated sales. Apollo had established a net VAT liability of £2,973,335.38 as a result of just one day's trading. Mr Rahmann confirmed that Apollo's wholesale suppliers were based in Portugal, Belgium and Cyprus. Mr Rahmann told HMRC that he did not pay for the goods, but asked his customers to pay the suppliers direct. It was established that Apollo's turnover for April 2006 was approximately £150,000,000 net of VAT. Officer Parikh, who had attended at the meetings, provided a list of all the known April 2006 deals carried out by Apollo in the period 7 April to 19 April 2006. The VAT total for these deals was £23,880,467.00. Mr Rahmann told HMRC that his customers, Park Supplies Limited, AC Electrical EU Ltd and Gara Technologies Ltd, had not paid him the VAT as they were supposed to do.

92. HMRC were advised by Menzies Corporate Reconstructing (insolvency practitioners), that they were instructed to take steps to put Apollo into a creditor's voluntary liquidation. Apollo's statement of affairs indicated a total deficiency of £26,713,599.30 of which £26,526,234 related to the outstanding VAT. HMRC became aware of further deals by Apollo and the debt at the time of the hearing was still outstanding and amounted to £50,907,724.00. @tomic had entered into deals, which included Apollo as an intermediate trader in April 2006. (See deals 6, 7, 9, 10, 14, 18, 19 and 20 for 18 and 19 April). It appears that the net value of goods supplied by Apollo in a period of 3 weeks in April exceeded £282 million pounds.

93. Mr Holland cross-examined Mr Mandalia, who, as with the other witnesses, was unable to confirm much of what he was asked because it was not within his knowledge base. He was referred to a schedule prepared by his colleague, officer Parikh. Mr Mandalia pointed out that the schedule of the deals in April 2006 did not include deals 18, 19 and 20 the subject of this appeal. Mr Mandalia was unable to confirm whether that was the case, but he believed that it contained all the assessments. Mr Holland referred the Tribunal to page 137 of the schedule in Mr Mandalia's exhibits. It appeared from that schedule that deals 18, 19, and 20 were included. The copy detail is very small on the schedule and difficult to see. We note that those deals are included.

94. Mr Baines gave evidence with regard to the position of Lets talk Limited in the Primeline contra chains. Officer Huw Griffiths informed Mr Baines that Lets Talk was a participant in 6 transactions which took place between 18 and 23 May 2006 and led to the trader Pimeline. The deals involved 21,400 mobile phones. Primeline sourced 14 lots of mobile phones, totalling 60,500 pieces, from Europe. Those deals led to directly to VAT zero rated broker deals undertaken by @tomic with a total sales value of £17,893,000.

95. Lets Talk was registered for VAT, as an intending retailer, with effect from 15 June 2005. Christopher John Whitehead, a director, was known to Mr Baines because Mr Whitehead had sourced mobile phones for the wholesale trade directly from hijacked traders when he ran A C J Communications LLP (ACJ). It also appeared that ACJ was at that time passing 3rd party payment instructions on to its customers.

96. Mr Baines visited Lets Talk on 2 November 2005. Mr Whitehead said that lets Talk had a low credit limit due to its limited capital and that he was setting up a second company with its own credit limit. Mr Baines advised M Whitehead that in view of Mr Whitehead's involvement with mobile phones that he would not sanction the setting up of a further company. Lets Talk's premises were set up as a retail shop but there was no evidence of any stock holding. The shop was situated away from the city shopping centre on an 'island' in the middle of an extremely busy traffic system. Mr Baines considered that the shop had been set up as a front to obtain VAT registration.

97. After several visits Mr Baines had obtained details of Lets Talk's VAT return dated 4 May 2006 signed by Mr Whitehead. The declared sales were £45,175,849 with purchases of £45,138,000. As a result he had uplifted 2 lever arch files and after examination discovered that during March 2006 Lets Talk had purchased a substantial amount of goods from a deregistered business, Linkmobile.com Ltd (Link) . Lets Talk had been advised by HMRC that Link had been deregistered with effect from 21 March 2006. From the examination of further information Mr Baines discovered that between 3 April and 3 May 2006 Lets Talk made a consistent profit margin of 25 % on all its deals with Togane Mobiles Limited irrespective of the supplier, quantity of phones, model or their value.

98. HMRC had been unable to obtain any information out of Lets Talk and its advisers and on 26 September 2007 raised an assessment in the sum of £11,785,070.37 against a person or persons unknown who were believed to have made supplies to Digikom Ltd in March 2006 using the identity of Lets Talk. Lets Talk's VAT registration was cancelled from 31 July 2006. We are satisfied on the balance of probabilities that Lets Talk was involved in MTIC fraud.

FCIB

99. Mr Bahia, in his statement at paragraph 50, indicated that all @tomic's United Kingdom bankers closed its accounts because @tomic was dealing in mobile phones. The letter from the Royal Bank of Scotland is dated 27 August 2004. @tomic opened its account with the FCIB on 1 October 2004. Mr Bahia advised that he did so because he could no longer use the United Kingdom's bank accounts. We note that all the other @tomic accounts were closed on the following dates:

- Bank of Scotland 21 December 2005
- Cater Allen private Bank 17 February 2006
- Bank of Baroda 26 July 2006
- Alliance Leicester was not prepared to offer banking facilities when requested on 11 February 2006
- Norwich and Peterborough Building Society was not prepared to offer banking facilities when requested on 10 March 2006

Mr Baines pointed out that all these accounts were closed after the application for the FCIB account in October 2004. He suggested that this, and the withdrawal of the Royal Bank of Scotland account, should have put Mr Bahia on notice that he was entering a risky environment.

100. Nigel Ward (Mr Ward), an officer from HMRC employed in the Specialist Investigations Directorate as a member of the MTIC team gave evidence under oath. In February 2010 he took over the role of viewing and analysing data from the Dutch server of the FCIB. He extracted the relevant data in relation to HMRC's civil investigations into MTIC fraud. In February 2011 he was given access to the information held on the FCIB's Paris server to which HMRC had gained access in 2010.

101. Officer Ghazalah Shah (Mrs Shah) investigated the original movement of the funds, When she left, Mr Ward was asked to review her statement. The Paris server included a more detailed narrative field that allowed confirmation or otherwise of the transactions. Mrs Shah's witness statement appears in the bundles and we have referred to her observations where appropriate. She explained that the full FCIB account reference is in the following format 00/000/000000/00. The first two digits indicates the currency. All of the transactions, in spite of the fact that phones went to and from Europe, were in sterling, represented by the number 04. The next 3 digits identify the account. The accounts used were all numbered 801 and were current accounts. Further, the current accounts could be accessed electronically by the account holders or others authorised to access the accounts with the account holder's authority. This means that there is the ability for funds to be moved around the various accounts extremely quickly. The next six digits were the customer's reference. Where funds were transferred from one account to another, the customer reference would be displayed so that it was possible to trace both the source and the destination of the funds. The last two numbers refer to the customer's account involved. @tomic's number was 04 (sterling), 801 (current account), 299678 9 (its reference number), 01 (its number 1 account)

102. Mrs Shah traced 8 transactions for @tomic based on the spreadsheet produced by Mr Baines. (See the sample of some of the spread sheets set out in the deals above at paragraphs 61 and 63). She confirms, at paragraph 60 of her witness statement, that for all the payments received by @tomic in the five deals on 24/05/2006 @tomic was paid by First in West (customer reference 202122). First in West does not appear in any of the five deal chains. Mr Ward, with the benefit of the Paris server, discovered that the Belcom account was numbered 202122/02, being a subsidiary account for First in West, which had a primary account number of 202122/01. Mr Ward concludes

that the payments in these deals was made by Belcom. There is no reference to First in West in any of @tomics due diligence into Belcom.

103. Mr Baines also stated that during the period 06/06 @tomic made 8 supplies of mobile phones to Belcom AB of Sweden (deals 20, 21, 22, 23, 29, 30 and 31) involving 26,000 units to a value of £8,996,000. The payment was also received from First in West. Mr Baines has produced evidence of an article which appeared in the online Swedish news journal 'The Local' dated 21 August 2006, which stated that First in West was used as a private company to purchase nearly 3 billion kronor worth of mobile phones. We accept that there is no evidence that Mr Bahia knew or ought to have known of the dishonesty of the proprietors of First in West, but he should have asked why payments from Belcom were made through an account operated by First in West. It might have indicated that the mobile phones had not been delivered to Belcom at all. In any event the spreadsheets prepared by Mrs Shah and examined by Mr Ward reveal circularity of the payments in relation to the deals 20 to 24 on 19 May 2006 to Belcom.

104. Mr Ward has produced a spreadsheet in relation to the deal 21 in the period 04/06 (see paragraphs 61 and 63 above). He has consulted the Paris server, which records the times and the dates when the payments were made. Although the invoices start with Anfell Traders (UK) Ltd the payments from Fonedealers Limited did not go to Realtech Distributions. Payments of £500,000 and £117,900 (£617,900) went to Multimode Marketing SL in Spain and from them to Pol CommTrading. The payment to Pol Comm Trading is of two amounts £830,725 and £830,725 but Mr Ward has traced the payments as they refer to phones Sony Ericsson W9001s. The payments from Pol Comm trading to Ascom Aps relates to £585,500, which was paid at 3.42 pm. Ascom Aps paid Brianstom £585,000 at 3.45pm, who in turn paid @tomic £584,000 at 4.09 pm. The amounts and the timings of the payments also indicates that the payments relate to the phones in question.

105. @tomic paid Globalised in two payments one for £500,000 at 12.24 pm and the other for £126,275 at 6.27 pm. We have had no evidence as to how Mr Bahia made the payments. We suspect that he did not do so. There is no sense in @tomic paying £500,000 to Globalised 4 hours before it received payment from Brianstom. Nor does it make any sense to split the payment and make the second payment two hours after receiving payment from Brianstom. Splitting the payment was unnecessary. We note from Mr Ward's other exhibits that there are several occasions where part payments of invoices are made by @tomic. We also note that there are further occasions where @tomic paid its supplier before it was paid by its customer. Some of the payments are in the daytime but all of the payments appear unusual not least because of the short intervals between the timings of the payments between traders. We would have expected that there would be a payment in followed by a payment out all within reasonable proximity of each other.

106. The invoice amount was clear. Mr Bahia stated that he could only pay his supplier when he received the money from his purchaser. He appears to have made the earlier payments out of monies held in the account, which does not agree with his statement that he could only pay for the goods when he was paid. If he makes an earlier payment then it would lead to difficulties in tracing the payments given that he carried out more than £16,000,000 over the period. Presumably he went on his computer at about 12.15pm to make the first payment at 12.24. We doubt that he would have sat at his computer unit 4.00pm waiting for the payment from Brianstom. There has been no evidence as to when he knew he would be paid. It is unclear why he would go back to his computer at 6.15 after business hours. If he had been checking his computer it was fortuitous that Brianstorm had paid and he could make the balancing payment of £126,275. If he was still at work he would have needed to look at the Globalised invoice to calculate how much he then needed to

complete the payment. Nowhere in the evidence are there any remittance advices for invoice payments. Mr Bahia could only have known that monies had been received by constant monitoring of his internet bank account. We do not believe that this is a realistic possibility for a man running a business of this size with so few other members of staff.

107. £585,500 passed through 6 separate business accounts. In relation to the Pol Comm Trading in Poland, Ascom Aps in Denmark and Brianstom in Cyprus in 27 minutes. In relation to the 4 United Kingdom companies and the payment to Spain it took just under 3 hours all out of office hours and up to 9.00 pm at night. We have not been told which time zone the Paris server is on. Europe runs one hour ahead of the United. If the time is the Dutch Antilles time then that time is 6 hours behind United Kingdom time. This would mean that Mr Bahia made his first payment to Globalised at 6.24 in the morning, again outside business hours. On the above basis and on the balance of probabilities, we consider that Mr Bahia was not operating @tomic's FCIB account. He must therefore, have authorised somebody to use the account on his behalf.

108. Mr Holland cross-examined Mr Ward. Mr Ward confirmed that the Paris server had all the information that the Dutch server contains, although he was not entirely sure what more it contained. From our examination of the exhibits, the Paris server also gives the timings of all the transactions and a detailed description of the goods. Mr Ward confirmed that HMRC had been unable to establish circularity of payments in relation to the deals 20 and 22 in 20/04/06 and in deals 36, 37, 38, and 39 in 9/06/06, and 40 and 41 in 12/06/06.

109. Mr Holland referred to the tracing of payments in relation to deal 21 (which appears in this judgment at paragraph 67) through the FCIB accounts and asked Mr Ward to confirm how those had been dealt with. Mr Holland noted that @tomic had paid Globalised before it had been paid by Brianstom. Mr Ward confirmed that he had traced the onward payments, where the sum was not readily recognisable, by noting the reference from the Paris server as to the quantity and type of mobile phone. Mr Holland referred to the payment by First in West which had actually been paid by Belcom. Mr Ward confirmed that evidence from the information in the Paris server. We consider that it is unlikely that Belcom operated through the First in West account without the same being disclosed to @tomic.

110. Mr Ward explained to Mr Holland that he had examined a further six chains at the request of Mr Baines. They related to deals: 1 (04/06); 2 (04/06); 6 (04/06); 2 (06/06); and 11 (06/06). Some of the payments in the deals were split and some made by third parties not involved in the chain. All the payments demonstrated circularity.

111. In six other deals the Paris server had not produced any additions to the payment chains as prepared by Officer Shah. For invoices 1462 and 1463 the short chains identified by officer Shah have been confirmed. In the remaining four deals the additional narrative does not support all of officer Shah's chains and he had therefore shortened these in his version. Mr Ward explained that in shortening the chains he had been unable to establish circularity of movement of the funds.

Mr Chapman's submissions

112. Mr Chapman provided written submissions in accordance with the directions given at the end of the hearing. In light of the parties' opening submissions and the cross-examination of HMRC's witnesses he submitted that the following issues remain in dispute:

(1) The impact of *Mahageben*

(2) Whether or not HMRC can trace the following tax losses

- a. @tomic straight chains, period 04/06, deals 17, 18, 19, 20, 21 and 22
- b. @tomic straight chains, periods 06/06 deals 20, 22, 36, 37, 38 and 39
- c. Whether or not Lets Talk was a fraudulent defaulting trader.
- d. In respect of the Contra Transactions, whether or not Primeline knew or ought to have known that the transactions were connected with the fraudulent evasion of tax
- e. In respect of @tomic's transactions as a whole, whether or not @tomic knew or should have known that the transactions were connected with the fraudulent evasion of tax.

113. The skeleton argument on behalf of @tomic relies upon paragraphs 51 to 65 of *Mahageben* and then states as follows:

8. These paragraphs make it clear that it is for the respondents to carry out the necessary inspections of taxable persons in order to detect VAT irregularities and fraud. If they do not, the knowledge/means of knowledge test arising in *Kittel* will be rendered meaningless. This is because the principles of legal certainty, proportionality and the protection of legitimate expectations will not have been respected. It is the Appellant's contention that, in certain instances, the Respondents have not carried out the necessary investigations and that, in these instances, it will be disproportionate, effectively to transfer the respondent's investigative burden onto the Appellant by allowing the Respondents to disallow the input VAT claimed by the Appellant.

114. Mr Chapman submitted that it is now well settled by the Upper Tribunal that *Mahageben* does not restrict *Kittel* and that the denial of repayment claims in such circumstances is not disproportionate (Mr Chapman referred us to *Fonecomp Ltd* paragraphs 15 to 32; *Softhouse Consulting Ltd v HMRC* paragraphs 13 to 17, and *Edgeskill v HMRC* at paragraph 17 in respect of the impact of *Mahageben*). If a trader knew or ought to have known of the fraud then it ought not to enter into the transactions. If a trader did not know or could not have known of the fraud then HMRC should make the repayment. The Tribunal does not have a supervisory judicial review function and so does not have the jurisdiction to consider legitimate expectations. Mr Chapman referred to *Hok Ltd v HMRC* [2012] UKUT 363 (TCC)M and *HMRC v Noor* [2013] UKUT 71 (TCC).

115. Mr Chapman submitted, as Mr Baines had observed, that fraudulent traders had become more sophisticated in their methods of seeking to avoid detention by the time of @tomic's deals. As such, the fact that various 'blockers' were inserted and documentation withheld added to the likelihood of fraud rather than detracting from it. Further, Mr Baines had sought to introduce evidence revealing connections, but had not been allowed to do so. Mr Baines had made similar assurances during cross-examination.

116. As to the deals, Mr Chapman submitted as follows:

- a. @tomic's deal 17 (04.06). HMRC have established a link between Anfel and Realtech from the documentation available from the freight forwarders ASR.

- b. @tomic's deals 18 to 20 (04/06) Mr Baines traced the deals to Gara and then Apollo using a deal log from another officer. In addition
 - i. Gara's sole documented support during the period 07 April 2006 to 24 April 2006 was Apollo
 - ii. Apollo appears as a defaulting trader in four other transactions in 04/06, three of which trace back to Gara, the other going back through Park Supplies.
 - iii. Gara instructs its purchasers to make 3rd party payments.
 - iv. With the exception of deals 18 to 22, all the other 04/06 broker transactions have traced back to a defaulting United Kingdom acquirer. With the exception of deals 36 to 41 the 06/06 broker transactions have traced back to defaulting United Kingdom traders.
- c. @tomic's deals 21 and 22 (04/06). Mr Chapman submitted, on the balance of probabilities, these deals derived from a defaulting United Kingdom acquirer for the following reasons:
 - i. Realtech appears to be a 'blocking' trader as documentation and information have been withheld.
 - ii. Realtech appears in eight more of @tomic's 04/06 broker transactions and in each case purchased mobile phones from Anfell.
 - iii. With the exception of Deals 18-20 in 04/06 and 36-41 in 06/06 @tomic's other broker transactions have traced back to a defaulting acquirer.
 - iv. A best judgment assessment in the sum of £247,477 remains outstanding.
- d. @tomic's deal 20 (06/06). @tomic takes issue with regard to absence of invoices or purchase orders in relation to:
 - i. Focus and Easyway. The records from the freight forwarder Secure Freight Management Ltd (Secure) reveals a fax from Focus requesting an allocation of the phones to Easyway.
 - ii. Causeway and Realtech. References from Secure includes a fax from Causeway instructing Secure to allocate and release the goods to Realtech.
 - iii. Karen Cummins in her investigation of the deals in the criminal investigation produced an excel spreadsheet, which for the periods 15 to 19 May produced the start of the chain for @tomic's deal 20, period (06/06) (see paragraph 67 above) namely Multimode, PZP Ena D.O.O., Focus racing, Easyway (London) Limited. Mr Chapman submitted that this corroborates HMRC's position that on the balance of probabilities @tomic's deal 20 was connected to a fraudulent default by Focus Racing Limited.
- e. @tomic's deal 22 (06/06) (See paragraph 67 above). @tomic takes issue again on the absence of invoices and purchase orders between causeway and Realtech. Mr Chapman submits that this is resolved by the fax to Secure from Causeway instructing it to allocate and release goods to Realtech.

- f. @tomic's deals 36 to 41 (06/06). @tomic takes issue with the absence of any paperwork prior to Performance Specifications Ltd (Performance) in respect of deals 36 and 40, Guess Trading Ltd (Guess) in respect of deals 38 and 39 and Atlantic Catering Equipment (Atlantic) in respect of deals 37 and 41. Mr Chapman submitted that on the balance of probabilities these deals derived from a defaulting United Kingdom trader for the following reasons:
- i. All the other 06/06 broker transactions and, with the exception of deals 18 to 22, all of the 04/06 broker transactions have traced back to a defaulting United Kingdom acquirer.
 - ii. Performance has failed to make its records available.
 - iii. Guess appears in five other transaction chains in 06/06 which all trace back through Fonedealers to a defaulting trader.
 - iv. Atlantic appears to be closely linked to Universal Appliances Ltd, which has been subject to a best judgement assessment for the period in the sum of £200,630.59.
- g. Primeline's deals 42, 43, 45, 46, 47, 48 and 50. (05/06). Teknic's high level of trading between 26 May 2006 and 31 May 2006 was inconsistent with previous trading patterns. Mr Salam, Teknic's director, was contacted. He provided his records, which gave the impression that Teknic's VAT number had been hijacked as Teknic's real documentation was substantially different to that in the deals. The uplifted deals from the criminal investigation also reveal identical chains. On the balance of probabilities Primeline's deals 47 and 50 were connected to a fraudulent default by Teknic.
- h. Primeline's deals 13 to 20 (the Lets Talk deals) (05/06) derived from a defaulting United Kingdom Trader for the following reasons.
- i. The Lets Talk deals have been traced back through Sundial to Lets Talk and they have acted as a 'blocker'.
 - ii. Sundial was a major customer of Lets Talk but no transactions have been recorded during the period 05/06. This is extremely unlikely given the intensity of the trading activity either side of the period.
 - iii. Mr Baines has given evidence that money, including all or most of the VAT element, was being sent overseas. This was re-enforced by the witness statement and exhibits of Elaine Emery relating to the FCIB.
 - iv. Lets Talk was sourcing goods from suppliers which ultimately defaulted on their VAT liabilities and passed on third party payments instructions.
- i. Primeline's knowledge. Mr Chapman adopted the findings in *Megtian Ltd* in respect of Primeline's 04/06 contra transactions as follows:
- “The director of Primeline had received numerous warnings about the prevalence of fraud in the trade it was dealing in. The company obtained a credit check about a trader in February 2006 which recommended that it should only give that trader £4,000 credit but then traded to the tune of over £12 million in the month of April 2006 and in March 2006. It received a credit check on another trader recommending a £300 limit but traded with it to the tune of £5 million in April 2006.

Primeline's turnover grew from £13,851 in the year ending February 2005 to £40,773,840 in the year ending February 2006 and to £152,282,500 in the three months ending May 2006. There is evidence that the director of Primeline asserted that he had made enquiries of HMRC about another trader with which he wished to deal and had been given clearance when that was not the case. The company had falsely represented the nature of the intended trade to HMRC when it applied for registration. The Director had also failed to register for VAT as a sole proprietor despite having a liability to do so.

That and the other evidence we have reviewed leads us to find that Primeline was dishonest in its dealings in the relevant chains and that it had used the two transactions with which Megtian was concerned to facilitate fraud by means of contra trading."

Mr Chapman accepted that the Tribunal was not bound by that decision in respect of the evidence which appeared in the decision.

@tomic's knowledge.

117. Mr Chapman submitted that neither Mr Bahia nor Mr Singh gave oral evidence. Their witness statements (and in particular their assertion that @tomic did not know or could not have known that the transactions were connect with the fraudulent evasion of VAT) should carry very limited weight.

- a. There is no updated evidence explaining why Mr Bahai was unable to attend the hearing. The only reason given for Mr Singh's non-attendance is that he no longer works for @tomic. This would not prevent him from giving evidence.
- b. As a result of their not attending, HMRC have been unable to test any of @tomic's evidence by cross-examination, which would have been instructive as to their veracity. Mr Bahia and Mr Singh would have been cross-examined about their understanding of the contractual arrangements; the way the deals were negotiated; and how they explained the vast profits they had been able to achieve without any background in selling mobile phones or CPUs.

118. @tomic's own case on knowledge and means of knowledge is not a complete or effective denial:-

- a. Mr Bahia states in his witness statement that the 'Company' did not have any knowledge or means of knowledge. He did not say that he *personally* did not have any knowledge or means of knowledge. Paragraph 58 of his first statement said:-

58. The Company accepts that it had a general knowledge that there was fraud within the mobile telephone wholesale industry. However, the Company expressly denies that it had any knowledge that there was fraud within the transaction chains which form the subject matter of this appeal"

- b. In the absence of cross-examination, it is not possible to tell whether or not Mr Bahia is making an unjustified distinction between himself and @tomic; the reality is that if he knew of the fraud so did @tomic. Mr Bahia does not deal with his knowledge at all in his witness statement. Similarly Mr Singh merely adopts Mr Bahia's statement. It is unclear what work either of them carried out for the company.
- c. Mr Baines was not challenged upon his conclusions in paragraphs 342 to 350 of his first witness statement.:

“350 These matters coupled with the fact that my enquiries have identified actual or probable defaults in all the transaction chains relating to @tomic’s 22 exports in period 04/06 and 38 exports in 06/06 lead me to believe that @tomic had knowledge that it was involved in MTIC VAT fraud and the “contra” or “off-set” transactions formed part of an overall scheme to defraud HMRC.

119. @tomic has been found, in other tribunals dealing with the periods 04/06 and 06/06, to have been dishonest with a knowledge of fraud. Mr Chapman referred to *Megtian Ltd v HMRC* and on appeal per Briggs J found that @tomic knew or should have known of fraud *UBS AG v HMRC* [2010] UKFTT 366 (TC)) or that it was, ‘conducting its business as part of an overall scheme for defrauding the revenue’ *Mobile Export 365 Ltd and Shelford (IT) Ltd v HMRC* [2010] UKFTT 367 (TC). Mr Chapman accepted that this Tribunal is not bound by these decisions it is of note that @tomic had not expressly taken issue with these findings.

120. Mr Chapman submitted that the reason for @tomic’s phenomenal success remains unexplained, leading to the conclusion that the transactions were contrived;

(1) @tomic was dormant as at 31 May 2003 but had a turnover of £14,700,000 as at 31 May 2004, £55,600,000 as at 31 May 2005 and £252,500,000 as at 31 May 2006. Neither Mr Bahia nor Mr Singh had any experience in wholesaling mobile phones or CPUs. No explanation has been given as to how @tomic obtained trading contacts and sourced the phones. In his first witness statement Mr Bahia stated at paragraph 118:

(2) “118. There was always commercial negotiation regarding price. The negotiations were carried out over the telephone. Accordingly, there are no notes evidencing each transaction.”. Its trading patterns appear to be highly regimented and contrived. Such contrivance was further evidenced by:

a. There appeared to be no commercial risk. Mr Bahia stated that @tomic as a broker and as a result it did not need to hold stock. It only purchased stock when it knew it had a buyer and paid for it out of monies it received from its customers.

b. @tomic did not only act as a broker. In the period 04/06 it acted as an acquirer on 6 occasions, which gave rise to the finding of dishonesty in *Megtian*. It acted as a broker on 22 occasions and a buffer on 32 occasions. In the 06/06 period it acted as a broker on 38 occasions and a buffer on 3 occasions.

c. The fact of non-payment does not remove commercial risk. @tomic might have considerable difficulty in re-possessing the goods for non-payment if they were by that time out of the country, damaged or stolen.

d. Although @tomic had a contract it does not appear to have paid much attention to it as evidence by the backdating of the agreement with Barndew. Mr Bahia has given no evidence as to what point @tomic’s contract became binding.

(3). @tomic’s due diligence focussed on its suppliers rather than its customers. This was unusual given that @tomic’s biggest risk was that of not being paid. There is no evidence as to who requested the Veracis’ reports. They are undated and revealed potential commercial risks. Globalised Corporation Ltd had only been trading for one

year and yet had a turnover of between £7,000,000 and £8,000,000 in one month. Mr Bahia appeared to have made no attempt to analysis the data.

(4). The Redhill checks on which Mr Bahia relied do not confirm that @tomic should enter into a deal with any company about which it was enquiring. Some of the due diligence was made after the deals had been entered into. Mr Singh visited Brianstom three months after the first sale took place.

(5) The manner in which the deals were conducted appeared artificial:

a. Deals 20, 21, 22, 23, 29, 30 and 31 in the period 06/06 related to sales to Belcom AB in Sweden, but delivery was required to Freight Connections BV in the Netherlands and payments were authorised by First in West utilising their number 2 account with the FCIB.

b. Mr Bahia confirmed that no IMEI inspections were requested although his invoices indicate that they were. Various goods were shipped to locations other than their overseas customers' premises on a back-to-back basis at a significant speed. There is no evidence of commercial negotiations nor any evidence of defective stock. @tomic's insurance appeared to relate to a period after the deals and in any event was inadequate.

c. Mr Chapman submitted that the relationship with Mr Bahia's younger brother's business Sygnet made no commercial sense. @tomic had dealt with both Globalised and Sygnet. His brother had been a director of Globalised until 5 February 2004. If there had been a genuine desire to assist his brother, Mr Chapman would have expected @tomic to trade only with Sygnet.

121. In the circumstances, Mr Chapman submitted that @tomic's appeal should be dismissed and that @tomic should be ordered to pay HMRC's costs (pursuant to and/or subject to the costs regime set out in Judge Cannon's direction dated 27 November 2012).

Mr Holland's skeleton argument and submissions therein.

122. Mr Holland has indicated that he is no longer instructed in this appeal and he has not therefore prepared written submissions. In his skeleton argument he stated that for the Respondents to succeed, it must prove that the Appellant knew or should have known that their transactions were connected to fraud as opposed to were more likely than not to be connected to fraud. In discharging its burden of proving that the Appellants knew or ought to have known that the transactions were connected to fraud, the Respondents must point to objective factors which were known to the Appellant or should have been known to them at the time that they entered into their transactions.

123. He submitted that there was no authority either in Article 167 and 168 of Directive 2006.112, the VAT directive or, in the case law of the Court of Justice of the European Union (the CJEU) or in English law which supports the Respondents' construct of contra trading. Conversely, there is authority for the proposition that it is not permitted to take a global view or to deprive a taxable person of the benefit of the right to deduct because of supplies which were not objectively linked to the taxable transaction in respect of which the benefit has arisen.

124. Mr Holland submitted that it is for the Respondents to carry out the necessary inspections of taxable persons in order to detect VAT irregularities and fraud. If they do not, the knowledge/means of knowledge test arising in *Kittel* will have been rendered meaningless. That is because the principle of legal certainty, proportionality and the protection of legitimate expectations will not have been respected.

125. Without the benefit of submissions by Mr Holland it is impossible to comment on the purpose of his cross-examination.

The decision.

126. We have considered the law and the facts and we dismiss the appeal and award costs to HMRC. We are concerned that Mr Bahia has neither attended the hearing nor produced any good reason as to why he has not done so. Further Mr Singh, his only witness and employee, has also not attended, nor offered an explanation as to the reason for his non-attendance. As Mr Bahia is seeking, on behalf of @tomic, a repayment of approximately £10,000,000, we would have expected him to either attend himself or, if he was too ill, for him to justify the illness and arrange for somebody to attend on his behalf. We do not accept that Mr Holland's attendance, as @tomic's solicitor, is sufficient, not least because Mr Holland has been withdrawn from the case and he has not therefore provide written submissions as directed.

127. We agree with Mr Chapman that as a result of Mr Bahia's and Mr Singh's failures to attend we should add very little weight to their witness statements. Mr Bahia's witness statement is merely a response to Mr Baines' statements and is of no assistance with regard to how the transactions were funded, negotiated and subsequently completed. As a result, we have had to consider much of the evidence as provided in the various witness statements and exhibits in 41 bundles.

128. Mr Holland's principal defence to the case arises from his consideration of the law and the European Courts' views. We intend to deal with those observations first.

Mr Holland prepared his skeleton argument on 9 January 2014' but did not have the benefit of the decision of *Edgeskill Limited* (released on 27 January 2014) in which The Honourable Mr Justice Hildyard, in the Upper Tribunal, said at paragraph 260:

“260. As a postscript, I note that my conclusion that the law is clear, settled and against the Appellant is confirmed by the recent decision in *Fonecomp Limited v HMRC*. That appeal from the FTT was heard and adjudicated by Sales J and H H J Roger Berner in the Upper Tribunal at the end of last year (2013); and I was sent a draft transcript after I had substantially completed my work on this decision.

Essentially the same points in relation to contra trading and the case of *Mahagaben* were advanced....in *Fonecomp*Sales J and H H J Berner there stated at paragraphs 27 to 29...as follows:

27. ..despite the conclusion of the Court of Appeal in *Mobilx*, on this appeal Mr Patchett-Joyce submitted that we review the European authorities and conclude that the Court of Appeal had (at least arguably) misconstrued them so that a reference to the Court of Justice should be ordered for it to clarify the law. As a further and alternative submission, he submitted that the judgement in *Mahageben* and *David* involved a significant modification of the approach of the Court of Justice in *Kittel*, such that it is now clear that a narrow test of connection between a transaction in respect of which input VAT is claimed and VAT fraud applies, on the basis of which either it is *acte clair* that Fonecomp must be allowed to reclaim its input VAT or there is such doubt about whether it is entitled to do so that a reference to the Court of Justice should be ordered.

28. We regard both these submissions as misconceived. The Court of Appeal in *Mobilx* read and interpreted the judgment in *Kittel* with meticulous care. We do

not consider that it is open to the Tribunal to second guess the Court of Appeal's interpretation of that judgment, laid down in authoritative fashion in *Mobilx*. But even if it were open to do so, we should record our full agreement with the Court of Appeal's interpretation. There is, in our view, no lack of clarity in the position. Accordingly, there is no proper basis on which it would be right to contemplate making a reference to Luxembourg to test whether the court of Appeal in *Mobilx* was correct in its interpretation.

29. Moreover, we do not consider that the judgment in *Mahageben and David* creates any doubt or uncertainty about the interpretation of the judgment in *Kittel* where there was none before”.

I have quoted from the decision of the Upper tribunal in *Fonecomp* at some length, first, because although I have reached my own conclusions independently and before having the benefit of that judgment, it encapsulates my own view on the applicable legal principles; and, secondly, to emphasis the point that the matters of law advanced by the Appellant's in that case and this are misconceived; the law must be taken as settled by *Mobilx*, the reasoning in which has not been disturbed by the subsequent ECJ/CFEU decisions to which I was referred”

We are also satisfied that the law has been settled by the decision in *Mobilx*

129. Mr Bahia has considerable experience in running businesses. He had failed to run a business selling pizza ovens at £12,000 each. He readily understood that businesses require capital and hard work. As an astute businessman he must have been amazed at the growth in the company from nothing in May 2003 to £252,500,000 by May 2006. That does not take place in a normal commercial venture. He indicated that he had provided approximately £200,000 working capital when he first started selling mobile phones. No further evidence has been produced to indicate how he was financing marginally more than half of the VAT due on the entirety of the deals. We have indicated, in the last column of each of the six deals, the amount of VAT @tomic had to find to pay its suppliers. In deal 2, in the period 04/06, @tomic purchased the phones for £1,586,250 from Cybacomms and sold them to Nordisk for £1,472,500. Mr Bahia has indicated that he could only pay Cybacomms when @tomic was paid by Norsdisk. That is not correct, it still had to find £113,750 towards the VAT. (£1,586,250 - £1,472,500). In the 6 deals for a period of period of 3 months @tomic needed to fund VAT amounting to £541,092 and for all the deals £1,208,568.

130. @tomic had a net worth of £913 for its year end on 28 February 2004. We have had no explanations as to how the VAT was funded, but given the net worth of the business, it could not have been achieved by commercial loans from a third party. Mr Bahia has indicated that the transactions have been funded by the repayments made by HMRC. We have not had any details of those repayments. We note, however, that marginally less than half of the VAT due has been funded by the profits on @tomic's sales

131. HMRC has to establish:

- Whether there were fraudulent tax losses in the supply chains leading to goods being offered to @tomic, and
- Whether Mr Bahia on behalf of @tomic knew or ought to have known of the connection with fraud.

132. We accept that Mr Bahia would not necessarily know of the deal chains above or below his own suppliers and customers. We need to decide from the evidence that he had at the time, in respect of the deals with which @tomic was involved, that he must have known, or ought to have known, that the deals were not genuine transactions. That @tomic was participating in transactions, which could not possibly be commercial and which must be connected to fraud. Mr Bahia must have been on notice that he was dealing with goods that were connected with fraud as a result of the difficulties at Manchester Airport.

133. We have examined in detail 6 deals and all of them appear to have the same shape. The intermediate United Kingdom traders appear to be satisfied to settle for a small profit, as indicated in the last column, whilst @tomic makes a substantial profit on its sale to its customers in Europe. Given that Mr Bahia had no experience in the market, it is most unusual that any one of the intermediate traders did not decide to sell to Europe themselves. Furthermore @tomics profit margin is substantially higher than that of the other companies running from 5.69% to 9.57 % and is consistent with Mr Stone's observation that the brokers in fraudulent deals appear to make a profit of at least 6%.

134. We agree with Mr Chapman's submissions with regard to the tax losses. There is no doubt that such losses have for the most part been traced to defaulting traders. Where they have not, we rely on Christopher Clarke J's comments at paragraph 109 of *Red 12 Trading Ltd* as authority for the proposition that the Tribunal may consider compelling similarities between one transaction and another and that it is not precluded from drawing inferences where appropriate, from a pattern of transactions of which the individual transaction in question forms part. Christopher Clarke J also highlighted the following as important factors in assessing the knowledge or means of knowledge of a trader:

viii. "compelling similarities between one transaction and another".

ix. "pattern[s] of transactions".

x. "transactions all of which have identical percentage mark ups...".

xi. "...made by a trader who has practically no capital...".

xii. "...as part of a huge and unexplained turnover...".

xiii. "... with no left over stock".

xiv. " A Tribunal could legitimately think it unlikely that the fact that all 46 transaction in issue can be traced to tax losses to HMRC is a result of innocent coincidence".

135. We have examined the documentation supplied for both the suppliers and the customers. Due diligence with regard to the customers has been provided by Mr Bahia for the hearing but it was not produced to HMRC when it was specifically requested. We have also checked most of the other deals and they all follow the same pattern. We believe the documentation to be no more than window dressing. There are errors in most of the documentation:

- It would appear that the phones are delivered to the freight forwarders where they remain until their ultimate dispatch to the Netherlands. If that were not the case, then it would not, we believe, have been possible for the thousands of phones involved in each deal to have been inspected and dispatched in time. Mr Bahia appears to have

made no enquiry as to why the phones had to be delivered to the Netherlands. We would have expected that the phones would be delivered to the premises, or at least to the country, of the trader with which @tomic was dealing.

- It appears that there were phone calls setting up the purchase and subsequent phone calls agreeing the sales. The parties to both, we were told, were found on the internet. No evidence has been given of such phone calls or indeed the negotiations leading up to the purchases and sales. We believe that in ordinary commercial circumstances these would have taken some time to establish and would have resulted in more unit prices not being in round pounds. We also note from the phone bills provided for some of the suppliers and customers that the accounts were minimal, which does not indicate that many transactions could have been handled by telephone. Whilst we appreciate that some of the deals may well have been handled through mobiles, there must have been a larger number of calls to the direct line.
- Once @tomic acquired the goods it arranged for them to be inspected on their behalf. Subsequently their customer ostensibly arranged for them to be inspected on their behalves. The inspection reports appear to indicate that one inspection report sufficed for both. (Note the Belcom seal on @tomic's inspection report). Where there are fax timings these show that the inspections came at or after the time of allocation and release to the customer.
- It is unclear how the inspections could have been carried out as there is no detail specification as to the types of phones on all the invoices. There has also been an insistence on IMEI reports, which never occurred. This insistence extended to computer processors, which do not have IMEI numbers.
- There are a series of notices to ASR asking for the goods to be allocated, and shipped on hold, all on the deal day, and released when payment was made. One of these was nearly two months after the actual date of shipment. We have not been told when the ownership in the goods passes one to the other. It is understood that that occurs when payment is made. In those circumstances @tomic was content to allow millions of pounds worth of goods to leave the United Kingdom, for delivery in the Netherlands, for customers elsewhere in Europe, unpaid for. No businessman would allow that to occur, because the risk is far too high that payment might not occur. Moreover, @tomic's purchases were made on the same basis but they were content to allocate goods that they did not own.
- A major problem with the documentations is that the goods appear to be at Heathrow, London. ASR have signed CMRs from West Drayton and it has never been suggested that the phones were other than at ASR's premises. As a result If the goods had been at West Drayton they would have said so. No evidence has been given as to why the goods were collected from Heathrow or indeed how they got there.
- The subsequent Eurotunnel Ticket confuses the matter further. If the goods were at Heathrow would it not have made sense to fly them to their destination? We believe that the fraudsters wanted to use the evidence they had of the movement of the goods through the Eurotunnel and Channel Ports as evidenced by the vehicles' registration numbers. The Eurotunnel ticket indicates times between 22.00 and 00.01 in the morning.
- We do not believe that a company with so few staff as @tomic could deal with the sourcing and negotiation of deals, carrying out of the due diligence, the production of paperwork, and the constant monitoring necessary of all the FCIB transactions on the numbers of transactions carried out in such short periods

- All the documentation has been carried out by fax. We accept the documentations are copies, but we would have expected them to carry the fax legends which most of them do not.

136. Comment has been made by the officers of the similarity of the deal packs across the trades. We have seen from the evidence that the supplier declarations, in some cases, appear to be identical as to its wording in disparate traders. We believe on the balance of probabilities based on the evidence that the documentation for the deals was contrived.

137. The due diligence evidence is even less satisfactory. The due diligence follows the same pattern for all the traders. Recognising that all the parties appear to be carrying out multi-million pound transactions, it is remarkable how small their business are. The Veracis reports are undated, and in some circumstances prepared after the event. The reports were never addressed to @tomic and Veracis was listed as the adviser to some of the vendors on which they were reporting. There is no evidence of @tomic instructing Veracis to carry out due diligence. The Companies House reports show that for all the companies that no substantial accounts have been prepared and that the businesses have very little capital. The site visits, which would appear unnecessary where Veracis has already visited, show no more than small offices with two people sat in them and a computer. Interestingly, they do not contain a photograph of either Mr Bahia or Mr Singh with the owner, which we would have expected if they wished to prove that they had visited. All the businesses appear to have a very casual rental arrangement, even to having to move rooms to accommodate other tenants. The tickets and visit dates are confused. Why have @tomic not kept both tickets to show both journeys? All the businesses are clearly of no substance. Any commercial business would not rely on any of this information if it was entering into the deals of the value @tomic had in mind.

138. It appears that it has been impressed on Mr Bahia that @tomic must have Redhill and Europa confirmation as to the validity of its suppliers' and customers' VAT registrations. There are numerous such enquiries. Some of them after the event and some only to Europa. We consider that Mr Bahia must have thought that such certification was essential in that he has made several similar enquires with regard to his freight forwarders ASR. The only risk with ASR was that @tomic would not be able to recover the VAT on ASR's invoices if ASR ceased to be registered. The amount of VAT was small. The invoices are fairly substantial, but there has been no evidence as to how these were paid given that @tomic had to rely on the VAT repayment to recover its expenditure and profit. There were no due diligence enquiries aimed at providing assurance that the suppliers were of sufficient financial standing to deliver good title to goods they owned, or that they had insured these goods against loss.

139. We are satisfied that @tomic had no insurance in place for the purposes of the transactions, both because the evidence produced shows that the insurance was obtained retrospectively and that @tomic has not complied with the requirements of the insurer's documentation.

140. Mr Bahia has given no evidence as to how he accessed the FCIB account and the times that that was done. He was on notice from several of his United Kingdom's bank and building societies that the mobile phone industry was very risky. Why would a new business bank with a bank located several thousand miles away, in a country never visited by its directors? No reasonable businessman would open an account with a bank it could not visit to carry out millions of pounds worth of business with traders it did not know.

141. The FCIB evidence is extraordinarily details. We do not doubt that the much of the money passed round the various traders and returned to the original source. In the alternative, it did not go round in a circle, but disappeared to a trader with no relevance to the deals with which @tomic was involved. We are satisfied from Mr Ward's evidence that he has been able to trace many of the deals as a result of the addition information available from the Paris server.

142. If @tomic's transactions were straightforward why has it paid its suppliers before it was paid itself. We accept that the payments occurred on the same day, but without any remittance advices @tomic would have no knowledge as to when its customers would be paying. If it did then it could afford to wait until it had been paid before it made prior payments to its suppliers. Mr Bahia has told us that he never made any payments to his suppliers until his customers had paid @tomic. That was clearly not the case.

143. Why, also, has he made two payments? There is absolutely no need for that to have taken place. In fact by making two separate payments he has over-complicated his transactions. The payments appear to have been made in some circumstances out of business hours and several days after the deals. Mr Bahia would have needed to know the actual value of the invoice from the suppliers to be able to split the payment. Presumably, he would have been at home after business hours and that information would not have been available to him. We have had no evidence as to how and when the payments have been made and can only rely on the timings and dates provided by the Paris server.

144. We have not been given any evidence as to what time is represented by the Paris server. We believe that the time is that of the server as the timings are sequential and it would make no sense for the times to be in the individual countries. Paris time is one hour ahead of the United Kingdom in April/May and 6 hours ahead of FCIB time in Curacao. Either way, we imagine that Mr Bahia ran @tomic from his office and not his home. We cannot therefore understand how he recorded payments either side of usual business hours unless somebody else was operating @tomics' account for @tomic.

145 If Paris time is used, then it is the most beneficial timings for @tomic. We note from the deal details provided by Mr Ward, that several payments within the circularity fall outside business hours. @tomic has received two payments one at 8.20 pm and another at 5.27 pm. It has made payments to its customers at 7.27 am and 5.54 pm. Similarly, payments have been received on separate deals at almost the same times between 12.06 and 12.18 and paid out between 3.33pm to 3.45 pm. Given that @tomic alleges that all these transactions were at arm's length it is remarkable that disparate customers and suppliers in different parts of the world would chose to pay and receive payment during almost exactly the same time slot.

146. We have considered all the evidence in the round, not preferring one part as against another, save that we have given very little weight to the evidence provided by Mr Bahia and Mr Singh in view of their absences. We have decided that the due diligence was no more than window dressing and we believe that the deal documentation had been prepared for @tomic as part of the fraud. We have decided that Mt Bahia knew, and if he did not know he ought to have known, that the transactions @tomic was entering into were connect with fraud and we dismiss the appeal.

147. Judge Cannan's direction dated 27 November 2012 provided:

1. The 1986 Rules apply to costs incurred by both parties up to and including the costs incurred by the respondents in serving their witness statements on or about 18 April 2009.
2. The 2009 Rules shall apply to cost incurred by both parties since that time.

Had this matter commenced after 2009 it would undoubtedly have been classified as a complex case. As it has not, Mr Cannan took the view, by applying the 2009 Rules that no further cost could be awarded for either party.

Rule 10 of the 2009 Rules also provides:

10 (1) The Tribunal may only make an order in respect of costs.....

(a) If the Tribunal considers that a party or their representative has acted unreasonably in bringing, defending or conducting the proceedings.

(2). The Tribunal may make an order under paragraph (1) on an application or of its own initiative.

(3) (4)

(5) The Tribunal may not make an order under paragraph (1) against a person (the “paying person”) without first-

- (a) Giving that person the opportunity to make representations; and
- (b) If the paying person is an individual considering that person’s financial means.....

148. In view of the fact that Mr Bahia has made no attempt to attend the hearing nor to produce evidence of his ill health, we can only assume that he never intended to appear at the Tribunal and that he believed, in light of his failing to instruct Mr Holland to provide written submissions, that there was little prospect of @tomic being successful in its appeal. As a result the Tribunal and HMRC have been put to unnecessary expense in pursuing the matter at the appeal. We therefore propose to award cost to the Respondents from 19 April 2009 to the date of the release of this decision, payable by @tomic, and failing @tomic by Mr Bahia. In so doing we invite @tomic to make representations as to why such an order should not be made. We also invite Mr Bahia to provide details of his financial means to show why he ought not to be required to make such payment in the event that @tomic fails to do so.

149. 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.

**DAVID PORTER
TRIBUNAL JUDGE**

RELEASE DATE 3 June 2014