



TC00380

VAT – input tax repayment claim – MTIC fraud whether fraudulent tax losses in deal chains of alleged contra-traders – yes – whether connected to appellant – yes – whether appellant had knowledge or means of knowledge of connection to fraudulent tax losses – yes – appeal dismissed.

FIRST-TIER TRIBUNAL (TAX CHAMBER)

REGENT COMMODITIES LTD

Appellant

- and -

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**Tribunal: David Demack (Judge)
Miss Susan Stott FCA, CTA (Member)**

Sitting in public in Manchester on 27 April 2009 to 1 May 2009 and 4 May to 8 May 2009

James Pickup QC instructed by Bark & Co, solicitors, London for the Appellant

Christopher Foulkes and Karen Robinson both of counsel instructed by the General Counsel and Solicitor to Her Majesty’s Revenue and Customs for the Respondents

© CROWN COPYRIGHT 2010

DECISION

A) INTRODUCTION

5 1. On or about 12 May 2006 the appellant company, Regent Commodities Ltd
("Regent"), a wholesale dealer in mobile phones and CPUs, submitted its VAT return
for the quarterly period 04/06, claiming input tax repayment of £3,083,775.37. The
10 return was selected for in-depth verification. On completion of the verification
process into part of the claim, on 6 June 2007 to be precise, Regent was notified by
letter that the Commissioners for Her Majesty's Revenue and Customs ("the
Commissioners") had rejected its claim for £2,027,626.75 in respect of 15
15 transactions in the period. The Commissioners themselves satisfied that the
transactions in print formed part of an overall scheme to defraud the revenue, and that
there were features of those transactions and conduct on Regent's part which
demonstrated that it knew or should have known that that was the case, in that it either
20 deliberately or recklessly ignored factors which indicated that those transactions may
have formed part of such an overall scheme. By Notice of Appeal, given on 11 June
2007, Regent appealed against the decision, "refuting the allegation that they ignored
factors which indicated that the relevant transactions formed part of an overall scheme
to defraud". On 14 September 2007, the Commissioners issued an amended decision
letter increasing the amount of input tax denied to £2,107,822.50. Other elements of
Regent's 04/06 repayment claim remain the subject of extended verification, and
consequently are not the subject of this appeal.

25 2. The Commissioners maintain that Regent's claim arises from the "Missing Trader
Intra-Community Fraud" variety of VAT fraud known as contra-trading. The "classic
way" in which the fraud works was described by Christopher Clarke J in *Red 12
Trading Ltd v HMRC* unreported CH/2009APP/0102 as follows:

30 "2....Trader A imports goods, commonly computer chips and mobile
telephones, into the United Kingdom from the European Union ("EU"). Such an
importation does not require the importer to pay any VAT on the goods. A then
sells the goods to B, charging VAT on the transaction. B pays the VAT to A, for
35 which A is bound to account to HMRC. There are then a series of sales from B
to C to E (or 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 received from C, but will claim to deduct (as an input tax) the output
tax that A has charged to B. The same will happen, mutatis mutandis, as
40 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
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 chains in
question may be quite long. The deals giving rise to them may be effected
45 within a single day. Often none of the traders themselves take delivery of the
goods which are held by freight forwarders."

"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 the exporter, and are often numbered “buffer 1, buffer 2 etc. The company which exports the goods is known as “the broker”.

3. Contra-trading is fully explained in paragraphs 9 and 10 of the judgment of Burton J in *R (on the application of Just Fabulous (UK) Ltd) v HMRC* [2008] STC 2123. In *Red12 Trading*, Christopher Clarke J summarised its effect 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 UK for a mark up. The effect is that Broker 1 has no claim for repayment of input VAT on the sale to it under 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 to HMRC from Broker 1. 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.”

In the instant case, in relation to the transactions giving rise to the input tax claim in dispute Regent is in the position of Broker 2. In relation to other transactions we must also consider it acted as a buffer in the dirty chain.

4. The Commissioners do not accept that in contra-trading cases the chain connected to the appellant is “clean”: they assert that it is fraudulent. They observe that the difference between the two chains is that the clean chain does not have a fraudulent loss in it. Nevertheless, for ease of reference, we shall throughout our decision continue to use the expression “clean chain”.

Two-tier contra-schemes

5. The present appeal involves consideration of what the Commissioners describe as “Two-tier” contra-schemes. In such schemes the first contra-trader (“Contra 1”) operates in the same way as in a single contra-trading scheme. However, it uses an additional source of supply for the goods it sells to its EU customers. The additional source is a second contra-trader (“Contra 2”) which also follows the normal single contra-trader pattern of trading in that the net input tax in a third chain is offset against the net output tax in a fourth chain. Contra 1 takes the position of broker for Contra 2’s UK suppliers. That results in Contra 2’s repayment claim arising from the third chain “shifting up” the chains to Contra 1. However, because Contra 1 is not acting simply as a broker, the claim does not remain there. Contra 1 is itself offsetting the tax liabilities on different types of supply (input tax in the first and fourth chains against output tax in the second chain). Because of the relative values of the first and fourth chains against the second chain, the bulk of the repayment claim is further shifted to the broker sourcing goods from Contra 1. In such a scheme the repayment

claim made by the broker is linked partly to the tax loss at the defaulter in the first chain (Contra 1) and partly to the tax loss at the defaulter in the third chain (Contra 2).

5 6. The parties have identified and agreed three issues arising from the appeal for our decision. They are:

- 10 i. Have the Commissioners established that there were fraudulent tax losses in the deal chains of the alleged contra-traders?
- 10 ii. If so, are the transactions in respect of which Regent seeks input tax credit referable to those tax losses or any of them ie is there a connection between them?
- 15 iii. And, if so, did Regent, through Mr Belfield, know or should it have known at the time of entering into each transaction that it was connected to a fraudulent tax loss?

15

Assuming the High Court judgment in *Blue Sphere Global Ltd v HMRC* [2009] EWHC 1150 (Ch) to be correct, Regent contends that there is a fourth question to be answered, namely: did the contra-traders know of the connections between the fraudulent defaults and their broker transactions?

20

7. Before us Regent was represented by Mr James Pickup QC, and the Commissioners by Mr Christopher Foulkes of counsel leading Ms Karen Robinson. Both parties put in very helpful opening statements and closing arguments. We took oral evidence from:

25

- Ian White, the Commissioners' Epinx Ltd ("Epinx") contra officer
- Nigel Humphries, a specialist officer of the Commissioners
- Terrence Mendes, the Commissioners' officer responsible for interrogating the computer records of the First Curacao Investment Bank ("FCIB")
- 30 • David Palmer, the Commissioners' S&R International LTD ("S&R") contra officer
- Richard Hywel Davies, the Commissioners' David Jacobs (UK) Ltd ("David Jacobs") contra officer
- Andrew Belfield, the director of Regent

35

We also had before us the witness statements of:

40

- Hywel John Owen, the Commissioners' Svenson Commodities Ltd ("Svenson") contra officer
- Graham Taylor, an officer of the Commissioners
- Linda Tarr, an officer of the Commissioners
- Roderick Guy Stone, a strategy officer of the Commissioners
- Alan John Ruler, an officer of the Commissioners

45

In addition, we were provided with documentary evidence extending to 25 lever arch files. It is from the whole of the evidence before us that we make our findings of fact. However, before making those findings, we find it convenient to first set out the law, as developed through the cases.

B) THE LAW

7. The right of a registered trader to deduct input tax he has paid in respect of the supply of goods or services to him from output tax charged on his own supplies, and to be reimbursed the difference, arises under both EU law and the Value Added Tax Act 1994. The relevant EU provisions were, in 2006, to be found in Articles 22 (8) and 28c (A) of the EU Sixth VAT Directive, and those in domestic law in sections 24 to 26 of the 1994 Act and regulation 29 of the VAT Regulations 1995. The legal basis of Regent's claim for repayment and the Commissioners' right to refuse repayment was set out in paragraphs 9 to 28 of the judgment of the Chancellor of the High Court in *Blue Sphere Global Ltd v HMRC* [2009] EWHC 1150 (Ch). As he observed at [10], notwithstanding the terms of the relevant articles in the Sixth Directive, "there is no provision in the VAT Act [the 1994 Act] qualifying the registered person's right to repayment at the end of an accounting period of any excess of input over output tax". The Chancellor continued:

"11. The right to refuse such repayment on which HMRC relies arises from a series of decisions of the ECJ [the Court of Justice of the European Communities] to which effect has been given in a number of decisions of the VAT and Duties Tribunal and puisne judges in England. It has not been suggested that they were wrong to do so. Consequently it is my duty to follow where they have led notwithstanding my concern as to whether this is an appropriate manner in which effectively to impose a liability to tax."

8. *Optigen Ltd v Commissioners for Customs and Excise* [2006] Ch 218 was the first important judgment in that series. In that case it was assumed for the purposes of the appeal that there was a carousel fraud. The Commissioners accepted that Optigen was an innocent party to the fraud, it having had no dealings with the missing trader in the deal chain. They accepted that it had had no reason to know that it was doing anything other than buy computer chips (CPUs) in the UK from one company and sell them to another company in another Member State. The Commissioners argued that Optigen was not entitled to the input tax it claimed because a trader, even though itself innocent of either fraud or recklessness, did not have the right to recover input tax on goods which it had sold to a company outside the UK when there was a defaulting trader in the chain of supply. The core of the Commissioners' argument was that transactions of that kind did not constitute economic activities giving rise to right to deduct within the Sixth Directive. The questions referred to the Court sought to ascertain whether a chain of transactions, or a carousel, should be considered as a whole, as submitted by the Commissioners, or each transaction individually, as contended by Optigen. In his opinion, delivered early in 2005, the Advocate-General rejected the Commissioners' argument; so too did the European Court. In its judgment, delivered on 12 January 2006, the Court concluded that each transaction must be considered individually and that "the character of a particular transaction in the chain cannot be altered by earlier or subsequent events".

9. The Court's reservations and limitations in *Optigen* were developed into affirmative principles in *Kittel v Belgium* and *Belgium v Recolta Recycling SPRL* (Joined cases C-439/04 and C-440/04) [2008] STC 1537, where judgment was delivered on 6 July 2006. There the questions posited "a recipient of a supply of

goods who has entered into a contract in good faith without knowledge of a fraud committed by the seller”. The referring Court also wished to know if the answer of the European Court would be different if the taxable person knew or should have known that by his purchase he was participating in a transaction connected with the fraudulent evasion of VAT. Having reiterated that a trader’s right to deduct in respect of a transaction was unaffected by other transactions, whether previous or subsequent, the European Court confirmed at para 51 that “traders who take every precaution which could reasonably be required of them to ensure that their transactions are not connected with fraud, be it the fraudulent evasion of VAT or other fraud, must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT...”. The Court then dealt with the converse cases stating, inter alia: a) where the tax authorities find that the right to deduct has been exercised fraudulently, they are permitted to claim repayment of the deducted sums retroactively (para 55); b) in the same way, a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with the fraudulent evasion of VAT, must be regarded as a participant in that fraud (para 56): that is because in such a situation the taxable person aids the perpetrators of the fraud (para 57). The Court concluded: “...where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct.” (para 61)

10. Thus in the light of the decisions in *Optigen* and *Kittel* (which have since been described by the European Court as “settled case law”, see para 65 of the judgment of *R (on the application of Teleos and others v Commissioners for Revenue and Customs* [2008] STC 706), the Commissioners have the right to refuse a claimed repayment of input tax if the taxable person knew or should have known or had the means of knowing (those elements, for this purpose, amounting to the same thing) that his transaction was connected with fraud.

11. The tribunal in *Dragon Futures v Commissioners for Revenue and Customs* (2006) Decision No 19831 set out its own version of the test at para 51 of the Court’s judgment in *Kittel* and at para [75] of the decision stated: “Where an initial enquiry gives rise to information suggesting the need for further enquiry, the test is reapplied to assess the need for that further enquiry” and, at [74]: “If, on what the taxable person knows after taking into account all actual knowledge and having made all proportionate enquiries, the better view is that there is probably no fraud connected with the transaction, then the taxable person has met the required standard.” The tribunal in *Calltel Telecom Ltd v Commissioners for Revenue and Customs* (2007 Decision No 20266) approved this interpretation, describing it as a useful starting point.

12. What is clear from the cases is that the relevant “knowledge” is not necessarily knowledge of the actual fraud, or even the identity of a particular defaulter (see the tribunal decision in *Calltel* at [51]), but rather knowledge of the probability of fraud and what a trader can infer from matters he knows or reasonably could know. That was confirmed by Lewison J in *Livewire*. At [91] he determined that an appellant does not have to know (or have the means of knowing) of the identity of the missing trader: the test is that, having taken all reasonable steps in the circumstances, the ordinary

competent trader should have known that there was, or was likely to be, a missing trader:

5 “The honest trader knows that he has bought goods on which he has paid
VAT. He knows that he will export these goods and reclaim the VAT from
HMRC. Unless there is a missing trader somewhere further down the chain (or
in a parallel chain) there is no fraud. I accept that the honest trader need not
know the identity of the missing trader but unless he knows or should have
10 known that there was (or was likely to be) a missing trader somewhere in the
dirty chain, I do not see how it can be said that he knew or should have known
that his transaction was connected with fraud.”

13. Although Lewison J referred to a “missing trader”, it must follow that he was
including in that description any fraudulent default, whether strictly a missing trader
15 or a hijacked VAT number, or in any other way an intent dishonestly to default in
payment of the VAT due.

14. We note that in *Livewire*, Lewison J used the phrase “or was likely to be” in
dealing with a missing trader; and in *Mobilx* Floyd J concluded his judgment by
20 saying at [88] that the appellant in that case “should have known that all its
transactions were more likely than not to be implicated in MTIC fraud.”

15. The judgment in *Mobilx* was delivered subsequent to that in *Livewire*. At [7] of
Mobilx, in reference to *Kittel*, Floyd J said:

25 “In the light of making enquiries beyond the immediate supplier, there is a
danger in reading paragraph 51 of *Kittel* in a narrow sense and suggesting that
provided proper checks are carried out by the trader on a supplier, then the
trader’s claims to repayment of VAT are not capable of challenge. That is not,
30 in my judgment, a correct view. Suspicious indications obtained by a trader
from carrying out due diligence checks on its supplier are one, but not the only
basis from which it may properly be inferred that a trader knew or should have
known of its implication in VAT fraud. The test to be applied is that set out in
paragraph 61 of the judgment, and indeed in the Court’s final determination at
35 the end of the judgment. Paragraph 51 needs to be understood in the sense that
‘all reasonable precautions’ may, in some cases involve ceasing to trade in
specified goods in a particular market, at least in the particular manner in
which the trader undertakes that trade. Such a situation may conceivably arise
40 where, from other indications available to the trader, the trader knew or should
have known that it is more likely than not that, despite all due diligence
checking, any further goods traded in the same way will be implicated in VAT
fraud.”

16. At [9] of *Calltel*, Floyd J observed that in *Livewire* Lewison J had analysed
45 decisions of the European Court of Justice delivered subsequent to that in *Kittel* which
had expressed the test enunciated at [61] in *Kittel* in “modified language”, saying:

50 “For example he drew attention to the fact that in the more recent decision in
Netto Supermarkt GmbH & Co OHG v Finanzamt Malchin [2008] STC
3280, the Court held at [24] that:

5 ‘...it is not contrary to Community law to require the supplier to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion.’”

10 17. Lewison J drew attention to the difference between “participating in a transaction connected with fraudulent evasion of VAT” (*Kittel*) and effecting a “transaction which ... result[s] in his participation in tax evasion” (*Netto*), and concluded that that had resulted in a narrowing of the test to be applied. In *Blue Sphere*, at [25] the Chancellor concluded that “the verbal formulations in *Teleos* and *Netto* (which were identical) did, as a matter of English, narrow the formulation of the principle of *Kittel* as expressed in paragraphs 56 to 59 in *Kittel*”, but went on to say, “But I do not think that the test has, as a matter of law, been narrowed”.

15 18. Regent involves an allegation that its deals were connected to a fraudulent tax loss through contra-traders, so that the input tax repayment claim was shifted from them to Regent. The Commissioners do not suggest that Regent was a dishonest co-conspirator. In *Livewire* Lewison J considered the means of knowledge test in such cases:

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

- 25 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.

30 103. 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 those frauds. I do not consider that it is necessary that he knew or should have known of a connection between his own transaction and both of these 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. As Millett J put it in *Agip (Africa) Ltd v Jackson* [1990] Ch 265, 295 (in the context of dishonest assistance in a breach of trust):

35 ‘In my judgment, however, it is no answer for a man charged with having knowingly assisted in a fraudulent and dishonest scheme to say that he thought it was “only” a breach of exchange control or “only” a case of tax evasion. It is not necessary that he should have been aware of the precise nature of the fraud or even of the identity of its victim. A man who consciously assists others by making arrangements which he knows are calculated to conceal what is happening from a third party, takes the risk that they are part of a fraud practised on that party.’

40 104. This conclusion is, I think, consistent with what Burton J said in *Just Fabulous*: ‘whether or not Evolution [the person equivalent to Regent] knew of the precise nature of the defaulter chain or of the goods purportedly dealt

with in that chain or the identities of the participants in that chain Evolution
knew of the fraudulent aim of Blackstar [the contra-trader] in acquiring
through the off-set on the contra-trading transaction, the opportunity to
receive, by such off-set, VAT which it would not be able to recover direct
from the Revenue.’ (Emphasis added)

105. In other words, if the taxable person knew of the fraudulent purpose of
the contra-trader, whether he had knowledge of the dirty chain does not
matter.”

19. At [48] of his judgment in *Blue Sphere*, in clear reference to [102] of Lewison
J’s judgment in *Livewire*, the Chancellor noted that that in alleged contra-trading
cases there are “at least, two potential frauds”. In other words, the two potential frauds
identified by Lewison J are not exclusive of other frauds.

20. The “connection” referred to in [103] of the *Livewire* judgment was dealt with
by the Chancellor in *Blue Sphere* where he explained at [41] that “the connection on
which the HMRC relies is the fact that both the clean chains originated with Infinity
[the contra-trader] and a large number of the dirty chains ended with Infinity. Thus the
connection is through the involvement of Infinity in both and the VAT consequence
that it can, indeed must, in the relevant accounting periods set-off its input tax on the
dirty chains against its output tax in the clean chains. HMRC accepted ... that, on this
basis, all traders in a chain in which Infinity was involved must, necessarily, have
been connected with fraud. The difference in their treatment depends on the evidence
as to their knowledge.”

21. The Chancellor continued:

“44. The nature of any particular necessary connection depends upon its
context ... 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 transaction in which there is one common party whether or not 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 legal 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 any
fraudulent evasion of VAT in the dirty chain because, in a case of contra-
trading, the right to reclaim enjoyed by C [the contra-trader] in the dirty
chain, which is the counterpart of the obligation of A [the missing trader] to
account for input tax paid by B [a buffer], is transferred to E [in this case
Regent] in the clean chain. Such a transfer is apt to conceal the fraud
committed by A in the dirty chain in its failure to account for the input tax
received from B.

5 46. Plainly 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. It is important ...that the tax losses are only used once.”

22. The Chancellor went on to deal with knowledge. The relevant part of his judgment in that behalf reads:

10 “52. The burden is on HMRC to prove that BSG [the equivalent of Regent] ought to have known that by its purchases it was participating in transactions connected with fraudulent evasion of VAT. It is not for BSG to prove that it ought not. Second, it is not sufficient to demonstrate that [the appellant] was involved in transactions which ‘might’ turn out to have undesirable associations. The relevant knowledge is that [the appellant] ought to have known that by its purchases it was participating in transactions which were connected with the fraudulent evasion of VAT; that such transactions might be so connected is not enough.

20 53. ... HMRC must also prove that BSG ought to have known that those other transactions involved the fraudulent evasion of VAT.

54. ...

25 55. In my view it is an inescapable consequence of contra-trading that for HMRC to refuse a claim by E it must be in a position to prove that C was party to a conspiracy involving.”

30 23. We note that in *Blue Sphere* all the “dirty” chains in which an alleged contra-trader was involved took place after the “clean” chains which included Blue Sphere. In *Livewire*, at para 106, Lewison J left open the possibility of the *Kittel* test being satisfied in respect of the broker appellant even where there was an innocent contra-trader providing the connection with the fraudulent default, albeit that the circumstances would be very unusual. Whilst it may be arguable that the language used by the Chancellor is particular to cases where all the “dirty” chains took place after the “clean” chains, subject to that it would appear that he concluded that, in reality, the alleged contra-trader must be deliberately offsetting its input and output tax in the knowledge of fraud in its “dirty” chains.

40 24. In *Commissioners for Revenue and Customs v Brayfal Ltd* (Unreported) CH/2008/App 082 Lewison J expressed a contrary view in answer to the question dealt with by the Chancellor in [55] above. Christopher Clarke J considered both views at [53] of his judgment in *Red 12*, and said that had it been necessary in that case to reach a conclusion on the question, he would have been in agreement with the Chancellor. Only were we not satisfied on the evidence would it be necessary for us to consider that question; as will later appear it is unnecessary for us to consider it.

45 25. In his judgment in *Just Fabulous*, Burton J had this to say about contra-trading where it was not alleged that the appellant was a co-conspirator with the contra-trader;

5 “29. ... there are bound to be evidential difficulties with regard to precisely what needs to be proved in respect of what might loosely be described as *mens rea* - ‘knew or should have known’ (see *Kittel* para 56), as contrasted with ‘having no knowledge and no means of knowledge’ (see *Bond House* para 46) – and the extent to which such *mens rea* must be proved.”

26. He returned to this question at the end of his judgment, saying:

10 “55. The assumed facts [in *Just Fabulous* all the facts were assumed to have been found against the appellants] ... put the case at the highest against these claimants; but of course there may well be gradations of knowledge which would need to be considered by the tribunal ...”

15 27. Burton J also said that the European Court had the Sixth Directive well in mind in expressly permitting the right to refuse deductions/payment (*Kittel* [55], [60] and [61]). That was in addition to his observation at [45] of *Just Fabulous* that “The [European] principle of legal certainty must be trumped by the ‘objective recognised and encouraged by the Sixth Directive ... of preventing tax evasion, avoidance and abuse.” And, as the Chancellor observed at [21] in *Blue Sphere*, the European Court, 20 in dealing with the question whether innocent suppliers could be required to account for the VAT, considered the principles of legal certainty, proportionality, fiscal neutrality and freedom of movement of goods.

25 28. At [85] in his judgment in *Livewire*, Lewison J observed that the European Court “was at pains to stress that the test was not one of dishonesty”. He added that that came out most clearly from the Court’s answer to the question posed in *Teleos* “where good faith is not enough on its own. The supplier must... have taken every reasonable measure to ensure that his supply is not participating in VAT evasion.” But it is also evident from the Court’s statement that “a Member State may lawfully 30 impose a requirement on suppliers to take all reasonable precautions in order to preserve their right to deduct”; whether a person knew or should have known is to be tested by objective facts or factors. The judge considered the appropriate domestic analogy to be that of constructive knowledge or constructive notice, described by Denning J in *Nelson v Larholt* [1948] 1 KB 339 at 343 as follows:

35 “He must, I think, be taken to have known what a reasonable man would have known. If, therefore, he knew or is to be taken to have known of the want of authority, as, for instance, if the circumstances were such as to put a reasonable man on inquiry, and he made none, or if he was put off by an 40 answer that would not have satisfied a reasonable man, or, in other words, he was negligent in not perceiving the want of authority, then he is taken to have notice of it.”

45 29. Although the Court held that a taxable person who had unwittingly been a party to a transaction within a fraudulent chain was nevertheless entitled to reclaim input tax in respect of that transaction, it also said that right was not enjoyed by taxable persons who had either “knowledge” or the “means of knowledge” that the chain comprised one or more transactions that had been “vitiating by fraud”.

50

C) THE FACTS

Background information

5 30. Mr Belfield obtained experience of the mobile phone industry when employed
by Marsland Trading Ltd. (“Marsland”) as a business development manager in 2002-
2003. Marsland was a subsidiary of Beatmark Ltd, the latter being described in
10 evidence by Mr Belfield as “an international force in the trading of grey market IT
and peripherals”. He added that Marsland’s procedures were “probably at the time the
most rigorous and ground breaking within the whole of the mobile phone industry”,
and included the recording of the IMEI numbers of all the phones in which it dealt.
Having left Marsland and worked for another company for a very short period, Mr
Belfield then established his own company, Lafayette Electronics Ltd (“Lafayette”),
15 which registered for VAT in January 2003. His co-director was Mr Stuart Whittaker,
who was also a director of Globaltech Ltd. Lafayette was funded by Marldon
Corporation Ltd (“Marldon”) by way of a loan of £1 million. Lafayette failed after 18
months, going into liquidation in January 2005, Mr Belfield blaming its failure on
inadequate manufacturer market support, and some bad decisions by Mr Whittaker.
Mr Belfield did not deny that Marldon had lost the whole of the £1 million it had lent
20 and, in the absence of a denial, we find that it did lose it.

31. Notwithstanding that Marldon had apparently lost its £1 million, on Mr Belfield
approaching its directors, Adam Nicholson and Duncan Howarth, with what he
described as “a business proposal to re-enter the wholesale mobile phone market”
25 they responded with an indication that they would support him “with transactional
finance on a deal-by-deal basis, and would expect a high return on funds invested.”
They went further, suggesting that he purchase from them for the purpose a company
they owned, payment for it to be deferred.

30 32. The company in question was called BHN Services Ltd (“BHN”). It registered
for VAT on 30 January 2003, its trading activities being described in Form VAT1 as
“Provision of professional and accountancy services”. Its turnover in the following 12
months was estimated at £100,000. The Form was signed by Duncan Howarth, as
35 director of the company. Its principal place of business was disclosed as an address in
Southport. BHN had an account with the First Curacao Investment Bank (“FCIB”),
which was based in the Dutch Antilles.

33. In its returns for the periods 04/03 to 01/04, BHN reported turnover in line with
the figure contained in the Form VAT1. For the periods 04/04 to 10/05 the company
40 made nil returns, which the Commissioners, wrongly it would appear, took as an
indication that it was dormant throughout the period. Its principal place of business
changed twice before the end of October 2005, first to an address in Widnes, and then
to one in Manchester.

45 34. On 2 November 2005, BHN’s name was changed to Megantic Services UK Ltd,
and on 21 November 2005 to that of Regent. Messrs Adam Nicholson and Duncan
Howarth resigned as directors on 21 November 2005, as did the then company
secretary, Howard Nicholson, Adam Nicholson’s brother. At the same time Mr
Belfield was appointed Regent’s director. (The company, Megantic Services UK Ltd
50 is not to be confused with Megantic Services Ltd (“Megantic”), a company which

features in Regent’s transaction chains both as its financier and paradoxically one of its competitors, and had as its directors and shareholders the same Adam Nicholson and Duncan Howarth who sold Regent to Mr Belfield).

5 35. The agreement for Mr Belfield’s purchase of the share capital of Regent produced to the Commissioners showed the purchase price to be £50,000.

10 36. Early in January 2006, Mrs Linda Tarr, one of the Commissioners’ compliance officers, received a request from their Central Co-ordination Team to visit Regent as the Team had received information that the company had opened an account with Hawk Precision Logistics Ltd (“Hawk”), a freight forwarder suspected by the Commissioners of being involved in trading in “MTIC goods”. The visit she subsequently made was preceded by a letter from the Commissioners’ specialist MTIC verification office at Redhill of 4 January 2006 outlining the then current
15 problems in relation to the mobile phone trade. That was the first effective notification to Regent that it might be engaging in transactions associated with MTIC fraud. Mrs Tarr and her colleague Mr Alan Ruler visited the company on 12 January 2006, when they noted a number of what they described as “inconsistencies” in Mr Belfield’s statements to them. Mr Belfield confirmed that he was aware of the issues of joint
20 and several liability and the security measures the Commissioners could take. The officers issued copies of the relevant Public Notices (including Notice 726) to Mr Belfield, although he had previously been supplied with them. Also at the meeting Mr Belfield disclosed that he had engaged a company providing bespoke software to small companies to devise a software package that would enable him to maintain a
25 database including IMEI numbers. The “inconsistencies” the officers identified were three. The first was a disclosure by Mr Belfield that he had paid £60,000 for the share capital of Regent as compared with the figure of £50,000 shown in the purchase agreement. Secondly, the officers queried a claim by Mr Belfield that he had purchased the company for its VAT registration, notwithstanding that the company
30 had been dormant for some considerable time and had no trading history to speak of. As VAT registrations are effected free of charge, the officers considered it strange that Mr Belfield had paid so large a sum of money effectively for Regent’s existing registration. (We might usefully mention at this point that Mr Belfield already had a company of his own, Aikon Ltd, which was VAT registered). Thirdly, Mr Belfield
35 claimed to intend to deal in steel or fish, saying that until he started to do so he might complete some deals in mobile phones, although none had been completed at the time. As Mr Belfield’s employment history showed him to have been most recently engaged in the electronic equipment and mobile phone business, the officers considered it odd for him to contemplate trading in steel and fish, products about
40 which he appeared to have little, if any, knowledge, and no experience. Finally, Mr Belfield disclosed to the officers that Marldon had agreed to lend Regent up to £500,000. That too struck the officers as odd, for, as we mentioned above, Lafayette had become insolvent owing Marldon about £1 million, and it seemed unlikely to them that a company which had in all probability lost so large a sum would lend
45 further moneys to a newly-formed company run by the very person responsible for that loss, unless its directors could “retain a close overview of the workings of Regent”. As the officers knew Marldon’s directors to be Howard Nicholson and Duncan Howarth, they considered their “overview” theory a definite possibility. During the visit the officers advised Mr Belfield to carry out due diligence on his

suppliers and customers and to check all such persons with the Commissioners' Redhill verification office.

5 37. Following the visit, during the remainder of January 2006, Regent entered into a number of purchases and sales transactions in mobile phones, and, since all its customers were outside the UK, proceeded to seek repayment of the input tax incurred on its purchases. On 17 March 2006 Regent was informed by letter that its input tax repayment claim for period 01/06 would be met, but that repayment would be on a "without prejudice" basis, so that the Commissioners might take further action following verification of that return.

15 38. On the basis of Mr Belfield's evidence to us, we find that he agreed to purchase Regent for its account with the FCIB. At the time with which we are concerned most wholesale trade in mobile phones and CPUs was carried out through accounts held by traders at the FCIB. In part that was due to the Commissioners having put pressure on the UK high street banks to close the accounts of all such traders late in 2005. And it is against that background that we find all receipts and payments with which we are concerned, not only by Regent but also by its suppliers and customers, and all the other companies, UK and non-UK, involved in its deal chains, were made through accounts with the FCIB; they were all dealt with by means of intra-bank transfers.

Regent's documentation

25 39. Mr Belfield claimed to have known the dangers of trading in the wholesale mobile phone market, and of the need for robust procedures to protect Regent against fraud. He explained to us, and we accept, that he sought professional advice from Mr John O'Donnell of the Chiltern Group, a specialist tax adviser, to decide on the procedures Regent should implement to ensure "good practice... in line with HMRC advice and recommendation". Mr O'Donnell provided help with (1) Regent's standard terms and conditions of business, (2) its separate sales and purchase conditions, (3) its trade application forms, and (4) its customer and supplier declaration forms.

35 40. The records Mr Belfield decided Regent should keep included:

- a) weekly VIES checks to ensure that the VAT registrations of those with which Regent intended to trade were current;
- b) calculations of profits on its deals;
- 40 c) declarations by both suppliers and customers to ensure that they were aware of the Commissioners' requirements of Notice 726, and to protect Regent against any potential joint and several liability to VAT under s. 77A of the Value Added Tax Act 1994;
- d) a sales order to customers (incorporating standard conditions of sale) and a VAT declaration;
- 45 e) a purchase order to its suppliers (again incorporating standard conditions of sale), a VAT declaration, and a letter of representation;
- f) a form of notification to the Commissioners of an intention to trade (16/5054) setting out details of the goods, the supplier, the customer, stock location, purchase price and selling price. It also requested
- 50 Redhill "to confirm any missing traders or hijacked VAT numbers in

the supply chain leading to Regent". (In evidence, Mr Belfield accepted that it was not the Commissioners' policy to supply such information).

- g) the Commissioners' verification;
- h) instructions to the freight forwarder holding goods including:
 - i) delivery form;
 - ii) freight forwarder validation form;
 - iii) allocation of stock request;
 - iv) inspection request; and
 - v) shipping instructions.
- i) CMRs (international consignment notes);
- j) any shipping documents;
- k) insurance papers; and
- l) goods release forms.

41. Day to day responsibility for ensuring that all the procedures were complied with fell on Mr Geoffrey Condron, Regent's business development manager. However, Mr Belfield accepted that he, as director of Regent, was ultimately responsible for any failings in procedure.

Regent's trading, inspection and VAT verification

42. Regent advertised its services on the website www.itp.com and on its own website. In relation to the deals with which are concerned, Mr Belfield accepted that it was approached by its customers as a "direct consequence of direct sales and marketing, which included advertising on Internet sites".

43. From every trader interested in dealing with Regent, Mr Belfield claimed to have required a completed Trade Application Form, its VAT Registration Certificate, its Certificate of Incorporation, as well as business and personal details of the directors as set out in the Trade Application Form. The Form required both customers and suppliers to provide trade and professional referees. From the evidence it emerged that a reference would normally be taken up from only one of the referees and then only by phone. A note of each call was made. Some references were provided in writing. Mr Belfield accepted that Regent's failure to take up all the references was a "flaw" in its due diligence. Regent carried out Equifax credit checks on its trading partners, and in some instances 192.com checks against the electoral register and Companies House checks. Mr Belfield explained those checks as not being intended to establish credit ratings for the companies concerned as Regent was not extending or seeking credit: it was to confirm independently the information contained in the Trade Application Form. Mr Belfield went on to say that an adverse credit rating would not have concerned him, as it was not the purpose of the check. He added that in the event all Regent's invoices were paid, and within its deal chains there was no fraud. In evidence, Mr White accepted that the terms contained in Regent's Standard Terms and Conditions were those one would expect to find in a written contract, so that we might ignore a claim by the Commissioners that Regent should have entered into written contracts.

44. On being approached by a potential customer, Regent would identify the make, model and quantity of mobile phones or CPUs the customer was interested in buying,

and the price it was prepared to pay. Having consulted its records of available stock, compiled from enquiries made of its suppliers, if Regent could source the desired match of product at a price acceptable to the customer, he agreed a deal in outline, and would invite the customer to submit a written purchase order setting out full details of the proposed transaction.

45. Whilst awaiting the customer's purchase order Regent would submit a check of the validity of the VAT registration number of each of the intended supplier and customer to both the Europa site of the European Commission, and to the Commissioners' Redhill verification office. Regent included with each Redhill VAT registration number verification request its "Notification of Intention to Trade".

46. Once the customer's purchase order had been received and Regent had received a "satisfactory validation response" from the Europa website, which invariably occurred on the same day as it was submitted, it would in turn issue a purchase order to its supplier and at the same time ask it to complete and return its "VAT Declaration and Letter of Representation". Mr Belfield described that form as being intended to confirm that "any relevant import taxes have been settled prior to Regent being offered the goods and also confirms the VAT amount for the transaction, and that it will be accounted for to HMRC by the supplier". Regent also requested the freight forwarder holding the goods to carry out a visual and physical inspection of them, and report to it having done so. The requested inspection consisted of a box count and check to ensure the specification of the phones or CPUs was "accurate, genuine and as per our order". All the events to which we have referred would have taken place on one day.

47. On completion of the inspection and VAT verification processes and when Regent had received its customers' relevant paperwork, which was invariably on the same day as the customer had placed its purchase order and been invoiced, and before Regent had received payment, Regent arranged for them to be delivered forthwith. Delivery of the goods was always made to a freight forwarder identified by the customer, which was in every case except one based in a country other than that of the customer itself. Thus, Regent was at risk of having to bear the costs of repatriation of the goods in the event of its not being paid for them, or the contract not otherwise being completed. Whilst being transported, Mr Belfield claimed that the goods were insured under Regent's marine cargo insurance policy, which it arranged on a deal by deal basis, and was underwritten by AIG. The Commissioners questioned whether insurance cover was effected, documentation relating to a number of deals being in their opinion "inconclusive", a number of security and transit conditions of the policy seemingly not having been met, thus potentially invalidating the policy. Mr Belfield's response to the Commissioners' concerns about insurance was that if there had been a question of Regent's insurance policy having been invalidated he would have expected the insurers to have raised the matter with him. We consider that given the high value of the goods being transported that constituted a serious risk.

48. In relation to every one of the deals with which we are concerned Regent arranged for delivery, albeit, if we accept Mr Belfield's evidence, on "ship on hold" terms, both before Regent received the result of its Redhill verification check and before payment of the goods was made. Mr Belfield claimed that in each case the goods were released to the customer only on full payment being received by Regent.

The documentation produced to us did not entirely confirm that claim. For instance, the Supplier Declaration Form provided by Cayenne Sarl in relation to Deal 1 shows the terms of delivery as “Free to Buyer” (4/875). And as will appear from our later findings, even when a customer made full payment, since on numerous occasions
5 Regent itself had been unable to make full payment to its own supplier, goods were not then released to its customer. Regent claimed to be unable to make checks on its customers’ freight forwarders.

10 49. At the end of each month, Regent provided the Commissioners with copies of all purchase invoices received and sale invoices raised during that month, plus “all relevant due diligence for all trade conducted in that month”. It also submitted its bank statements, income and expenditure schedules, CMR documentation and ferry tickets. Regent kept a due diligence file for each company with which it traded, whether in the UK or the EU.

15 50. Mr Belfield visited Regent’s trading partners, and on the basis of what he found as a result completed either site reports or questionnaires. He said that he attempted to make his first visit before carrying out the first transaction with a new customer or supplier, but that was not always possible. In the event of it not being possible, he
20 attempted to visit as soon as possible after the first trade. Mr Belfield claimed to be conscientious in making site visits, saying that it was important to meet a director of each trading partner, and for him to gauge for himself the credibility of the trader. The process also enabled him to assess whether he was dealing with a bona fide business; it was a precaution advised by the Commissioners, and one readily taken up by
25 Regent. Mr White accepted that Mr Belfield’s site visits and face to face meetings were in line with the Commissioners’ recommendations in Notice 726, but observed that most such visits were carried out after Regent had first dealt with the trader concerned. We accept that observation as fact.

30 51. Mr Belfield compiled three databases for Regent, namely:
1. a database of EU customers;
2. a database of freight forwarders; and
3. a database of UK customers and suppliers.

35 52. He claimed, and we accept, that he constantly updated the databases. Traders were moved from one section to another within them depending on whether they had returned documents to Regent, whether site visits had been made, and whether verification of VAT registrations had been received. Where appropriate the databases indicated that Regent should not trade with a particular company.

40 *The financing of Regent’s operations*

45 53. By way of introduction to this section, we note that in the year to 31 October 2003 Regent’s unaudited accounts showed turnover of £90,000, and in the following year £322,807. In the year to 31 October 2005, they showed turnover of £152,000. Thereafter, the company’s turnover increased exponentially, reaching £103.7 million in the year to 31 October 2006.

54. Mr Belfield claimed, and we accept, that he introduced about £15,000 of his own money into Regent. That money would appear to have been applied and absorbed as working capital.

5 55. We also mentioned earlier that Marldon agreed to lend up to £500,000 to Mr Belfield to be applied as “transactional finance” for Regent. In the event, Mr Belfield took up only £150,000 of the agreed facility. There was then a disagreement between Mr Belfield and messrs Nicholson and Howarth as a result of what Mr Belfield claimed to be the failure of Regent’s former directors to discharge an outstanding corporation tax liability. Consequently, Mr Belfield said he resolved to terminate the loan arrangement with Marldon and obtain working capital from other sources. Regent repaid the moneys borrowed from Marldon in March 2006. Having done so, and ended its borrowing arrangement with Marldon, it then had no access to funds other than the capital introduced by Mr Belfield.

10 15 56. However, later in our period, Regent obtained finance from Lorimer Holding & Finance Ltd BVI (“Lorimer”), a company which, as its name indicates, was registered in the British Virgin Islands, and Global Financial Services Management Ltd (“Global”).

20 57. Mr Belfield claimed to have been directed to Lorimer’s website by a firm called Fairfax Gerrard, a “transactional finance house” which held shares in Megantic. Although Fairfax Gerrard itself lent money, Mr Belfield said he did not approach it for a loan as its lending terms were “very expensive”.

25 58. Having made application online to Lorimer for a loan, Mr Belfield met its European representative in Frankfurt. The outcome of the meeting was that Lorimer agreed to lend Mr Belfield personally £250,000 on an unsecured basis. The loan agreement was made on 30 April 2006, and the monies lent credited to Regent’s bank account with FCIB on 19 May 2006.

30 59. The loan agreement was examined by Philip Sarocka, an operational accountant employed by the Commissioners, who prepared a report on it. Mr Sarocka’s report, whose contents we accept as correct, contains a number of observations. He noted that section 3 entitled “Use of procedure”, stated that “The loan shall be for the purpose of financing the relevant transactions”. Although section 1.2 of the agreement contained a list of definitions, none was provided for “the relevant transactions”. The rate of interest on the loan was 80 per cent of net profit generated payable after 60 days. No further interest was provided for. The loan was to be repaid in full on the “maturity date”, see section 6 of the agreement. That date was defined only as “the date upon which the transaction is completed”, see section 1. The agreement was completely silent as to what should happen in the event of there being no “transaction”, or there being a delay in the transaction being completed. Section 3 of the agreement also provided that “the Lender shall not be obliged to make enquiry of the Borrower as to his use of the proceeds”. The agreement contained no definition of “net profit”, notwithstanding that its definition was crucial to the calculation of the interest to which Lorimer became entitled. It was also silent as to what should happen in the event of there being no net profit. Further, the agreement stated that Lorimer was entitled to “80 per cent net profit”. Again the agreement provided no definition of the phrase, so that Mr Sarocka noted that it could be argued that “net profit” related to the

whole of Regent's profits rather than simply those generated from use of the moneys lent by Lorimer.

5 60. In interview on 20 December 2006, Mr Belfield confirmed that the whole of the Lorimer loan remained outstanding. Mr Belfield maintained that he had endeavoured to contact Lorimer in order to clarify Regent's position with it, but with no success; its website had "gone down", so that he was unable to contact it by email.

10 61. Regent's third source of finance in the period was Global Financial Services Management Ltd ("Global"), another company registered in the British Virgin Islands, but in this case having a mailing address in Hong Kong. The only documentary evidence presented to us relating to the arrangements for the Global loan consisted of the first page of a five page fax sent from + 852 2721 2881. The significance of that fax number is that it is the same number as that on loan documentation supplied by Global Financial Services Ltd (Hong Kong) in relation to other MTIC cases currently being investigated by the Commissioners. However, in fairness to Regent, we should disclose that the documentation relating to those other cases is unlike the Regent loan agreement.

20 62. Although the company which agreed to lend money to Regent was Global Financial Services Management Ltd, enquiries by the Commissioners showed no company of that name to have an address in Hong Kong, but one to be registered in the name of Global Financial Services Ltd (Co. No 163676). Those enquiries also revealed a website www.global-f-s.com operated by Global Financial Services Management Ltd with a Hong Kong address. That website was found no longer to be operating as early as October 2007. On the basis of the information so obtained, the Commissioners concluded that the company which in fact lent the money to Regent was Global Financial Services Ltd. For those reasons, as reinforced by certain evidence obtained by Mr Mendes on his interrogating the computer records of the FCIB, apparently confirming the Commissioners' conclusion, we similarly conclude. We should add that evidence was adduced to show that the signatory, beneficial owner and director of Global was one Paul John Bennett Davis, an Englishman resident in Spain.

35 63. Again Mr Sarocka reported on the agreement and again we accept the correctness of his report. He noted that it was styled "Conditional Joint Venture Loan Agreement", and provided for an unsecured loan of £1.5 million. It was signed by Mr Belfield, but not by anyone on behalf of Global. Repayment was due 70 days from the date of the agreement, that date being 24 April 2006. Taking account of what were referred to as a "credit facility fee" and a "title discharge fee", the interest provided for was £30,000 (i.e. 2 per cent or, annualised, 10.4 per cent). However, should the full amount of the loan not be repaid by the due date, penalty charges were due at a rate of £15,400 per day for 1 to 14 days after the due date for repayment, £38,250 per day if the full amount of the loan and interest remained unpaid for 15 to 45 28 days after the due date, and £76,500 per day if the full amount of the loan and interest remained unpaid more than 28 days after the due date.

50 64. Mr Belfield claimed to have heard of Global from a competitor of Regent, Base Interactive Ltd ("Base Interactive"). He said that Mr Bouthroe of that company gave him details of Global's website and other contact information. Following his initial

approach to Global, Mr Belfield was visited by its UK agent, and Global was said to have carried out due diligence on Regent before it made the loan. Mr Belfield said in evidence that he did not discuss with the representative the particular deals Regent was going to make. The moneys Global had agreed to lend were credited to Regent's account with FCIB on 9 May 2006.

65. As with the Lorimer loan, Mr Belfield confirmed to the Commissioners on 20 December 2006 that none of the Global loan had been repaid. And again, Mr Belfield maintained that he had endeavoured to contact Global to clarify Regent's position with it, but with no success. The company had disappeared.

The 15 disputed deals

66. In period 04/06 Regent entered into 15 broker deals, the input tax in respect of which it subsequently included in its repayment claim for that period. It is that input tax which is in dispute in the appeal.

67. Mr White explained that he traced back each one of Regent's 15 transactions to one of four acquiring traders which imported the goods from the EU. In all but two of those deals, numbers 2 and 3. (Invoices 1017 and 1018), where it purchased from a single buffer trader, Regent made its purchase direct from an importer. The four acquiring traders, were Epinx, S&R, David Jacobs and Svenson.

68. The Commissioners assert that each of the four acquiring traders was a "contra-trader", knowingly offsetting its input tax claims in deal chains involving a fraudulent defaulter, dirty chains, against its output tax liability in respect of acquisition deals in clean chains in which there appeared to be no tax loss. They also say that the repayment claim made by Regent in respect of each deal is linked to a tax loss by virtue of the offsetting exercise conducted by the four contra-traders: the connection with a fraudulent tax loss is established by the offsetting process alone, irrespective of the state of mind of the contra-trader. The Commissioners further assert that Regent's deals are connected, by virtue of the contra-traders' offsetting processes, to every broker deal conducted by such traders in the relevant period. They claim that the evidence demonstrates a connection with a large number of broker chains, many of which were fraudulent: and it is the overall offsetting process that provides the connection. Finally, they contend that, although the state of knowledge of a contra-trader may be relevant to the issue of Regent's knowledge or means of knowledge, it is not relevant to the issue of connection with a fraudulent default (see *Blue Sphere*).

69. In the Schedule to our decision we have set out in tabular form in chronological order the chain relating to the first 7 of Regent's 15 disputed deals so far as the Commissioners were aware of them at the time of service of the statement of case of the parties involved in those chains. We have not included the remaining 8 deal chains as, depending on whether a particular deal involved S&R or Epinx as supplier, each followed the pattern of either Deal 6 or Deal 7. Evidence relating to Deals 8 to 15 is set out in sufficient detail in the evidence of Mr Mendes, which follows shortly. All the deals involved an importation into the UK by an alleged contra-trader followed by the sale to Regent (in two cases indirectly) and the export by Regent to a non-UK company.

70. We then set out, also in tabular form, the chronology of each of the deals to the extent needed for the purposes of this decision.

Regent Invoice No	Deal No	Phones/CPU's	Date of purchase order Invoice/delivery	Date payment made/completed to Regent	Date goods released by Regent
1016 (c)	1	1250 Nokia 8800	11/4/06	9/5/06	19/5/06
1017	2	1500 Nokia 9300i	11/4/06	2/5/06	19/5/06
1018	3	1750 Nokia 9300i	11/4/06	19/5/06	19/5/06
1019a	4	2000 Nokia 7380	13/4/06	25/4/06	19/5/06
1019b	5	2000 Nokia 7380	13/4/06	25/4/06	19/5/06
1020	6	4000 Nokia 6280	19/4/06	25/4/06	25/4/06
1023	7	15750 Intel SL9Z9	20/4/06	25/4/06	9/5/06
1024	8	2100 Nokia 6100	20/4/06	25/4/06	25/4/06
1025	9	12285 Intel SL7Z9	20/4/06	25/4/06	26/4/06
1026	10	2500 Nokia 8800	20/4/06	25/4/06	25/4/06
1032	11	7875 Intel SL7Z9	27/4/06	9/5/06	9/5/06
1033	12	8505 Intel SL8HZ	27/4/06	9/5/06	9/5/06
1034	13	3000Nokia N990	28/4/06	9/5/06	9/5/06
1036	14	25515 Intel SL7Z9	28/4/06	9/5/06	9/5/06
1038	15	3800 Nokia 9300i	28/4/06	9/5/06	9/5/06

5 (All Nokia products are phones; all Intel products are CPUs)

71. In relation to the above table we observe that in every case the purchase orders of both Regent and its customer, and the invoices of Regent and its supplier were dated identically. So too were Regent's delivery instructions. The date the goods were released was also the date on which Regent made full payment or completed payment for the goods concerned.

72. As an indication of the dangers Regent faced in delivering goods prior to completion of its verification check and before payment, we might mention that in Deals 8 and 10 (Invoices 1024 and 1026) Regent's customer was Proinserco SL ("Proinserco"), a Spanish company. Both deals were made on 20 April 2006, and invoiced on that date. Both were in Nokia phones. Mr Belfield knew from the VIES check on Proinserco that its VAT registration number was valid, but the Redhill check revealed that details submitted with the search were incorrect, the Commissioners reporting that "The documents you are providing is [sic] not the current VAT certificate". Mr Belfield's evidence was that he then contacted "Victoria" at Proinserco, who agreed that "there was a problem with the address", but said that she would let Regent have the new address. On the basis of the VIES check alone, Mr Belfield went ahead with the transaction and shipped the goods concerned on hold to Proinserco's freight forwarder, Sint Kruis Winkel of Belgium. Proinserco made payment for the goods on 25 April and they were released to it. On 26 April 2006 Proinserco was de-registered by the Spanish authorities "because the company has vanished".

73. We then turn to the record of the receipts and payments of money by the parties involved in the various chains as disclosed by Mr Mendes who, as we earlier explained, was the officer responsible for the interrogation of the FCIB computer

records. FCIB's computer database was seized by the Dutch revenue authorities on its banking licence being withdrawn and administrators being appointed in October 2006. Later the database was made available to the UK revenue authorities.

5 74. Mr Mendes' evidence showed that Regent received and made payments in
 10 respect of each of its 15 deals through its account 203125 at the FCIB. He explained
 15 that he was able to analyse 14 of the 15 deals. He traced receipts and payments
 20 backwards and forwards to follow the flow of money in respect of each deal, and to
 25 identify its origin and ultimate destination where possible. That process involved his
 30 tracing receipts and payments through the accounts of all the different companies
 35 concerned in the schemes, everyone, it will be recalled, banking with FCIB.

75. Looking in the direction of Regent's customer and beyond in each chain, Mr
 15 Mendes claimed to find a pattern of similar, although generally slightly larger,
 20 amounts being paid into the accounts of those involved close to the times when the
 25 relevant payments out might have been expected to be made. Equally, looking in the
 30 opposite direction, he said he found similar, although generally slightly smaller,
 35 amounts to be paid out of the relevant accounts close to the times the associated
 payments had been received.

76. Mr Mendes was unable to analyse Deal 1. We have therefore carried out our
 15 own analysis which follows the consideration of his evidence. In Deals 2 to 5,
 20 invoices 1017 -1019 (a) and (b), he was unable fully to trace the line of financial
 25 transactions. In Deal 2, the cash flow chain traced started with the Amira Group and
 30 then passed through Comica Handelsovernering BV ("Comica") and BRD to Regent
 35 and thence to Megantic and David Jacobs. In Deal 3, it again started with the Amira
 Group and passed through Forex GmbH ("Forex") and BRD to Regent, going on to
 Ace Telecom and Svenson. Deals 4 and 5, which in Regent's hands began as a single
 deal and was then divided into two, started with the Amira Group, and the money
 passed through Comica and Globalfone to Regent. One half then flowed through
 BRD and Negress Investments back to the Amira Group; the other half Mr Mendes
 traced only as far as David Jacobs, Regent's supplier. However, the Commissioners
 were later able to trace that transaction one step further by invoices showing that it
 started with Polcom Trading SP Z00 of Poland. (We have endeavoured correctly and
 fully to name the companies concerned, but may in some instances have failed to do
 so. Nevertheless we believe we have identified each one in sufficient detail).

77. However, in relation to Regent's 10 deals with Epinx and S & R, Mr Mendes
 40 found a complete cash flow path with Global at the beginning and end of every one of
 the deal chains concerned. Taking Deal 6 (invoice 1020 – S & R as acquirer and
 supplier) made on 19 April 2006 as an example, and comparing the money flow with
 invoices available to him, he found:

<i>Money Flow</i>	£	<i>Invoices</i>	£
Global A/c 201529			
25/4/06 payment	£838,800		
Valdemara Electronics	837,800		
25/4/06		↓	
Hi-Lo Sweden 25/4/06	836,000		
		Regent 19/4/06	836,000 ↑

Regent 25/4/06	909,450			
		↓	S & R	909,450
			19/4/06	
S & R				
25/4/06	140,000			
25/4/06	768,000	↓		
			Hennar SA 7/4/06	768,000 ↑
Hennar SA				
25/4/06	140,000			
25/4/06	766,800			
Estocom Distribution OU				
25/4/06	140,000			
25/4/06	765,600			
Global A/c 201529				

78. On the basis of that monetary flow path, and particularly that the amount paid to Hi-Lo on 25 April 2006 was very similar to that it in turn paid to Regent, and the timing of the receipt of money by Hi-Lo was shortly before it made payment to Regent, Mr Mendes concluded that the two payments were related.

79. The deal between Hi-Lo and Regent was for 4000 Nokia 6280 phones. The difference in the amounts received and paid by Hi-Lo was £1800. Assuming the difference to represent Hi-Lo's profit on the transaction, Mr Mendes found it to equate to a profit of 45p per handset - a figure of the magnitude usually found in UK buffer deals. Conducting the same exercise with the payments to and from Valdemara, he calculated the difference of £1000 to represent 25p per handset.

80. Tracing the bank transactions in the opposite direction, Regent having received £836,000 from Hi-Lo, and having then paid its supplier, S&R £909,450, including UK VAT, which VAT S&R would then ordinarily have proceeded to offset against the VAT repayment it would otherwise have sought in respect of its dirty chains, S & R then paid £768,000 to its supplier, Hennar, VAT free. That sum matched the sum invoiced by Hennar to S&R. Hennar then paid the slightly smaller amount of £766,800 to Estocom.

81. Those figures were interpreted by Mr Mendes as representing a mark-up by Hennar of £1200 for 4000 phones, or 30p per handset. Equally, the corresponding payment by Estocom on the same date of £765,600 represented a mark-up of 30p per handset. Assuming that to be the case, Global paid out £838,800 for 4000 Nokia phones, and later the same day received £765,600 for the same phones.

82. Despite the fact that the Commissioners recovered no invoices to confirm that the transactions at either end of the circular chain just described were definitely in respect of the deal chain constructed by Mr Mendes, they believed that the timing of the receipts and payments pointed to the payments being related to those deals, since the amounts matched subject to a small decrease at each step. Mr Mendes looked for, but was unable to find, identical amounts to those he did find in the whole of the 2006 FCIB records for the companies concerned.

83. The Commissioners rejected Regent's claim that other payments made to Hi-Lo and from Hennar represented the sale and purchase respectively of the handsets concerned. They regarded the matching of times and amounts in the bank records as compelling, claiming that it was beyond coincidence that the clearly matched payments traced to and from Global, not just in relation to Deal 6, but also to every one of Regent's deals involving S & R and Epinx.

84. Regent also suggested that the amounts received and paid by Global, Valdemara and Estocom might be part payments, or payments in respect of larger transactions. The Commissioners acknowledged that as a possibility, but claimed it unlikely in the extreme that they were the former given the slight diminution in amount paid at each step of the chain. The diminution was entirely consistent with a small profit margin for each trader. And, if the payments were part payments for a larger overall transaction, it was very odd that the precise amounts paid over were so clearly consistent with the amount of the goods, the subject of the invoiced deals. Valdemara might have purchased further goods from Hi-Lo on the same day, but the figures did not suggest that the payment identified by Mr Mendes in his analysis was anything other than complete payment for the invoiced goods. The Commissioners claimed the facts to point clearly and strongly to the identified payments in the flowchart above representing the same goods, and to complete payment for them: Global was therefore making a loss.

85. But even if Global also received further funds in respect of those goods, the fact that it appeared at both ends of the transaction chain for payments which, the Commissioners said, clearly did relate to those goods was itself evidence of circularity and fraud. There could be no legitimate reason for that to happen: Mr Mendes' analysis showed the whole chain to have been engineered.

86. In the absence of invoices between Global and Valdemara, etc in the Deal 6 chain, Regent maintained that it was impossible to say that the payments indicated that Global had actually purchased the goods from Valedamara, rather than simply providing funds for Valdemara's transaction. To that claim the Commissioners responded with the following observations:

- a) unlike the loan to Regent of £1.5 million, it would have indicated finance was being provided on a deal-by-deal basis;
- b) as Global received funds on the same day as Estocom, which they asserted clearly related to the same chain of transactions, Global was either:
 - i) selling the phones to Estocom, in which case it was by some extraordinary coincidence lending money to one company (Valdemara) to purchase phones it had itself sold some weeks before (Hennar sold to S & R on 7 April 2006) to the company (Estocom) at the other end of a lengthy deal chain, or
 - ii) it was receiving repayment of loan finance having also lent money to Estocom in order that that company might sell the same phones for which another Global client had borrowed money to purchase. As Global had also lent money to Estocom to enable it to participate in the deal chain, it, Global, appeared to be lending money to the companies at either end of a long deal chain, as well as to the UK broker in the middle of the chain.

87. Whichever way Regent's suggestion was viewed, it appeared to the Commissioners that the whole chain was controlled by Global. In evidence, Mr Belfield said that Global was not aware of the precise deals Regent was to undertake, or with whom, and that Global did not appear to have any experience in the mobile phone trade.

88. Of Deals 8 and 10, which took place on 20 April 2006, Mr Mendes traced all the payments through the same participants as in Deal 6, except that Regent's customer was Proinserco rather than Hi-Lo. The identified payments were all made on 25 April 2006, save for a further payment of £155,800 from S & R to Hennar made on 27 April 2006. In relation to those two deals, there were sometimes two or even three payments between a number of the parties. As the combined payments related to two deals in different amounts in two models of phones, Mr Mendes said that he had been unable to calculate the profit margins obtained by the participants in the chains. However the increases in the amounts variously paid by Estocom, Hennar, Valdemara and Global were consistent with the sorts of mark-up seen in other buffer deals. Global paid out £1,361,000, and later the same day received £1,095,000. As Estocom paid Global the same amount as it was itself paid by Hennar, the Commissioners accepted that there might have been a further relevant payment between Hennar and Estocom, and Estocom and Global, corresponding to the further payment made by S&R to Hennar.

89. In relation to Deal 13, the pattern again followed that in Deal 6 except that Estocom and Valdemara reversed roles, with Estocom purchasing from Regent's customer, Elandour, and Valdemara selling to FAF International Sarl ("FAF"), S&R's supplier. Regent, its supplier and customer, all raised their invoices on 28 April 2006, and all payments were made on 9 May 2006. The chain of transactions involved 3000 handsets, and the mark-ups obtained per handset by each company in the chain were as follows: Valdemara 30p, FAF 40p, S&R as UK acquirer £2, Regent as UK broker making the repayment claim £20.75, Elandour 35p, and Estocom 30p. The differences in the matched payments where invoices were not available, i.e. in relation to the non-UK transactions, in the Commissioners' opinion gave rise to such precise figures when viewed as mark-ups that they provided further evidence that the payments did all relate to the goods in that deal chain. Global paid out £841,200, and received on the same day £768,900.

90. The pattern in relation to Deal 15 also followed that in Deal 6. All the deals were made on 28 April 2006, and all payments made on 9 May 2006. The mark-up obtained by each participant in the deal chain taken in order from its beginning for each one of the 3800 handsets was calculated as follows: Avoset 35p, Hennar 35p, S&R, as UK acquirer, £2, Regent, as UK broker, £23.75, Hi-Lo 35p and Valdemara 35p. Again it was the Commissioners' case that the payments did all relate to the goods in the deal chain. Global paid out £1,221,510, and received later in the same day £1,118,340.

91. The remaining Global deals involved Epinx as the alleged contra-trader, and were all in CPUs as opposed to mobile phones. The first was Deal 7, where all payments, except one, took place on 25 April 2006. The exception was that Regent made an additional payment on 9 May 2006, the day on which it received the Global loan. Notwithstanding that Regent did not make full payment on 25 April, Epinx, its supplier, was able to pay the full amount it owed its supplier, FAF. Regent's part

payment did not therefore affect the full flow of moneys in respect of the rest of the chain on 25 April 2006. Again single payments were made between the traced companies, with (ignoring the VAT paid by Regent) small decreases in the amounts paid over as the chain progressed. The mark-ups obtained for each one of the 15750 units by the participants in the deal chain taken in order from its beginning were as follows: Zorba 10p, FAF 10p, Epinx, as UK acquirer, 35p, Regent, as UK broker, £6.35, Elandour 10p, and Avoset 10p. Again the Commissioners observed that the differences in the matched payments in the absence of invoices probably indicated that the payments all related to the CPUs concerned, and were complete payments for them. Global paid out £1,356,075, and on the same day received £1,244,250.

92. Deal 9 took place on 20 April 2006. From Global, the chain of which it formed part flowed through Zorba, FAF, Epinx, Regent, Elandour, Avoset, and back to Global. All payments in the chain, as identified by Mr Mendes, were made on 25 April 2006. Regent's customer, Elandour, paid the consideration due from it in two amounts, £940,000 and £114,667.25. At the beginning of the chain of payments, Global also made two payments, the first also of £940,000, which two payment pattern was followed by Avoset, the intermediary between Global and Elandour, and again the first payment was of £940,000. The number of CPUs dealt in, 12,285, was particularly notable, as was the difference in price, £12,285, between that received by Zorba and that paid out by Zorba to Regent. Once more the Commissioners claimed that the payments clearly related to the goods the subject of Regent's deal, and were not part payments. Global paid out £1,057,124.25, and received later the same day £969,286.50. Deal 9 was significant in that it was the only one of the 15 deals in which the goods supplied were delivered to the country in which Regent's customer was based.

93. All payments relating to Deals 11 and 12 were made on 9 May 2006, with the exception of a further payment of £260,884.50 made on 23 May 2006 by Epinx to FAF in addition to £1,020,000 paid on 9 May 2006 to make up the full amount of £1,280,884.50. The monetary chain traced by Mr Mendes started with Global, and flowed through Avoset, Elandour, Regent, Epinx, FAF, Zorba, and back to Global. As with Deals 8 and 10, the Commissioners said that it could be assumed that FAF and Zorba in turn made additional payments following the 23 May payments which were "passed down the line", such payments each being less in turn than that paid to the customer immediately above in the chain. Regent raised four invoices in respect of the two deals, each being dated 27 April 2006. As a result of his not knowing the amounts of any such additional payments, Mr Mendes was unable to calculate the mark-up per CPU. Further, the two deals involved different types of CPU. Nevertheless, Mr Mendes found the overall figures to provide a standard mark-up for the EU customer end of the chain as follows: Epinx 35p both deals, Regent £6.60 Deal 11, and £6 Deal 12, Elandour 10p, and Avoset 10p. Once more the Commissioners maintained that the payments related to the CPUs the subject of Regent's deals.

94. The chain of payments for Deal 14 took place on 9 May 2006. The invoices were all dated 26 April 2006. The customer part of the payment chain had a constant figure of £1,335,000 being paid down the line, and an additional payment, again at each step reducing slightly, making up the total. The chain of transactions identified by Mr Mendes once more started with Global, and flowed through Zorba (mark up 10p), FAF (mark up 10p), Epinx as UK acquirer (mark up 35p), Regent as UK broker

(mark up £6.60), Elandour (mark up 10p), Scorpion (mark up 10p), and back to Global. It showed Global as having paid out £2,278,489.50, and receiving £2,090,954.25 on the same day.

5 95. We find Mr Mendes' evidence clearly to show that Global initiated payment in
respect of each of the ten deal chains connected with it, and received payment at the
other end of the chain of payments. It paid and was paid by companies of which, on
10 Mr Belfield's account, Regent had no knowledge and which, in the course of
legitimate trade, would not have known of each other's identity in the particular chain
of transactions. That happened on each and every occasion Regent conducted a deal,
irrespective of with whom it dealt, and who else was in the chain of supply or chain of
customers. We find that evidence compelling as indicating that each party in the
chain, and particularly Regent, was aware from whom it must purchase, and to whom
it must sell, and that Regent dealt with those with whom it was intended to deal.

15 96. Having dealt with Mr Mendes' evidence, we then return to our own analysis of
Deal 1. As we mentioned earlier, we have set out that deal in tabular form in the
Schedule to our decision. In our analysis we deal not only with the pattern of
payments revealed by the FCIB records, but also that revealed in other documents.
20 Regent purchased 5500 Nokia 8800 phones from David Jacobs which that company
had itself purchased from Mighty Mobile SL ("Mighty Mobile") of Spain. David
Jacobs placed its purchase order for the phones with Mighty Mobile on 10 April 2006,
the agreed price being £388.85 per handset, a total of £2,138,675 for the entire
consignment. Mighty Mobile raised the invoice for its sale on 11 April 2006. David
25 Jacobs proceeded to sell the consignment to Regent the following day, raising its
invoice on that day. Also on 11 April, Regent agreed three sales of the phones it had
purchased: one to Cayenne Trading SA ("Cayenne") of Luxembourg, one to
Megantic, and the third to Base Interactive. Each purchaser submitted its purchase
order on 11 April. The respective numbers of phones sold were 1250, 3000 and 1250.
30 As both Megantic and Base Interactive were UK companies the sales to them were
liable to VAT at the standard rate; in contrast, the sale to Cayenne, being an inter
Community sale, was zero-rated. Megantic forthwith proceeded to sell the phones
sold to it to Senbetel Telecom of Spain, and Base Interactive to sell to Globalfone
Communications GmbH of Austria, in each case the sale price per unit being identical
35 to that obtained by Regent in its sale to Cayenne. All the sales agreed on 11 April
2006 were also invoiced on that date. The goods which Regent had agreed to sell to
Cayenne were transported "ship on hold" to Intersprint Logistics, Cayenne's freight
forwarder in Belgium, on 12 April 2006, that is before Regent had received the result
of its Redhill checks on Cayenne and before it had been paid for the goods.

40 97. On 20 April all three of Regent's customers in Deal 1 made payments to it.
Megantic, which owed £1,376,512.50, paid £635,625; Bass Interactive, which owed
£573,546.88, paid the full amount; and so too did Cayenne, which owed £529,687.50.
Regent immediately paid David Jacobs £1,738,859.38, very slightly less than the sum
45 it had just received. On 25 April Megantic paid a further £52,631.25 to Regent, which
that company passed on, subject to a very small reduction, to David Jacobs. It was
not until 9 May 2006 that Megantic made payment to Regent of the balance of
£688,256.25 due from it. On the same day, Regent passed on £687,375 to David
Jacobs. That left a balance of £43,125 owing to David Jacobs, which sum remained
50 outstanding until 19 May 2006, the day on which Regent received the loan of

5 £250,000 from Lorimer. Regent thereupon paid the balance due from it and released all three supplies to their respective owners. We observe that Regent received the loan of £1.5 million from Global on 9 May 2006 so that it could have made payment of the balance due from it on that day. The fact that it did not do so, despite having obligations to its customers, leads us to find, as the Commissioners claimed, that the Global loan was made for specific purposes which did not include payment of the David Jacobs invoices.

10 98. We should add that although the customer in Deal 2 paid for the goods shipped by Regent on 2 May 2006, again it was not until 19 May 2006, when it received the Lorimer loan, that Regent released them. A long delay in release of the goods was also a feature of Deals 4 and 5: in both cases payment was received by Regent on 25 April 2006, yet the goods were not released to its customers until 19 May 2006. As no explanation was offered by Mr Belfield for the delay in releasing the goods, we assume he is unable to explain it, and we conclude that it was for non-commercial reasons.

15 99. We find that the profits made on Regent's 15 denied deals varied between 7.1 per cent and 7.8 per cent.

20 D) EVIDENCE OF THE TRADING PATTERNS OF GROUPS OF COMPANIES OF WHICH THE FOUR ALLEGED CONTRA-TRADERS FORMED PART

25 100. Mr Humphries analysed the deal sheets of the four alleged contra-traders which supplied Regent (albeit indirectly in Deals 2 and 3) in its 15 denied deals. They revealed patterns of trade similar to those of other traders performing the same role. Each of the four alleged contra-traders formed part of one of two groups of traders operating in such a way as to indicate to Mr Humphries that their activities were co-ordinated and contrived; that each participant in the transactions knew from whom it was to purchase and to whom it was to sell. It also revealed that David Jacobs and Svenson shared a pattern of trading with five others, namely Digital Satellite 2000 Ltd (which traded under the style of and is hereinafter referred to as "Powerstrip"), which traded under the style of TC Catering Supplies Ltd, Selectwelcome Ltd, Svenson Worldwide Ltd, and Scorpion Connections Ltd, forming a group of 7 contra-traders. It also showed that Epinx and S&R shared a pattern of trading with 4 others, namely Kquality Trading Ltd, Intertrade Worldwide Ltd, A-Z Mobile Accessories Ltd and Waterfire Ltd, forming a second group of 6 contra-traders.

30 101. Two of the companies in the second contra-trading group (Kquality Trading and Intertrade Worldwide) supplied Regent in broker deals, but in deals not forming part of the 15 denied deals; they were the subject of the Commissioners' extended verification.

45 *The David Jacobs Group*

50 102. The evidence relating to the David Jacobs Group revealed a number of features of the trading of the 7 companies forming that group.

i) The contra-traders' acquisition chains (clean chains)

103. The companies used the same 8 EU suppliers, who were also EU customers of the brokers in the same chains. Three of the contra-traders (Svenson, Powerstrip and David Jacobs) also acted as brokers in some of the chains, Svenson further acting as a buffer in some of the chains. They used the same 30 buffer traders, 10 of which also appeared as brokers. There were 16 broker traders, 12 of which also acted as contras or buffers in some of the chains. The profit margins on broker deals were considerably higher than those on buffer or acquisition deals. (For instance, Regent's broker transactions in April 2006 showed margins of between £6 and £6.80 for CPUs, and between £10 and £33.75 for mobile phones. Its buffer transactions showed a consistent margin of 50p per phone. It did not carry out any acquisition deals in the period, but examples of acquisition margins in its chains showed margins of between £1 and £2 for mobile phones, and between 35p and 40p for CPUs).

104. There were only 23 EU customers for all 16 brokers. Those customers, shared by many of the brokers, were all connected with the EU suppliers either because they were also suppliers themselves (8 companies), or because they were in chains that ended with one of three EU companies – Parasail Distribution Spain SL (“Parasail”) (Spanish), Comica Handelsoederneering BV (“Comica”) (Dutch) or Forex (German)– each of which was itself linked to EU suppliers. We note that a total of 23 customers was a very small base for 16 different UK traders, particularly when 8 of those customers were also suppliers to the group. Eleven of the EU traders had been deregistered as missing traders in their respective member states, and the directors of two of them, Opal 53 GmbH (German) and Hilton Moore (Danish) had very similar addresses in Dubai.

105. A number of acquisition chains of David Jacobs, Svenson and Selectwelcome involved three EU companies Parasail, Comica and Forex. In Selectwelcome's case, where the Commissioners had traced a number of its May 2006 deals (17 of 24 chains traced back beyond EU supplier, 9 of 24 chains forward beyond EU customer), every chain traced showed that either Comica or Parasail was the original supplier and the eventual customer. Also in Selectwelcome's May 2006 chains, one deal resulted in goods originating with Comica returning to that company. In all the traced deals, goods originating with Parasail were supplied to Comica, and goods originating with Comica were supplied to Parasail or Forex. Forex also acted as immediate EU supplier in some chains, having been supplied by Parasail with goods which were therefore eventually supplied to Comica from the UK. In two chains, BRD Werbung und Handels GmbH (“BRD”) acted as the immediate EU supplier, having purchased from Parasail or Comica, and then as the second EU customer (the customer of the UK broker's EU customer). It then sold the goods either to Parasail or to Comica. BRD therefore appeared as EU customer and supplier in the same chain. Consequently, there were three chains where the goods returned to a company which originally supplied them.

106. The Commissioners traced 17 of Selectwelcome's 28 chains of transactions in June 2006 back beyond an EU supplier, and had traced 24 of those chains forward beyond an EU customer. In every case, the chain began or ended with one of Parasail, Comica or Forex: goods originating with Parasail were supplied to Comica; goods

originating with Comica were supplied to Parasail or Forex; and goods originating with Forex were supplied to Parasail or Comica.

5 107. The Commissioners had less success in tracing the chains involving David
Jacobs and Svenson. Nevertheless, in respect of each of their acquisition deals in
April and May 2006, Mr Humphries disclosed that they had been able to do so far
enough to identify Parasail or Comica eventually appearing as an EU customer.
Further information obtained by the Commissioners in respect of 5 other companies
involved in David Jacobs and Svenson's chains further extended the pattern of
10 supplies involving Parasail, Comica and Forex. All the further transactions they had
been able to trace involved those three companies; the remainder involved BRD,
which regularly bought from Parasail and Comica, and sold to Parasail.

15 108. The Commissioners also obtained information from EU sources showing
Parasail and Comica to be run by the same person, one Adil Kamran, a German
national. In a report provided by the Spanish revenue authorities dated 16 March 2007
(22/7082) Parasail was said to have been acting as a "triangular operator", to have
gone missing having not really existed as a normal Spanish trader, and to have been
20 "used for fraud purposes by foreign people". Consequently, it was deregistered for
"false trading" in September 2006. And, in a report prepared by the Dutch revenue
authorities dated 21 November 2007 (22/7100), the Commissioners were informed
that Comica had been deregistered in December 2006 "because the company was
suspected to be involved with carousel fraud".

25 109. The EU information also showed that Parasail sold to three Cypriot companies,
Destonia, Flash Tech and Leriant Trading, the latter two appearing as a supplier to
UK defaulters in the contras' broker chains. Comica also sold to Destonia. We find
that the EU companies behind the contras' acquirer deals were also suppliers to their
dirty chains.

30 110. The evidence with which we have just dealt resulted in Mr Humphries claiming
(22/6824 at paras 42 and 43):

35 "42. Overall, the transactions involving Parasail, Comica and Forex must be
contrived. They occur within a closed cell of traders which appear to be
operating in concert. The goods originate with a very small group of EU
suppliers, and end up with the same group of companies at the end of the
transaction chains. Where both ends of the chains have been further traced,
and with one exception [notwithstanding that goods remained within the same
40 small group of suppliers], none of the companies involved received, as
customers goods, goods which they had originally supplied as suppliers. This
has happened no matter which combination of UK traders the goods passed
through on the way.

45 43. This could not happen in the course of normal commercial trade, and I do
not believe it would be possible unless the traders involved at each stage of the
transaction chains had knowledge of the contrived scheme."

50 Having tested Mr Humphries' conclusion against the submissions of Mr Pickup (with
which we deal later), we are satisfied of its correctness.

111. Mr Humphries implicitly claimed that efforts had clearly been made to avoid traceable circularity within the deal chains; although the goods started and finished with companies that were linked, the true circularity could not be seen because, with three exceptions, no single company appeared more than once in the chain. He claimed the trading patterns showed efforts had been made (in the main successfully) to avoid traceable circularity as, in reality, the companies at either end of the chain were linked. Proper due diligence could not explain those patterns. A hypothetical legitimate EU company diligently conducting IMEI checks and finding it was being offered the same goods as it had itself offered for sale would not have been expected simply to reject those goods; it would have been expected to stop trading with that supplier immediately. Yet Comica, Parasail, Forex, BRD and others had continued trading with the same companies time and again.

112. It was put to Mr Humphries in cross-examination that, if a chain were contrived and fraudulent, it would have been unusual to find a “split deal” such as Deal 1, where the goods purchased by Regent were split into three parts, two parts being sold to UK customers and only the third being supplied to an EU customer. Mr Humphries replied that it was not unusual, and asserted that it was a further device to frustrate the detection of fraud by the authorities. Far from being evidence of split deals showing legitimate trading, such deals showed further efforts being made to prevent the detection of circularity and fraud. Those making sure that the goods were sold from the EU to the UK, and back to the EU, where they were reunited into one consignment again, could not have done so without the knowing co-operation of each participant in the chain; such participants included Regent, Megantic and David Jacobs. In relation to Deal 1, where Regent sold two parts to other UK companies, both such companies then proceeded to export the goods they had bought to the EU.

ii) The contra-traders’ broker chains (dirty chains)

113. The Commissioners analysed the broker chains of four of the contra-traders, albeit to a lesser extent than in the acquisition chains, revealing 19 defaulting traders, 10 of which were common to all four contras, and a further 8 of which were common to two or three of the contras. Essentially, the EU customers concerned formed two groups: in nearly all the chains, the group of customers used appeared to depend upon the identity of the defaulter. One of the EU customer groups was the same as the EU customers appearing in the contras’ acquisition chains, i.e. the EU customers for the dirty chains were the same as those for the clean chains. The Commissioners suggested that that provided a link between the acquisition deals and the broker deals undertaken by the contra-traders. (Two of the defaulters, Midwest Communications Ltd and West 1 Facilities Management Ltd attempted to enter into what the Commissioners considered to be a contra-scheme, but it failed due to a lack of evidence of export of the goods concerned).

114. The evidence showed that three of the David Jacobs group of 6 contra-traders, David Jacobs itself, Svenson and Powerstrip, had sourced goods in some of their broker/dirty chains from a second group of contra-traders (“contra 2 traders”), as well as from chains commencing with a defaulter.

115. At paras 47-81 of his witness statement (Core/6824-6828) Mr Humphries disclosed that analysis had shown Powerstrip's broker chains to trace back to 6 of 9 contra 2 traders. The 9 companies, referred to as "the Blackstar group", revealed patterns of trade and links between them. The EU traders appearing in the transactions did so variously as EU suppliers and EU customers in both the acquisition chains (D chains) and broker chains (C chains). Two individuals, Joakim Broburg and Alexis Leroy, were involved in 6 of the EU companies in the chains, and Broburg could be shown to be involved in a further 4 EU companies. Sebastian Davalos-Davila was directly involved with yet a further 5 of the EU companies. All of those 15 companies, despite being based in 9 different EU states, were therefore linked to three individuals, all of whom resided in Malaga, Spain. (The links were detailed in Mr Humphries' statement at paras 82-94 and in a chart he prepared (23/7219). A number of the companies concerned had since been deregistered on suspicion of, inter alia, non-existent trading, non-economic activity or other involvement in carousel fraud (23/7156-7219).)

116. Mr Leroy was the director of Proinserco SL, an EU customer of Regent in two of its denied deals (Deals 8 and 10).

117. It is the Commissioners' case that the evidence shows that in the whole series of transactions entered into by the 9 contra-traders concerned the goods passed from a small group of EU traders, via the 9 UK contra-traders and 33 UK broker traders to another small group of EU traders, which had links to the first group. Those EU traders also provided a link between the acquisition, or clean, chains of the contra-traders, and their broker, dirty, chains.

118. Despite Powerstrip not being one of the contra-traders supplying Regent in its 15 denied deals, David Jacobs and Svenson were also supplied by that group of 9 contra-traders in their dirty chains.

The Epinx Group

119. The evidence relating to the Epinx group also revealed a number of important features of the trading conducted by the 6 companies in that group. We consider it in two parts: the first relating to clean chains, and the second to dirty chains.

i) The contra-traders' acquisition chains (clean chains)

120. The Commissioners considered the deal chains to reveal the following three distinct sets of transactions (Core / 6831, paras 96-104).

Set 1

121. In Set 1 the 6 contra-traders used the same 10 EU suppliers, 9 of which also appeared as EU customers at the end of the chains. Where an EU trader appeared both as customer and supplier, it did not receive as customer goods which it had originally supplied. Further, it appeared to the Commissioners that efforts had been made by the traders to avoid circularity in the transaction chains. There were 23 broker traders which had many EU customers in common. There were only 11 EU customers for all

23 brokers, 9 of which were also EU suppliers (Core / 6831-2, paras 105-107; 23/7253).

Set 2

5

122. The 2 contra-traders involved in Set 2, Epinx and A-Z Mobile Accessories, used only 3 EU suppliers, 2 of which also appeared as EU customers. Where an EU trader appeared as both customer and supplier, it did not receive as customer goods which it had originally supplied. Again, it appeared to the Commissioners that efforts had been made by the traders to avoid circularity in the transaction chains. There were 22 UK broker traders, including 6 of those from Set 1, which sold to 6 EU customers, none of which was a customer in Set 1. Two of the EU customers were also EU suppliers. Two other EU customers, 2 Trade (Belgian) and CZ International (Czech), were linked by directors who shared a common address. The directors had been arrested by the Belgian authorities in connection with the use of false invoices for the supply of mobile phones, the sum involved being in excess of one billion Euros.

10

15

123. The Commissioners' analysis identified further patterns involving EU customers/suppliers, namely; that all goods originating with Kom Team ended up with Evolution and CEMSA regardless of which UK broker sold them; that all goods originating with Nordic Telecom ended up with Kom Team, Hennar and St Charles Consulting; and, that all goods originating with St Charles ended up with the linked companies 2 Trade and CZ International (Core / 6832, paras 108-112; 23/7255,7280).

20

25

Set 3

124. There was a single EU supplier, UK contra-trader (A-Z Mobile Accessories Ltd), UK broker and EU customer in Set 3. The chains were distinguished from the other two sets as none of the goods supplied to those chains was sold to any of the EU customers in the other two sets of transactions. (Core 6833 para 113; 23/7257,7280).

30

ii) The contra-traders' broker chains (dirty chains)

125. Analysis of the broker chains of all 6 contra-traders had been analysed by the Commissioners. They showed that they shared but 12 EU customers, 8 of which also appeared as both customer and supplier in Set 1 of the acquisition chains above, and 2 of which also appeared as both customer and supplier in Set 2 of those chains. (Core / 6833 para 114; 23/7255, 7282). The Commissioners considered that to provide a firm link between the acquisition transactions and the broker transactions undertaken by the 6 contra-traders. We agree.

35

40

126. In respect of the 22 contra-traders operating in the three groups (the David Jacobs group, the Epinx group and the Blackstar group), the destinations of the goods in the transactions appeared to the Commissioners to be pre-determined by their origin. The UK broker traders selling to the EU had distinct sets of EU customers depending on the identities of their EU suppliers. When they purchased goods originating with certain defaulters, they sold them to a small group of EU traders (J Corp Aps, EC Trading Aps, D Jensen, DGB Sarl, Fone Link SL, and Servicios Operativos Surcom). When they purchased goods originating with the other defaulters, or with the EU suppliers to the David Jacobs group's acquisition deals,

45

50

they always sold them to a second group of EU customers. When they purchased goods originating with the EU suppliers to the Blackstar group's acquisition deals, they all sold to a third group of EU customers. (We were provided with charts illustrating the above matters for David Jacobs, Svenson and Powerstrip – see 5 22/6864, 6870, 6874, 6888 and 6892). When they purchased goods originating with the Epinx group, they all sold them to further groups of EU customers, depending on where the goods originated.

10 127. In each separate series, the goods passed from a distinct, very small group of EU suppliers to a distinct, very small group of EU customers, the first group often being linked to the second one, or even containing the same companies. Those matches of EU suppliers to EU customers were maintained even when the goods passed through a large number of different UK traders in various combinations, with the goods effectively remaining under the same control throughout.

15 128. Regent's 15 sales followed the pattern dictated by the group of contra-traders from which it had purchased. All the goods originating with the David Jacobs group it sold to Globalfone, BRD or Cayenne; all those originating with the Epinx group it sold to Hi-Lo, Proinsarco or Elandour.

20 129. Mr Humphries' analysis did not show how many deals a given trader had been involved in, and did not disclose all available details of each of its deals.

25 130. Regent undertook only a small number of deals compared to the total number analysed, but one of the principal points to emerge from Mr Humphries' analysis was that the rigid patterns of trade – where, within well-defined groups, the EU source of the goods determined the EU destination – showed that the trades were organised in that way. Regent's deals followed the same pattern. Each and every deal, including those when Regent acted as a buffer or broker in other deals beyond the 15 denied, 30 fitted the same pattern: Regent bought from different suppliers and sold to different customers, both within the EU and in the UK; each time it chose from which company to buy and which to sell, its trades followed the same pattern. That happened even though there were two distinct groups of contra-traders, each with its own pattern of trade. So, when Regent bought from Epinx, it sold to companies within the overall 35 pattern established for the Epinx group. Yet when it bought from David Jacobs, it always sold to companies within the pattern seen for all the David Jacobs group's deals. We find the conclusions drawn by Mr Humphries from his analysis to be correct.

40 131. Mr Humphries did not include information in respect of other deals that might have been done between, e.g. Regent and Megantic, such that the overall trading relationship between the companies might have been considered. He explained that although the deals he had analysed fitted the patterns of the two contra groups, other deals conducted during the same periods which did not involve those contra-traders 45 also fitted those patterns. Information as to all Regent's deals in February, March and April 2006 was available; the first month of Mr Humphries' analysis was April 2006; in that month, Regent conducted no deals other than those analysed.

50 132. In February and March 2006 Regent was involved in deals where it was a buffer to David Jacobs itself and Powerstrip acting as acquirers, and where it was a buffer in

dirty chains leading direct to a default, again including chains involving David Jacobs himself. We find that every trade Regent undertook involved it participating in a chain commencing either with an alleged contra-trader from the David Jacobs group, or with a fraudulent defaulter.

5

133. All the phones in Regent's denied deals were manufactured by Nokia. The goods were imported into the UK and then exported by Regent. In a period of 18 days in April 2006, Regent exported 6 different models of Nokia phone that had recently been imported into the UK. The Commissioners questioned whether a volume-led grey market caused by a shortage of handsets in a given area would have existed for 6 different models during the same period.

10

E) ADDITIONAL EVIDENCE OF THE CONTRA-TRADERS KNOWLEDGE

15

134. The Commissioners adduced further evidence which they claim to show that the contra-traders' deals were contrived, and provide further support for their claim both that there was a connection between Regent's denied deals and a fraudulent default, and that the operations of the contra-traders were themselves fraudulent. In their evidence, with which we shall now deal, the officers for the four contra-traders set out the features of those traders' activities – features similar to those found in Regent's own deal chains – which the Commissioners contend imply fraud. The evidence adduced was considerable, and we cannot deal with it all, so that we confine ourselves to rehearsing only so much as is needed to enable us to paint a general picture. The Commissioners' case is that each of the contra-traders was aware that its broker deals were connected with fraud, either because there was a fraudulent default in the chain, or by connection with a fraudulent default via a contra-trader.

20

25

a) Epinx (Mr White)

30

135. Epinx effectively took over the business of Pinx Ltd, which became insolvent in February 2005, both companies having Paula White as director. Epinx registered for VAT in April 2005, and received a letter about MTIC fraud shortly thereafter. The letter was followed by a visit by MTIC officers on 27 June 2005. On 9 March 2006 Epinx made application both for a change of trade class to "wholesale of electrical items", and for permission to make monthly returns. The Commissioners refused the latter as the company failed to provide evidence of being in a regular repayment position. As well as being an acquirer and broker, Epinx also acted as a buffer, its verified deals in that behalf in periods 03/06 and 06/06 tracing to tax losses totalling £31,497,000. Epinx's turnover rose from £77.7 million in period 03/06 to £212.4 million in 06/06, and that in a company that only began trading in MTIC goods in 2005. The company operated with little capital or other financial backing, and had little experience in its trade sector.

35

40

136. In a number of broker deals, Epinx was supplied by FAF. The Italian authorities concluded that FAF was a fictitious company and the transactions it purportedly conducted were false. Epinx carried out no Redhill checks on FAF, nor did it make any credit or other checks on it. In another deal, with Nordic Telecommunications Aps (Danish), Epinx was found by the French authorities to have been involved in a circular chain of transactions which led back to Nordic.

50

137. In the majority of Epinx's dirty chains the same companies were to be found. They started with the hijacked trader, Eutex Ltd, went on to Dialhouse Ltd or PM Wholesale Ltd, then to Yodem and Sabretone before going to Epinx. The uniformity of the constitution of those chains was conspicuous.

138. In common with most MTIC traders, Epinx banked with FCIB. It made contact with its suppliers and customers using the websites IPT and ICB - sites which had no manufacturers, authorised distributors or retailers on them.

139. Epinx undertook minimal due diligence on its suppliers and customers. Its due diligence consisted of an introduction pack, a check on the EU Europa website, and an occasional site visit. The documentation it provided to the Commissioners was usually undated and unsigned. Epinx made no credit or other checks on the companies concerned and, despite its being specifically asked to do so in correspondence, made no Redhill checks on companies with which it intended to deal.

b) S&R (Mr Palmer)

140. In each of the three accounting periods 12/05, 03/06 and 06/06, S&R's EU supplies and acquisitions were carefully balanced (Core/328-329), so much so that in period 06/06 its VAT liability on supplies exceeding £18 million was £675.04. S&R had earlier repayment claims denied as being connected with fraud.

141. During 2005 S&R began exporting tank liners and diabetes testing kits as well as mobile phones and CPUs. That resulted in a large increase in its turnover and a large repayment claim for period 06/05. The Commissioners subjected the claim to extended verification, and in that process discovered that the serial numbers of the diabetes kits differed from those issued by the manufacturers, and the specified containers could not accommodate the tank liners supplied.

142. S&R's European suppliers included FAF and Forma Hennar SA. Both were deregistered by the relevant revenue authority as being "letter box" companies having made no returns or failed to supply records on request.

143. In a number of S&R's export deals Nano Infinity appeared as its EU customer. That company was found by the French authorities to be "an invoicing agency embroiled in an MTIC scheme". Another customer, Kiera Trading, was deregistered by the French authorities as being involved in a "vast network of VAT fraud of the carousel type, including the UK". Sabretone, a buffer in a number of S&R's dirty chains, was deregistered as a missing trader on 1 August 2006.

144. In 12 of 14 export deals examined by the Commissioners, S&R purchased from Epinx, which was allegedly in the same "cell". On one occasion S&R bought goods from Epinx at a price between £50 and £60 per unit below the price it had paid three weeks earlier.

145. S&R was paid for its supplies some time after they were made and after delivery, although it did not deal on credit terms.

146. S&R's import deals were conducted at the beginning of its accounting periods, whilst its export deals were conducted at the end. Cash flow problems could not be offered as an explanation for that practice in S&R's case as it was obtaining output tax from its customers in acquirer deals. Normal commercial practice would be for deals to be conducted throughout accounting periods.

147. Despite being asked by the Commissioners to produce its due diligence records as part of their extended verification process, S&R never provided them.

148. S&R dealt with a number of dubious freight forwarders, one having shredded all its records and another, Boston Freight, having been deregistered by the Belgian authorities having operated from a farm with no storage facilities.

c) David Jacobs (Mr Davies)

149. Mohammed Asghar Iqbal was a director of David Jacobs until 24 June 2005, and he remains a shareholder. He was also a director of Svenson until 19 January 2004, so that there was a link between Svenson and David Jacobs. In any event the two companies regularly dealt with each other.

150. David Jacobs' director Naveed Aslam was visited by the Commissioners on 7 July 2005, when he was informed of their concerns about MTIC fraud, and advised of due diligence, joint and several liability for tax, the function of the Redhill office, and other matters. He indicated that he had some knowledge of MTIC fraud. The Commissioners paid Mr Aslam another visit on 14 July 2005, by when David Jacobs had carried out its first deal in which it was allowed credit and in turn allowed its customer credit. The only due diligence it had carried out was to make Redhill checks to verify VAT registrations. On a further visit on 19 October 2005 the Commissioners told Mr Aslam to request IMEI inspection on all future deals. Again David Jacobs' due diligence appeared to be restricted to Redhill checks.

151. In addition to requests made at the above meetings, and subsequent to the trading period concerned in this appeal, David Jacobs was requested in 5 letters and in a number of faxes and telephone calls to supply its due diligence documentation as part of the Commissioners' extended verification process. All the requests were ignored so that the Commissioners concluded that no due diligence was conducted. Similar requests for the production of CMRs met with the same response, leading the Commissioners to query whether the goods concerned existed at all.

152. Information obtained by the Commissioners from other EU revenue authorities about seven companies with which David Jacobs dealt revealed that a number of them had been deregistered for reasons such as being a missing trader or a conduit company. One such company was Forex. The companies appeared to be operating in a highly irregular way, and were found to be involved with fraud. The information also showed that a number of UK nationals were running all but one of those companies. The Commissioners considered that had David Jacobs carried due diligence it would have discovered a considerable amount of the information that the Commissioners obtained: it did not carry out due diligence as it had no need to do so.

153. In a credit report David Jacobs was described as a “maximum risk company”. Yet it was able to find trading partners. The Commissioners considered that to indicate that those partners either performed no due diligence on the company, or took little notice of that they did undertake.

5

154. Mr Davies provided examples of deals in which David Jacobs had placed an order with Regent as its UK supplier and then arranged for the goods to be dispatched to a warehouse in Spain 5 to 7 days before it received the purchase order from its EU customer. That suggested to the Commissioners that David Jacobs knew that the deals were all part of a scheme.

10

d) Svenson (Mr Owen)

155. Svenson had a common founding director with David Jacobs. On 12 January 2006 the Commissioners informed it by letter that a supply chain in which it had acted as a buffer had traced to tax losses of £264,957. Its director, Abdul Salam Koser, had links with other companies associated with MTIC fraud.

15

156. In April 2006 Svenson conducted acquirer deals with a greater value than broker deals, initially placing itself in a payment position at the end of its quarterly period 06/06. In May it conducted a greater value of broker deals, changing that position to one of repayment. In June it conducted £16 million acquirer deals, but followed them on the very last day of the period with 26 broker deals valued at over £60 million. Given the proportion of its broker deals that were connected to a further contra chain, the Commissioners considered that to be a highly irregular form of trading and to have been necessary to ensure that the contras in its dirty chains could conduct sufficient acquirer deals before the end of the period to disguise and offset its own fraudulent repayment claims. The result was that Svenson’s resulting repayment claim was, although still very substantial, much smaller than it would otherwise have been. The Commissioners regarded that overall trading behaviour to be most irregular and to point clearly to contrivance.

20

25

30

157. Also in period 06/06 Svenson conducted 126 buffer deals, 73 of which had been traced to a tax loss. In its acquirer deals it was supplied by three different EU companies which appeared to the Commissioners to have been involved in fraud. One of those companies was Mighty Mobile, a company said by the Spanish authorities to be a property company whose offices had long been closed.

35

158. The goods included in Svenson’s 26 broker deals undertaken on 30 June 2006 were not released in accordance with its normal practice, i.e. within 2 weeks of the invoice being raised, but were retained for some 1 to 2 months. Svenson attributed the delay in release to the closing of its bank accounts with FCIB, yet it was not until 15 August 2006 that FCIB informed its clients their accounts should be closed by 15 September 2006. As ordinarily Svenson’s customers would have released payment by mid-July, the Commissioners did not accept the explanation offered.

40

45

159. All that Svenson regularly obtained by way of due diligence was a supplier and customer questionnaire: it frequently undertook no credit checks and obtained no trade references, or bank documents. Such credit checks as it did undertake were often performed after deals had been completed.

50

Conclusion on additional evidence of the contra-traders' knowledge

5 160. On the basis of the evidence so adduced as to the contra-traders' knowledge, we
are satisfied that each one deliberately and fraudulently offset some or all of the input
tax repayment claims it would otherwise have had to make by conducting acquirer
deals as well. In acting so, we find that each contra-trader was aware of the
10 connection of its broker deals to fraud. However, we accept that those responsible for
the defaults in the contra-traders' supply chains and the nature of the defaults may not
have been known to the contra-traders; but observe that it is unnecessary for a contra-
trader to have that knowledge in respect of its broker chains for it knowingly to
conduct its deals so as to disguise those connections.

Buffer deals

15 161. In its accounting period ended on 30 April 2006, Regent acted as a buffer in 16
chains of transactions. On the basis of the information with which we were provided
we find that all but three of such deals took place in February and March 2006 and
most of the sales were to Megantic. All the deals followed the patterns which Mr
20 Humphries discovered in his analysis of the transactions of the four contra-traders he
identified. As in most instances Regent's sales were to traders already trading with its
suppliers, Mr Humphries questioned the need for Regent to become involved, other
than to lengthen the supply chain and artificially increase the prices of the goods. In
every case, the profit made by Regent was 50p per phone, where it dealt in phones,
25 and 15p per CPU where the deal was in CPUs. Mr Belfield described himself
satisfied with the profits made in buffer deals, saying that he simply added what he
had determined to be Regent's margin to the price quoted to its customer, and did not
seek to increase it.

30 F) QUESTIONS 1 AND 2: CONNECTION OF ASSESSED TRANSACTIONS TO
FRAUDULENT LOSS

162. Mr White traced each one of Regent's 15 assessed transactions back to one of
35 Epinx, S&R, David Jacobs and Svenson (Core/175, Core/182-183). The
Commissioners allege each of the four to be a contra-trader knowingly offsetting its
input tax claims in broker chains against its output tax liability in respect of
acquisition deals in which goods it imported were then exported by traders such as
Regent. Mr White claimed that it followed that the repayment claim made by Regent
was linked to a tax loss by virtue of the 4 contra-traders offsetting exercises. With the
40 exception of Deals 2 and 3, which involved a buffer trader, Regent made its purchases
direct from the importer. Mr White claimed his analysis to show that by virtue of the
four traders' offsetting processes Regent's deals were connected to every broker deal
conducted by the contra-trader in the relevant period: the evidence demonstrated a
connection with a large number of broker chains, many of which the Commissioners
45 claimed to have established to be fraudulent; and it was the offsetting process that
provided the connection. Mr White's analysis took the following form.

50

Contra-trader 1: Epinx (Mr White)

163. In the relevant period, 5 of Regent's denied broker deals (numbers 7, 9, 11, 12 and 14), all in CPUs, traced back to Epinx as acquirer, resulting in a denied repayment claim of £983,705.62.

164. The Commissioners investigation into Epinx in relation to transactions in accounting periods 03/06 and 06/06 showed that it made 108 acquirer contra deals totalling over £78.9 million. And in the same period it completed 77 broker deals with a value of over £83.3 million. Mr White had traced 72 of the broker deals back to defaulting traders resulting in tax losses of £13,001,539.20. In period 03/06 the value of Epinx's acquirer deals was £32,606,292 as against broker deals of £33,435,455, resulting in it declaring net VAT due to the Commissioners of £7,670.15. And in the following period the respective figures for acquirer and broker deals were £46,329,053 and £48,580,649.

165. Mr White produced the deal sheets evidencing 70 of the broker chains leading to a default, together with the deal packs of 6 examples taken therefrom (Core/233-237). Included in those deal sheets were 44 specifically covering dirty chains in period 06/06. The Commissioners had traced 32 of the 44 to Eutex Ltd, a company accepted by Regent as a hijacked trader, and 4 to DBP Trading Ltd, also accepted as a hijacked trader. The total of the defaults concerned was £7,154,849.36.

Contra-trader 2: S&R (Mr Palmer)

166. In the relevant period 4 of Regent's denied broker deals (numbers 8, 10, 13 and 15), all in mobile phones, traced back to S&R as acquirer, resulting in a denied repayment claim of £689,045. Deals 8 and 10 were formed by Regent dividing into two a single consignment it bought (Invoices 1024 and 1026), giving rise to 5 broker deals from 4 S&R acquirer deals.

167. Mr Palmer carried out the investigation into S&R's transactions. During period 06/06 he found that S&R made 17 acquirer deals totalling £18,397,460, all the goods the subject thereof being re-exported to the EU by 6 traders. In that period, S&R accounted for VAT of £675.04. It also completed 14 broker deals, all of he had traced back to fraudulent tax losses. 12 of the 14 traced back to the hijacked trader Eutex Ltd, and to fraudulent tax losses of over £2.4 million. Two further deals traced back to another fraudulent defaulter, AC Enterprises Ltd. Again we were provided with deal sheets (14/4360-4373), on this occasion relating to the 14 chains leading to a default, and with examples of the relevant deal packs.

Contra-trader 3: David Jacobs (Mr Davies)

168. Three of 4 of Regent's denied broker deals (numbers 1, 4, and 5) traced back to David Jacobs directly, the fourth (number 2) involved Megantic as a buffer. The four deals, all in mobile phones, gave rise to a denied repayment claim of £341,206.25.

169. In period 06/06, Mr Davies, an officer of the Commissioners, found that David Jacobs had made a total of 92 acquirer contra deals totalling £129,388,027.50, and 137 broker deals. Of the latter, Mr Davies had traced back 97 to 9 defaulting traders,

5 resulting in tax losses of £15,564,499.81. He had also traced back 22 of the 97 dirty chains to Midwest Communications Ltd, a defaulter, its defaults totalling £3,322,569.25. Mr Davies had further traced back the remaining 40 David Jacobs broker deals to 8 traders which also acted as contra-traders, i.e. in double contra transactions.

10 170. Mr Davies demonstrated that by conducting EU acquisition deals contributing to a total output tax figure of £40,010,403, the input tax figure of £43,973,345.60 resulting from David Jacobs broker deals left a repayment claim of £3,962,942.39, instead of the repayment claim of £26,696,186.14 it would have had to make without the acquisition deals.

Contra-trader 4: Svenson (Mr Owen)

15 171. One of Regent's denied broker deals was traced back, via Ace Telecom Trading Ltd, to Svenson as acquirer, resulting in a denied repayment claim of £93,865.63.

20 172. In period 06/06, Mr Owen, found that Svenson had made 76 acquirer deals giving rise to an output tax liability of £17,944,832. It completed 112 broker deals in the same period, 15 of which he had traced back to tax losses of £1,968,621 with two defaulting traders, Midwest Communications Ltd and Stockmart Ltd. He traced the remaining 97 broker deals back to 8 traders, which also acted as contra-traders in double contra-schemes.

25 173. By conducting EU acquisition deals contributing to a total output tax figure of £42,014,434.40, the input tax figure of £50,741,807.65 resulting from its broker deals left a repayment claim of £8,727,373.25, instead of the repayment claim of £17,944,832 it would have had to make without the acquisition deals.

30 **The answers to Questions 1 and 2**

35 174. On the basis of the evidence relating to all four alleged contra-traders Mr Pickup accepted, as do we, that the Commissioners had established that there were fraudulent tax losses in their deal chains. Mr Pickup further accepted, again as do we, that Regent's transactions the subject of the appeal were, with the exception of those involving Epinx and those in Deals 2 and 3, connected with the fraudulent evasion of VAT.

40 175. In relation to the Epinx transactions, he observed that all the fraudulent tax losses in the sample chains fell in the accounting period 03/06, whereas the transactions between Epinx and Regent took place in April 2006. He submitted that it must follow that the liability of Epinx for output tax on its transactions with Regent could not have been offset against the fraudulent tax losses in its broker chains which were accounted for in the earlier period; applying the analysis adopted by the
45 Chancellor in *Blue Sphere* in respect of the Epinx transactions, the Commissioners had not, on their random selection of broker transactions, proved the necessary connection. Moreover, Mr Pickup added, the Commissioners had not proved the connection in the case of David Jacobs in Deal 2 and Svenson in Deal 3; in each there was a buffer trader in the chain between the alleged contra-trader and Regent. Again,
50 applying the analysis of the Chancellor in *Blue Sphere*, the liability to output tax

offset by the alleged contra-trader was that arising in Deal 2 in David Jacobs' supply to Megantic, and in Deal 3 in Svenson's supply to Ace Telecom. In neither of those transactions was there a liability to output tax arising from any transaction with Regent; Megantic and Ace Telecom had supplied goods to Regent, and each supplier had a liability to pay output tax to the revenue, but they were not alleged to be contra-traders.

176. Mr Foulkes maintained that, although the presence of another trader in a chain of transactions extended the length of the chain, it remained a chain of transactions. Regent apparently accepted, in the light of the judgment in *Blue Sphere*, that the connection, via the contra-trader, with the clean and dirty chains was established by the simple fact of the offsetting of the input and output tax by the contra-trader. As Regent took no issue with the presence of buffer traders in the dirty chains, and that they in any way negated the connection with the fraudulent default, the distinction it sought to make as to the presence of buffers in the clean chains was unclear to the Commissioners, who were not aware of any dictum that suggested that a properly established chain of transactions did not, by its very nature, provide a connection between its ends. In Mr Foulkes' submission the connection had been proved in relation to Deals 2 and 3.

177. As to the Epinx deals, Mr Foulkes re-asserted that the tax loss chains provided by the contra officers were simply example chains designed to show the full deal pack evidence, and how the deal sheets were compiled in those cases. In the case of each alleged contra-trader the responsible officer had provided evidence of the overall extent of fraudulent default to which that trader's export deals were connected. Mr White produced evidence of Epinx's 77 broker deals in periods 03/06 and 06/06, and the tracing back of the majority of them to a fraudulent default; the fraudulent loss traced back to Eutex Ltd was £5,891,578.61, and that to DBP Trading Ltd, £1,263,270.75. In Mr Foulkes' submission, Regent's deals were connected with all the fraudulent chains revealed by Mr White by virtue of the offsetting exercise conducted by Epinx; it was the offsetting process alone that gave rise to the connection. The evidence of the connection of Regent's five deals with a very substantial default in Epinx's broker chains by virtue of its offsetting during period 06/06 was clear, and was not challenged by Regent. Further, it took no issue with Mr White's assertion in evidence that Regent's deals were connected with a fraudulent default.

178. Having carefully considered the submissions of each party, we have concluded that we should follow those of Mr Foulkes. As he observed in relation to Deals 2 and 3, there is no dictum to suggest that a properly established chain of transactions does not provide a connection between its ends. In its absence, we are satisfied that in the instant case a connection existed. And, in relation to the Epinx deals, we agree with Mr Foulkes that it is the offsetting process alone that gives rise to the connection. We are satisfied that there was a connection between Regent's five deals with a default in Epinx's broker chains by virtue of its offsetting during accounting period 06/06 to the fraudulent tax losses in the deal chains of the contra-traders. It follows that we answer both the first and second questions positively.

Additional question: Have the Commissioners proved that the contra-traders were parties to conspiracies involving the defaulters in their transaction chains?

5 179. Mr Foulkes submitted that each of the contra-traders knew that its broker deals were connected with fraud, either by virtue of there being a fraudulent default in the chain, or by connection with a fraudulent default via another contra-trader; the contra-trader deliberately and fraudulently offset some or all of what otherwise would have been its input tax claim arising from acquirer deals as well. In such a case, in acting in that way the contra-trader knew of the connection of its broker deals to fraud; if it had not known, it would not have needed to perform the fraudulent balancing offset.

15 180. In relation to a submission by Mr Pickup that it would have been difficult for a contra-trader to have known of a defaulter some steps down the chain, and even more so of a contra-trader whose own broker chain contained a fraudulent default, Mr Foulkes submitted that the evidence above and below established clearly that there was a scheme in which the contra-trader played a particular role. If that were accepted by us, it followed that the contra-trader clearly knew that its broker deals were connected with fraud. That was so notwithstanding that the identities of those responsible for the default, and its nature, may not have been known to the contra-trader. The contra-trader would have to have known, at the time it was conducting its broker and acquirer deals, that the former were connected with a fraudulent default, otherwise it would not have been in a position to choose to calculate and perform offset deals.

25 181. Mr Foulkes further contended that the fact that the value of Regent's repayment claims formed but a small part of the overall value of the contra-traders' dirty chains, submitted by Mr Pickup as an indication of its being unlikely to indicate fraud, was irrelevant. He maintained that the fact that a number of traders played the role of broker in the contra-traders' acquirer chains simply reduced the risk of extended verification, as each repayment claim was less substantial.

35 182. As the Commissioners had not come to a conclusion as to whether the alleged contra-traders were in fact contra-traders since decision letters and/or assessments had not been issued or made against them, Mr Pickup submitted that Regent was being discriminated against by having its repayment claims denied when others were not being pursued for VAT due. In responding, Mr Foulkes observed that that was irrelevant to the determination of the issues before us, and, in any event, was not an argument that could be taken before the tribunal. We accept the correctness of Mr Foulkes' observations.

40 183. In reliance on Mr Humphries' evidence, that of the other officers for the four contra-traders and the documents to which they referred, we conclude that the schemes in which the four contra-traders were involved were fraudulent in nature and that the contra-traders, as participants therein, clearly knew of that nature. We hold that each was involved in conspiracies with the various defaulters in its dirty chains. In so concluding, we have taken particular account of the fact that none of the contra-traders has either been assessed to tax, or had a decision letter. We are required to determine whether the contra-traders knew they were involved in conspiracies with the various defaulters; the test does not require us to consider whether a trader has been assessed to tax or received a decision letter. And, in relation to the evidence of

those officers for the contra-traders who stated that they did not know whether the individual companies for which they were responsible were so involved, we observe that we have evidence covering the overall picture, whereas they had only the information relating to the individual companies with which they dealt.

5

Question 3: Did Regent, through Mr Belfield, know or should it have known at the time of entering into each transaction that it was connected to the fraudulent tax loss

10 *Introduction*

G) SUBMISSIONS FOR THE COMMISSIONERS

15 184. Mr Foulkes primarily asserted that Regent had actual knowledge of a connection with VAT fraud. He submitted that to be plain from the evidence that all the deals conducted by Mr Belfield on behalf of Regent during the relevant period were connected with a fraudulent scheme or schemes involving many parties playing a number of roles. The scheme or schemes involved planning the routes taken by the transactions in respect of certain goods with the purpose of defrauding the revenue.
20 He maintained that each party knew with whom it should trade in respect of given goods, and was thus aware that its deals were contrived and fraudulent.

25 185. Although Mr Foulkes submitted that in the event of our not being satisfied that Regent had actual knowledge of a connection with fraud, it had means of knowledge, we find it unnecessary to deal with his submissions in that behalf, for we determine the appeal on the basis of Regent's actual knowledge of a connection with VAT fraud.

30 186. In Mr Foulkes' submission, the contra-traders' offsetting procedures coupled with the evidence of officers Mendes and Humphries constituted further evidence of the deals being contrived. That, he claimed, provided further support for the assertion that there was a connection between Regent's denied deals and fraudulent defaults, and that the operations of the contra-traders were themselves fraudulent. In their evidence, the officers responsible for the four contra-traders set out the features of those trades that implied fraud, features similar to those contained in Regent's own deal chains.
35

Regent: knowledge of a connection with fraud

40 187. Mr Foulkes did not accept a claim by Mr Pickup that it was the contra-trader which was at the centre of a scheme and drew others, such as Regent as a broker in its acquirer deals, into it. In Mr Foulkes' submission, a contra-trading scheme was just that; it was a scheme designed to defraud the revenue by obtaining a VAT repayment without the associated output tax payment having been made. The profit for the scheme, and the purpose of the fraud, was to have the government pay money out; the crucial player was therefore the trader making the repayment claim. He accepted that
45 the contra-scheme sought to prevent verification of the contra-trader's broker deals, thereby providing it with protection, but maintained that that was simply part of the way in which the protection of the real "key player", the broker trader (Regent) which was to make the all important claim, was effected. The contra-scheme was designed to
50 provide greater protection for the broker in making that repayment claim by ensuring

that an examination of its deals would not trace directly to a default; far from being “drawn in” to the fraud, the broker trader was a key part of it.

5 188. Mr Foulkes submitted that a number of factors additional to those relating to factual matters showed that Regent’s deals were part of a contrived scheme to defraud the revenue in which not only the contra-traders played a knowing part, but in which it would have been clear to Regent that its deals were connected with a fraudulent default. The factors he considered were the following:

10 189. Common to all Regent’s buffer deals was a connection with a fraudulent default; and all its deals involved one of the four identified contra-traders, either acting in an acquirer role or as a broker.

15 190. Where a customer of Regent had a trading relationship with one of its suppliers, as a number did, it would have had access to that supplier as a source of goods. It would thus have been able to determine the price at which Regent could buy, and would have had no need for Regent, which would simply have added a margin to itself for profit. The position was even more untenable where a company which on one day acted as supplier to Regent, on another day acted as customer from it. If
20 Regent’s supplier had been able to source goods from a company at a lower price than that at which Regent was prepared to deal (as it did when it acted as a supplier), there was no reason for it to buy from Regent, when it could have gone to a cheaper source.

25 191. Further, where an acquiring contra-trader imported goods from the EU and sold them e.g. to Regent, which then proceeded to export them, it often exported to an EU company that was also a customer of the contra-trader which supplied Regent. In those circumstances, the contra-trader had no need whatsoever to involve Regent; that it did so could only be explained because no repayment claim, and hence no profit for
30 the scheme, would be possible if the goods were being imported and exported by the same company. A suggestion by Mr Pickup that the action of a contra-trader in simply balancing its input and output tax might be explained as an honest accounting exercise undertaken so as not to incur a VAT liability was firmly rejected by Mr Foulkes, he observing that if a contra-trader was concerned only to balance its input
35 and output tax, it did not have to enter into separate broker deals; it could simply have sold the goods it had imported to its EU customer, but again there would have been no repayment claim to provide the profit for the fraud.

40 192. Dirty chains tracing direct to a default were invariably longer than clean ones tracing to a contra-trader. In the latter case it was unusual to find even one buffer. The longer chain was necessary to provide distance artificially between the broker and the default. That painted a very clear picture of a fraudulent scheme; in a legitimate market one would have expected to see chains of a similar length for the same types of transactions. The only explanation for the shortness of the clean chains and the
45 length of the dirty ones was that the participants were not acting independently; they were directed as to with whom they should trade.

50 193. Although there was a genuine grey market in mobile phones and CPUs which operated similarly to that in other goods, the market in phones and CPUs in which Regent traded contained features and characteristics that made no commercial sense,

and could not be explained by legitimate factors. It was no answer for a trader to say, “That’s how this market operates”. Goods were manufactured in order to be supplied to an end user; there had to be a consumer market otherwise the prices of goods in the wholesale market would continue to spiral upwards indefinitely. In none of the chains in which Regent, or any of the contra-traders, took part was there any sign of a manufacturer, authorised distributor or retailer.

194. Even if there was a sensible reason for the goods in Regent’s deals to enter the UK (which the Commissioners did not accept), it was of real significance that none of the goods traded by the company, or any of those with whom it traded, ever remained in the UK to be sold in the retail market.

195. All the mobile phones traded in by Regent had two-pin plugs, which could not be used in the UK. None of the phones traded by Regent had its plug changed. (We find those as additional facts).

196. Regent’s turnover grew at an “unrealistic rate”. Mr Belfield claimed that the turnover of a business was related to the types of products in which it traded, and that mobile phones and CPUs were high value goods. Notwithstanding that fact, and the further fact that Regent had obtained loans for trading purposes, the level of trading it achieved in its first year of trading, £103.7 million in the year to 31 October 2006, was in Mr Foulkes’ submission “extraordinary in the context of Mr Belfield’s limited experience and record in the market”: no legitimate business could expect such a huge turnover in such a short space of time.

197. Regent chose to trade only in the two types of goods most commonly associated with MTIC fraud. That appeared to have been the clear intention of Mr Belfield when he entered into the arrangements with messrs Nicholson and Howarth.

198. Regent made a remarkably consistent profit on all deals irrespective of the make, model and value of the goods and the parties involved. On its broker deals the profits were always between 7.1% and 7.8%, and on buffer deals the profits were always 50p per phone and 15p per CPU. That was not the operation of a legitimate and free market; it was a market where every trader did the same as everyone else trading in it in the knowledge that if it did not do so it would have no deals and no profit at all. It was all contrived, and Mr Belfield was playing his part in the contrivance.

199. Regent and all its customers and suppliers had accounts with FCIB. Although Mr Belfield claimed it essential for Regent to have 24 hour banking and to be able to make payments swiftly, the vast majority of Regent’s deals involved payment many days after they were conducted. Further, transactions with FCIB had the advantage of being invisible to the UK revenue authorities.

200. Regent used freight forwarders suspected by the Commissioners as being involved in MTIC fraud. Regent claimed its choice of freight forwarders to be governed by the location of the goods it purchased.

201. Regent claimed to obtain insurance on a case-by-case basis and to have had an oral agreement with its freight forwarders for them to ensure that the policy conditions

were met. The idea of an oral agreement in a trade involving wholesale consignments of high value goods was in reality commercially unrealistic; the risk involved was far too great. That Mr Belfield claimed it a “strong possibility” that the insurance company would have approached the freight forwarder direct spoke volumes in itself.

5

202. No goods had been returned to Regent as being faulty or damaged. (We also find that as a fact). Given the volume and frequency of transactions in the goods concerned that was unrealistic

10

203. Regent conducted deals with its supplier for which it did not have to pay until it was itself paid, thus enabling it to obtain more favourable terms of a customer than its supplier could secure from it. Equally, suppliers released goods to Regent before they received payment. In evidence, Mr Belfield claimed that Regent’s supplier “allocated” title in such circumstances, allowing the goods to be released to Regent so that it could export them to its customers. In that event, Mr Foulkes claimed that the supplier was taking a risk in relinquishing control to Regent. Further, since Mr Belfield asserted that Regent did not release goods until it received full payment for them, and payment was usually made some days later, in the event of non-payment Regent was at risk of the expense of having to repatriate the goods.

20

204. Mr Humphries accepted that his analysis did not extend to finding out “what was really happening on the ground”; whatever was happening on a day to day basis clearly involved the direction of individual traders and the way in which they traded. In Mr Foulkes’ submission further information could have provided only more evidence of fraud: it would not have been possible for the patterns of trade found by the Commissioners’ officers to have occurred in the course of normal commercial trade. The transactions were clearly contrived as part of overall fraudulent schemes, with each participant playing a knowing part in a scheme. A trader such as Regent would not have known the details of all the other traders in its chains, or of the links and patterns found by the officers, but those patterns could not have arisen without the individual participants knowing from whom to buy and to whom to sell; there was an organisation behind the chains directing the participants in their trades. Given that they were being so directed, they knew that they were part of a scheme, and the only possible reason for that could be fraud.

25

30

35

205. The evidence showed there was clear direction, and it was no answer for Regent to claim that it might have been complicated or required much organisation; in a scheme involving such large amounts of money, organisation was clearly well worth the trouble. The evidence demonstrated the clear fraudulent nature of the schemes in which the four contra-traders operated. It provided compelling evidence of fraud in which the contra-traders were knowingly participating. Furthermore, it provided compelling evidence of fraud in which Regent was involved, such that the only sensible inference was that it knew that its deals were connected with the fraudulent evasion of VAT.

40

45

206. The circumstances surrounding provision of the loan by Global, the terms of the agreement itself, and Mr Belfield’s account of events since the loan was made, were, in Mr Foulkes’ further submission, so far beyond sensible legitimate commercial arrangements as to lack any credibility. The main points Mr Foulkes relied on for so contending were that:

50

- The agreement contained spelling errors such as were most unlikely to be found in a professionally drafted document. (We accept that as an additional fact).
- 5 • It was entitled “Conditional Joint Venture Loan Agreement”, but there did not appear to be any of the elements of a joint venture in the agreement, such as the sharing of profits
- The loan was unsecured – given the history of Regent, its financial weight and stability, it was extraordinary that any legitimate lender would grant a loan to it.
- 10 • The interest rate was very low for an unsecured loan
- The Commissioners maintained that, when interviewed on 20 December 2006, Mr Belfield confirmed that no repayment had been made, and he was unsure whether any charges had been added to the loan account at that time. It was inconceivable that a legitimate businessman would not know whether, and if so the extent to which, his company was incurring penalties for non-payment; Mr Belfield had lost all contact with the lender which appeared to be showing no interest in the outstanding £1.5 million: the circumstances surrounding the whole agreement bore no resemblance to a legitimate transaction.
- 15 • The real picture was revealed by the FCIB records showing that Global appeared at the beginning and end of the money chains in all ten Epinx and S & R deals: the loan formed part of the mechanism by which the fraudulent acquirer chains were carried out; Regent needed capital to play its part in the transactions, and if the Commissioners had met Regent’s input tax repayment claim, the capital would have been returned as repayment of the loan
- 20 • The Commissioners regarded with scepticism Mr Belfield’s claim that Global had taken no interest in repayment of the loan; Mr Belfield’s unwillingness to admit that he had been in touch with the lender was consistent with their assertion that they were all part of the fraud.
- 25
- 30

207. Although very little information was available about Lorimer, Regent was content to borrow from it. As with the Global loan, that from Lorimer was unsecured. The rate of interest on it was 80 per cent of net profit generated, payable after 60 days; there was no mention of any further interest or penalties becoming due after that date. A number of provisions in the agreement were not defined, and the agreement was silent as to what would happen in the event of there being no net profit. Again the circumstances surrounding the loan did not resemble those of a legitimate transaction; the situation was very similar to that of the Global loan. And again, Mr Belfield claimed to have lost all contact with the company.

208. Taking the Global and Lorimer loans together, Mr Foulkes made the following additional submissions. In evidence Mr Belfield claimed to have entered into the David Jacobs and Ace Telecom (Svenson) deals in anticipation of Regent receiving the Lorimer funds, saying that the delay in its receiving the funds (they arrived on 19 May 2006) led to difficulties with Regent’s customers in its April deals. He said he took out the loan with Global (funds received on 9 May 2006) to conduct further deals with Epinx and S & R. (We accept those as additional facts). Yet when Regent

received the Global funds it did not apply them in payment of moneys due to David Jacobs and Svenson, but waited until the Lorimer loan arrived. In those circumstances, Mr Foulkes submitted, it was plain that the Global moneys were for the deals in which Global was complicit, and it appeared that the Lorimer moneys were particular to the Svenson and David Jacobs deals.

209. The Lorimer loan was particular to the Svenson and David Jacobs deals for a reason. Regent not only changed its customer, but also its suppliers a few days after it carried out the deals with those companies, but did so well within the timescale for which it routinely made payment for such deals. That change in suppliers and customers fitted the patterns of each of the contra-cells activities.

210. Some areas of Mr Belfield's evidence lacked credibility; the loans from Global and Lorimer were good examples, as was his evidence as to the nature and extent of his dealings with those behind Megantic. The tribunal was entitled to consider why Mr Belfield had not given a full and honest account, and if it concluded that the only reason he was untruthful on any issue was because the truth was that he had knowledge of a connection between Regent's deals and fraud, it could rely on that conclusion.

211. There was an absence of due diligence by Regent, which was itself a feature that the tribunal might consider in assessing whether it had actual knowledge of a connection with fraud. If Regent knew that its deals were contrived as part of a fraudulent scheme, it would not have been necessary for it to conduct proper due diligence checks; there would have been no commercial motive as Regent would have known that its deals would be concluded, and the moneys paid to it as part of the scheme. And there would have been no "anti-fraud" motive for obvious reasons. A failure to carry out proper due diligence checks lent further support to the assertion that Regent had knowledge, and that any purported checks undertaken were, in reality, "window dressing" in order to provide some proof to the authorities that the trade it was conducting was legitimate. Regent's claim to have gone to considerable trouble to procure the due diligence documentation provided, and to have taken other steps to satisfy the Commissioners of its involvement in legitimate trade, was entirely consistent with an attempt to provide sufficient "window dressing"; and, when viewed against the background of the amount of money being made in such deals, was minimal.

212. Mr Belfield having been a director of a company that failed owing Marldon £1 million was then provided with the means to begin trading in mobile phones by the very individuals who owned Marldon and were also running Megantic, a large mobile phone trader. Megantic and Regent began trading with each other. Mr Foulkes submitted that the clear inference was that it was not intended that Megantic and Regent should operate at arm's length. It was difficult to understand why Megantic would want to fund the introduction of another trader into a genuine market. Megantic and Regent not only traded with each other but within the same patterns and groups of contra-traders; they traded roles, appearing in supply chains above and below each other. That made no sense in a genuine market.

50

H) APPELLANT'S SUBMISSIONS AND OUR RESPONSE TO THEM

213. Although we have dispensed with Mr Foulkes' submissions on means of knowledge, in order to ensure that we have taken full account of Regent's case, we shall now proceed to deal with the entirety of Mr Pickup's submissions.

Knowledge

214. Mr Pickup submitted that there was no evidence that Regent, or Mr Belfield, knew its transactions were connected with fraud, or that there was any guiding hand or directing mind pointing it towards a particular supplier or a particular customer. Mr Belfield claimed that had he been told from whom to buy or to whom to sell in any individual case, he would have withdrawn from the potential transaction since it would not have been one undertaken in the operation of a free market. He took all reasonable steps to ensure that Regent's transactions were not connected with fraud, and pursued extensive due diligence.

215. To Mr Pickup, the Commissioners' case on actual knowledge appeared to be founded on a conclusion reached by Mr Humphries from his analysis of the deal sheets of the three groups of apparently connected alleged contra-traders to determine where the goods originated and their destination. Whilst there may have been a fraudulent tax loss in a contra-trader's broker chain, there remained the question as to whether, at the time of entering into a particular broker transaction, that trader was either a party to the conspiracy to defraud of which the defaulting trader was a party or, if not a party, knew or had reason to suspect that there was a fraudulent tax loss in its chain. Those issues, and in particular the state of knowledge/participation of the contra-trader, were of significance in determining the knowledge of Regent since, as the Chancellor concluded at [55] of *Blue Sphere* "...for HMRC to refuse a reclaim by E (the appellant) it must be in a position to prove that C (the contra-trader) was a party to a conspiracy also involving A (the defaulting trader)".

216. Mr Pickup summarized the facts relating to the three contra-groups identified by Mr Humphries: the David Jacobs group (7), the Epinx group (6) and the Blackstar group (9). He observed that Regent appeared as a broker in the charts prepared by Mr Humphries relating to David Jacobs and Epinx for April 2006, but not in those for the two later months of their accounting periods 06/06. In those later months the exports to companies such as BRD, Globalfone, Cayenne, Hi-Lo and Elandour of the type undertaken earlier by Regent were taken over by other broker traders, particularly in the David Jacobs group, Megantic, Base Interactive and Evenmore. The link between the groups was provided by the double contra-trades carried out by Svenson and Selectwelcome. It was their activities in acquiring further input tax to set off against their liability for output tax that caused Mr Humphries to conclude that there was some connection between the activities of the three groups. Mr Pickup observed that Mr Humphries accepted that if there were no fraudulent loss in a chain "all you have is an accounting exercise" and "the net effect on UK VAT in the whole transaction would be nil". Mr Humphries went on to say that "where the contra schemes exist they are contrived", and to explain why he so said. That was evidenced by goods originating from a set group of EU suppliers and, irrespective of the path they took through the UK, ending up with the same group of EU customers, which frequently contained companies in the same group of EU suppliers, or companies linked to them

in some way. Mr Humphries did not think that happened by accident, but would take quite a lot of organisation – organisation that ought to have been apparent to any member of the group: “They should realise that the thing is contrived”. Mr Humphries did, however, acknowledge that not everyone involved in the transactions would have
5 known every detail of what was going on in the chains. But he then went on to say that for the goods to “end up” where they did, traders must have been directed where to sell them; “I don’t think they could always end up in the right place for that group without there being some external source”. In Mr Pickup’s submission, Mr Humphries’ evidence was “supposition”, unsupported by evidence, and did not stand
10 up to scrutiny. His analysis was restricted to the contra-trader and followed the path of goods both to and from that trader. He did not consider the trading patterns between buffer traders; he did not look at the trades between, say, David Jacobs and Regent, or Regent and Megantic, to determine whether transactions between those traders in April 2006 may have been unusual or out of place; he did not consider price, that
15 being outside his remit, and he took the transactions only as far as the deal sheets permitted. Although Mr Humphries had identified the defaulters in the contra-traders broker chains he had not looked at the defaulter chains; nor, in considering why goods had been supplied to particular EU customers, had he considered the freight forwarder records which, he conceded, might have provided detailed information as to
20 transactions in particular goods. Finally, Mr Humphries conceded that to discover what was really happening on the ground, closer verification was necessary.

217. Mr Pickup identified what he described as a number of “anomalies” in Mr Humphries’ analysis. Deal 2 (1017) was a supply to Regent, not by David Jacobs, but
25 by Megantic – a company not alleged to be a contra-trader, but rather a broker like Regent. Deal 3 (1018) was not a supply by Svenson, a contra-trader, but rather by Ace Telecom, a buffer within the group. Deal 1 (1016) was a supply by David Jacobs to Regent and two other traders, Regent purchasing 3000 phones and Base Interactive and Cayenne Trading each purchasing 1250. Since the supplies other than to Cayenne
30 were to companies within the UK, only invoice 1016c formed part of the disputed deals. The other two parts of the supply were not alleged to be part of the overall scheme; they were not the subject of extended verification. They were simply part of the background and the trading of Regent with other buffer traders. Mr Pickup contended that it was difficult to see how that fitted in with an overall scheme
35 whereby Regent was simply acting as directed by a presently unidentified guiding hand. The David Jacobs supplies at Deals 4 and 5 (Invoices 1019 (a) and (b)) were split into two by Regent and exported by it to BRD and Globalfone. Consequently, between 10 and 13 April Regent made one export to Cayenne, 2 to Globalfone, and 2 to BRD. That was the extent of Regent’s broker deals in the DJ group in April 2006.

40
218. Within the David Jacobs group of 7 companies there were other traders with which Regent traded as a buffer, namely Powerstrip and TC Catering. Three of its buffer deals could be traced back to de-registered traders. Mr Humphries had not examined in any detail the nature of the relationship between the companies; he had
45 simply considered the deals of Powerstrip and TC Catering and the other contra-traders to determine the movement of goods.

219. Within each group of contra-traders there must, or might, have been innocent
50 “unknowing” traders caught up in a cover-up of fraudulent tax losses in other broker or defaulting chains. If that were so, then the same must be true of contra or clean

chains. Mr Humphries conceded it to be possible for innocent traders to be caught up in straight or MTIC chains, but thought it less likely in a contra scheme. In Mr Pickup's submission that could not be sustained. Mr Humphries was influenced by the origin and eventual destination of goods, looking at the paths followed by goods sourced originally from e.g. Forex, which inevitably ended up with an EU customer in the form of Parasail or Comica, or those originating with Comica which ended up with Forex or Parasail, whilst those originating with Parasail ended up with Comica. Mr Pickup acknowledged that might have indicated some element of direction at the European ends of the transactions, but contended that it did not necessarily do so within the chains themselves, not even necessarily with the contra-traders, and particularly not with a broker such a Regent which was involved in a limited number of transactions. The fewer the transactions a broker was involved in, the less likely it was that it was a knowing participant in an overall scheme to defraud the revenue. We are unable to accept the correctness of those submissions.

220. In the second group, Epinx, were the contra-traders S&R, Intertrade and Kquality Trading. According to Mr Humphries' analysis, Intertrade and Kquality Trading were part of an overall scheme to defraud the revenue. From the further analysis provided in evidence, Deals 4 and 5 of that analysis (not Deals 4 and 5 with which we are concerned) were trades between Kquality Trading and Hi-Lo; those trades were not part of the appeal, and were subject to extended verification. Were Mr Humphries right in saying that any trader involved in the overall scheme must have known of the fraud and that its transactions were part of the cover-up fraud, it must follow that when those transactions were conducted by Regent they were connected to fraud. Mr Humphries conceded that the Commissioners had not determined whether Regent's deals formed part of the alleged overall scheme. Furthermore, Mr Davies, the officer responsible for David Jacobs, conceded that he did not know whether at the time of its transactions that company would have known of the tax loss in its broker chains. If David Jacobs, a contra-trader in the scheme, may not have known of the fraud in its broker chains, Mr Pickup questioned how it could be asserted that a peripheral broker such as Regent must have known its transactions were connected with the fraudulent evasion of VAT. Taking Mr Davies' evidence with all the other material suggested that, whilst Mr Humphries' analysis was of assistance in showing the movement of the goods, it was of little help in determining whether Regent knew or should have known its transactions were connected with fraud.

Means of knowledge

221. Mr Pickup submitted that if a contra-trader were not a party to the conspiracy of the defaulter in its dirty chain that had a direct bearing on whether a trader such as Regent should have known that its transactions were part of the cover-up of the contra-trader. Further, if the contra-trader may not have known of the fraudulent loss:

- a) Regent could not have known; and
- b) it was difficult to see how a trader in Regent's position should have known since no amount of due diligence would have informed it, as a broker in the clean chain, what the contra-trader may not itself have known.

222. Further, the Commissioners' selection of the contra-trader's broker chains against which to offset repayment claims such as those of Regent was a random

exercise. Regent's broker deals generally took place not only before the tax losses relied on by the Commissioners were incurred, but also in an earlier accounting period of the relevant contra-trader. As in *Blue Sphere*, the contra-trader's randomly selected losses could not have been offset against the output tax on Regent's deals: they fell in the wrong accounting period. That illustrated the artificiality of the Commissioners' case: it was simply an accounting exercise to obtain, within reason, from wherever possible, sufficient tax losses to offset against the output tax liability arising between the contra-trader and the broker making a reclaim. In those circumstances, Mr Pickup submitted that Regent could not have known at the time it entered into its transactions that they were connected to fraudulent tax losses which would only later be incurred.

223. Mr Pickup submitted that the evidence relating to the four alleged contra-traders was contradictory and unsatisfactory, and not helped by the fact that the Commissioners had reached no formal decision as to the credibility of the traders themselves: the role of the contra-traders and the state of their knowledge were matters highly pertinent to our decision. In the case of *Epinx*, there was no suggestion from the Commissioners that Regent would have known of the 6 transactions they selected to offset its, Regent's, input tax repayment claims, or of the relevant tax losses. Since the Commissioners had not completed their extended verification of *Epinx's* transactions, they had not determined it to be a contra-trader. Mr White's claimed "belief" to the contrary did not enable him to say how, in Regent's case, it could be determined when it entered into its 15 deals it knew, or should have known, that they were connected with fraud. S&R was a long established company that continued to trade, albeit not in mobile phones, and before trading with it Regent obtained an Equifax report confirming its financial soundness and the fact that it made significant profits. Again, the Commissioners had selected random chains including broker deals of S&R revealing a tax loss against which to offset Regent's input tax repayment claim and, as it happened, all involved deals where the tax loss was created by the trader purporting to be *Eutex Ltd.* Officer Palmer claimed that S&R was involved in fraudulent activity and disclosed that extended verification of its transactions had been completed. Yet no decision letter had been sent to S&R, and without it the credibility of that company was left in doubt. The officer responsible for David Jacobs, Mr Davis, admitted in evidence that it may not have known of the tax loss in its broker chains against which its output liability was set. He further conceded that he had selected particular tax losses for the purpose of offsetting against Regent's input tax claim on a "first past the post" basis, and where he had not had enough direct tax losses he had looked to a two-tier contra-trader to obtain indirect tax losses to "make the sums add up". Mr Pickup submitted that Mr Davis' admissions spoke for themselves: the Commissioners' exercise was one of simple accounting. Once more, albeit that the Commissioners' extended verification exercise into David Jacobs' transactions had been completed, no decision letter on the outcome had been sent to the company. Indirectly, through *Ace Telecom*, Regent conducted one deal with *Svenson* which officer Hywel Owen offset against a single deal selected at random it had made with *Midwest Communications Ltd*, a defaulting trader. There was no evidence, or at least no compelling evidence, that *Svenson* conspired with the defaulting trader and others to defraud the revenue.

224. Mr Pickup submitted that Regent's due diligence was good: through Mr Belfield it denied being a party to an overall scheme to defraud the revenue. Mr Belfield was not instructed with whom to deal, and was not prompted or directed in any way: he

knew nothing of contra-trading (which the Commissioners appeared to have “conceived” in July 2005), and the Commissioners offered no guidance as to how to avoid it, or what might indicate involvement in it.

5 225. Having observed that a number of courts and tribunals had accepted the
existence of a grey market in mobile phones and CPUs, Mr Pickup contended that the
issue was not whether a grey market existed, but rather whether in an individual case
a trader was legitimately trading within it or was engaged in fraud. He maintained
that in the instant case Regent’s trading was legitimate.

10 226. In Mr Pickup’s further submission, a claim by Mr White that Regent’s due
diligence was “superficial” was unjustified. In evidence he had conceded that it was
“good” and “better than he had seen with many traders”. Mr White was left with two
criticisms of Regent’s due diligence. First, he maintained that in visiting its trading
15 partners some days after completing transactions Regent was left open to becoming
involved in fraud. And, secondly, the negative credit checks it obtained should have
warned it that the companies with which it traded might be engaged in fraud. Had
Regent visited traders prior to trading with them and responded to credit checks,
neither would have protected that trader against its clean chain being part of a contra
20 fraud, nor would they have informed it of any fraudulent tax losses in a dirty chain of
its supplier.

227. Where the Commissioners refused a broker’s input tax repayment claim on the
ground that its transactions were initiated by contra-trading then, provided it had
25 carried out proper due diligence and adopted proper and reasonable trading
procedures, Mr Pickup observed that it was difficult, as the Chancellor conceded in
Blue Sphere, to conceive of a case where the relevant knowledge could be proved,
short of its knowing participation in a conspiracy to defraud the revenue. Mr Pickup
accepted that a broker such as Regent did not need to know the precise detail of a
30 defaulting trader, but submitted that the evidence against it fell far short of its having
known that what its supplier was doing was using a contrived trade with it to raise an
output tax liability to set off against the fraudulent tax loss created by a defaulting
trader with whom it had conspired.

35 228. It appeared that the Commissioners alleged that in some way Regent’s
associations with Megantic, its directors messrs Nicholson and Howarth, and Marldon
were indicators of fraud. In Mr Pickup’s submission, the assertion was without
substance; there was no proven fraud against any individual or company. Indeed,
Megantic had itself made an input tax repayment claim, and it too had had it rejected.

40 229. In so far as the Global and Lorimer loans were concerned, Mr Pickup
maintained that Regent did not know, nor could it have known, that Global was
involved in the distribution, or financing of the distribution of mobile phones, and in
the extended chains of some of Regent’s deals. What Global’s involvement was, and
45 whether it was simply providing finance, or supplying and buying phones, was not
immediately apparent – it was outside the remit of Mr Mendes. But whatever might
be the case, it was not something within the knowledge of Regent at the time of its
transactions.

230. Regent's buffer trades showed an emerging pattern among a small number of traders (including Megantic, David Jacobs and others). Mr Pickup maintained that there was nothing significant in that trade; it had never been suggested that Regent was involved in dirty chains as a buffer trader.

5

231. A number of factors identified by the Commissioners as indicative of fraud reflected the nature of the trade itself, but, Mr Pickup maintained, they did not indicate fraud. Such factors included the fact that the deals were done "back to back"; that no stock was held by Regent; that Mr Belfield did not personally inspect stock; that Regent always made a profit on its deals; and that no goods were ever returned as having been damaged.

10

232. Mr Pickup submitted that it did not follow that any mobile phone trader with an account with the FCIB must be engaged in fraud. In 2005 the Commissioners put pressure on high street banks to close the accounts of customers in the wholesale mobile phone trade causing them to look elsewhere for banking facilities. The FCIB offered the service such traders required. In any event, in the instant case Regent's FCIB account had been opened by messrs Howarth and Nicholson prior to Mr Belfield acquiring Regent. At the time it was trading there were no concerns about FCIB in the public domain.

15

20

233. The Commissioners apparently accepted that Regent's due diligence and trading practices were good, and suggested that it was serious about due diligence. In Mr Pickup's submission there was no satisfactory evidence that Regent knew of an overall scheme to defraud the revenue, or knew that its transactions were connected with the fraudulent evasion of VAT. Furthermore, in the circumstances of the appeal, there was no evidence that Regent should have known, or ought to have known, that its transactions were connected to the fraudulent evasion of VAT.

25

30

234. The contra-trader was and remained the key player in any contra-trading scheme. In Mr Pickup's submission a broker such as Regent did not become the key player: it simply passed on the fraudulent input tax claim. The broker incurred the expenditure and was out of pocket. It had paid the VAT on its acquisition and was seeking reimbursement of its outlay. The profit of the scheme was that of the contra-trader which offset its input tax credit against its output tax liability: it was the contra-trader who defrauded the revenue.

35

235. If the contra-trader, as the key player, may not have known of the fraud in its broker chain and may not have known of the overall scheme to defraud, Mr Pickup contended that it could not be said with any confidence that a trader in Regent's position must have known.

40

236. Mr Pickup observed that the Commissioners sought to draw a distinction between knowledge of the particulars of any fraudulent default and of the nature of any connection with fraud and the simple knowledge of the fact that there was a connection with a fraudulent default, and suggested that on occasions witnesses may at times have been referring to the former whilst dealing with the latter.

45

237. Whilst in only three of Regent's buffer deals was there a connection with a fraudulent default, there was none in its broker deals: the only connection came via

50

the offsetting of the contra-trader's deals against fraudulent defaults in the contra-traders' broker chains.

5 238. Whilst accepting that Regent was required to make all enquiries it could
reasonably have been expected to make on the information it had, Mr Pickup
submitted that the Commissioners were in error in saying that Regent's failure to
make IMEI checks was an indicator of its having failed to make all such enquiries:
such checks would not have alerted it to the possibility of its being part of a fraudulent
10 scheme, and Mr Belfield's attitude was consistent with that of an honest businessman
making his way in a particularly demanding market. They were also in error in
making the same claim about its failure to obtain completed ownership documentation
from freight forwarders: no freight forwarder was ever prepared to verify ownership
of goods it held. An adverse credit check would also have failed to warn Regent of a
15 connection with the fraudulent evasion of VAT. In any event, Regent had made such a
check against S&R and found it to be a strong and financially viable company. Whilst
its credit check against David Jacobs had suggested that no credit should be given to
that company, Regent had heeded that warning and dealt with it only in cash. Mr
Pickup submitted that overall Regent's due diligence was good and it followed its
20 systems and procedures with reasonable attention to detail; its failings were of
minimal significance when considered against the background of a relatively short
period of trading.

239. In conclusion, Mr Pickup submitted that Regent's behaviour did not fit the
Commissioners' case of a trader knowingly participating in an overall scheme to
25 defraud the revenue: rather it suggested careful and honest trading within a potentially
dangerous market.

H) CONCLUSION

30 240. We now consider Regent's involvement in the April 2006 transactions to
determine whether it knew or should have known that they were connected to the
fraudulent evasion of VAT within the contra-chains in which the four contra-traders,
having been Regent's suppliers in the clean chains, subsequently took part. Having
done so, we examine the overall position adopting the approach adopted in the direct
35 tax case of *Hall (Inspector of Taxes v Lorimer [1992] STC 599*:

40 "The object of the exercise is to paint a picture from the accumulation of detail.
The overall effect can only be appreciated by standing back from the detailed
picture which has been painted, by viewing it from a distance and by making an
informed, considered, qualitative appreciation of the whole. It is a matter of
evaluation of the overall effect of the detail, which is not necessarily the same as
the sum total of the individual details. Not all details are of equal weight or
importance in any given situation. The details may also vary in importance from
one situation to another. The process involves painting a picture in each
45 individual case."

(Mummery J at 612, approved by Nolan LJ [1994] STC 23 at 29).

241. As the tribunal in *Blue Sphere Global Ltd v Commissioners of Customs and
Excise (2008) Decision no 20901* added:

50

“Individual factors may be insufficient in themselves to lead to a conclusion that a trader “should have known”, but the accumulations of a whole series of such factors may prove to be of such weight that, on the evidence before the tribunal, this can be the only conclusion.”

5

242. We see no reason why that observation should be confined to means of knowledge and not extend to knowledge itself, so that we do so extend it.

10 243. The case for Regent is essentially that it neither knew nor had the means of knowing that its deals were connected with the fraudulent evasion of VAT, and that its due diligence requirements were of such a high standard and were carried out to that standard that the company took every step reasonably required to satisfy itself that the transactions it effected did not result in its participation in tax evasion. Had it followed its systems and procedures to the letter and there had been no other factors
15 for us to consider, its case might have had some prospects of success. But in the instant case there were clear breaches of its own procedures and evidence that Mr Belfield, and hence Regent, was aware that its deals were contrived and pre-arranged. It is against that background that we must come to our conclusion.

20 244. Evidence of contrivance and pre-arrangement emerged in a variety of ways, the main ones with which we shall now deal. It will be recalled that Lafayette, Mr Belfield’s earlier company which was financed by a loan of £1 million from Marldon, went into liquidation in January 2005, whereupon Marldon lost the whole of the money it had lent. Mr Belfield then approached Marldon’s directors with a proposal
25 that they finance him in a new venture wholesaling mobile phones and CPUs. They agreed to do so, selling him for the purpose Regent, a company whose only asset, if it can be described as such, was an account with the FCIB. Payment of the £50,000 consideration for the company was to be deferred. The directors also agreed to lend Mr Belfield, apparently through Regent, a further £500,000. In the event, Regent
30 borrowed only £150,000 of the facility, and then only for about two months. Although the market in mobile phones and CPUs was, to use Mr Belfield’s description, “volatile and competitive” Marldon’s directors, who also ran Megantic, a company also dealing in the mobile phone and CPU market, started to trade with Regent as both a supplier and a customer, granting it credit facilities on its purchases. As Mr Foulkes submitted
35 we should, we infer that in those circumstances it was not intended that Regent and Megantic should operate at arm’s length. In the real commercial world, Megantic would not have wanted Regent as a competitor, and certainly would not have financed its operations. But in the event, the companies went on to trade within the same trading patterns and with the same groups of contra-traders identified by the
40 Commissioners, appearing above and below each other in supply chains. Whilst dealing with Megantic, we might conveniently add that in Deal 2, Regent purchased the supplies from Megantic for exactly the same price as Megantic had paid for them. That fact speaks for itself as being uncommercial. In our judgment Regent’s relationship and dealings with Megantic provide compelling evidence of contrivance
45 and pre-arrangement of which Mr Belfield must have been aware.

245. Megantic was not the only company prepared to provide credit facilities to Regent. So too were the four contra-traders which supplied it in its denied deals. No evidence was adduced to show that any one of the four contra-traders, or Ace
50 Telecom or Megantic, carried out any due diligence on Regent and, in its absence, we

find that none of them did so. Seemingly all those companies were prepared to allow Regent, as a newly formed company with no capital of its own to speak of and against the background of its only director's involvement in Lafayette, to become committed to them in very substantial sums. Their agreement effectively to lend such large sums in the particular circumstances is compelling evidence that the transactions were pre-arranged and contrived; they were completely divorced from ordinary commercial transactions, as Mr Belfield must have been aware. No legitimate business with capital as small as that of Regent could have achieved a turnover of the magnitude it did achieve in a matter of three months. Further, the transactions were carried out at a speed consistent only with pre-planning and orchestration. That Regent was invited to become involved in transactions so large and valuable as those in point in the appeal so shortly after commencing trading and against the background we have described, should have put Mr Belfield, assuming his innocence, on notice that the company was involved in an overall scheme to defraud the revenue. The evidence in that behalf is again compelling.

246. As further evidence of Regent's almost certain involvement in such a scheme we would cite the apparent ease with which the company and Mr Belfield were able to obtain unsecured loans from Global and Lorimer respectively. Again, they did so against the background of Lafayette's failure and Mr Belfield's involvement therein. So viewed, that anyone was prepared to lend Regent £1.5 million and Mr Belfield £250,000, particularly on an unsecured basis, must have indicated to Mr Belfield, again assuming his innocence, that Regent was involved in transactions that were pre-arranged and contrived. Once more it is information of which Mr Belfield must have been aware.

247. In Deals 6 to 15 i.e. those involving Global, Mr Mendes was able to trace through the FCIB records what we find to have been the circular form the financial transactions took. The monies went through the accounts of companies of which, on Mr Belfield's account, Regent had no knowledge and which, in the course of legitimate trade, would not have known of each other's identity. That happened on every occasion Regent conducted a deal in that series, irrespective of which company supplied it, and which other company was its customer. Further, each and every one of the deals Regent entered into whether as buffer or broker fitted the pattern of trade of whichever group Mr White identified it as being associated. In our judgment, it would be difficult to find more compelling evidence of Mr Belfield's knowledge of involvement in pre-arranged and contrived transactions than that of Mr Mendes.

248. Whilst dealing with the FCIB records, we might add that we completely reject the reasons Mr Belfield offered for Regent having to have an account with that bank, namely that it needed 24 hour banking and the ability to make payments swiftly. The evidence presented clearly shows that Regent made most payments for goods many days, if not weeks, after its deals were conducted. If nothing else, Mr Belfield's evidence lacks credibility.

249. Mr Belfield expressed himself satisfied with the "fixed" profits Regent made on its buffer deals. His explanation that in such deals he simply added what he had determined to be "Regent's margin" to the price quoted to its customer rang anything but true. And in its broker deals Regent's profits were always in the range of 7.1 per cent to 7.8 per cent. As Mr Foulkes submitted, that was not the operation of a

legitimate and free market: it was a market where everyone did the same as everyone else in the knowledge that if it failed to do so it would be excluded from deals. That constitutes yet more compelling evidence of contrivance and pre-arrangement.

5 250. A number of companies in addition to Megantic were suppliers to Regent one
day, and its customers the next. If as a supplier such a company had been able to
source goods more cheaply than through Regent there was no reason for it to trade
through the company. The situation bears all the hallmarks of something other than a
genuine commercial arrangement. Indeed, in our judgment, it presents even more
10 compelling evidence of pre-arrangement and contrivance.

251. So too does that relating to Regent's purchases of goods from an importing
contra-trader, and its then proceeding to sell them to an existing EU customer of that
contra-trader. In those circumstances, again as Mr Foulkes submitted, the only reason
15 for the inclusion of Regent in the chain of transactions was to ensure that an input tax
repayment claim could be made. That is the plainest of evidence of contrivance and
involvement in the scheme to defraud the revenue.

252. Having terminated its loan arrangement with Marldon in March 2006, and
repaid that company the moneys it had lent, Regent then appears to have had access to
20 no funds other than the working capital Mr Belfield provided – a mere £15,000. As it
was not until 24 April 2006 that Regent entered into the loan agreement for £1.5
million with Global, and it was as late as 30 April 2006 that Lorimer agreed to lend
Mr Belfield £250,000, from sometime in March until 24 April 2006 Regent had no
25 arrangements in place to cover the funds required to meet its liability to VAT on its
first ten deals, they all having been entered into prior to 24 April. Further, it did not
have the actual funds to meet any of the liability until it received the Global loan on 9
May 2006. In our judgment, although Mr Belfield's behaviour seemingly put Regent
at risk of being unable to meet its tax liability, in reality he knew that the necessary
30 funds were available and would be provided, the transactions and their financing
having and air of inevitability, being to his knowledge pre-arranged.

253. In each one of Regent's 15 denied deals, the purchase, sales and delivery
documentation bore the same date; there was thus a link between the deals that again
35 was stamped with all the hallmarks of inevitability. In our judgment, the dating
procedure adopted was wholly contrary to ordinary commercial practice, providing a
further indication of Regent's involvement in an overall scheme to defraud the
revenue.

40 254. Following on from that dating practice, Regent went on to deliver the supplies to
each of its customers' freight forwarders on the same day it received the customer's
purchase order, notwithstanding that it had neither been paid nor received the
response to its Redhill verification request. That demonstrates to us that Mr Belfield
intended to go ahead with the deals without waiting for all the assurances, by way of
45 verification or due diligence, it theoretically sought as to the standing of those with
whom it was dealing – another indicator of pre-arrangement and contrivance.

255. Further, in always exporting goods before it had been paid, in many cases to
freight forwarders apparently unknown to it, Regent not only took the risk of having
50 to pay for their re-patriation in the event of non-payment by its customer, but also of

its being unable to recover the goods and being liable for their cost to its supplier. No trader behaving responsibly would have accepted those risks. They point to Mr Belfield having known that in reality there was no risk of the deals not being completed. Again, pre-arrangement and contrivance are indicated.

5

256. We do not consider ordinary commercial practice Regent's behaviour in releasing goods to its customers' freight forwarders in every one of its broker transactions, albeit allegedly "ship on hold", immediately it entered into a deal and prior to payment. At the very least it smacks of the transactions having been co-ordinated. We might add that, despite Regent's own documentary evidence showing that it exported the goods "ship-on-hold", we are not satisfied that the goods were so shipped, or, if they were, were treated by the receiving freight forwarders and their principals as subject to that condition. As we mentioned earlier, the Cayenne Supplier Declaration Form relating to Deal 1 (4/875) shows the terms of delivery as "Free to Buyer".

10

15

257. Mr Belfield obtained his knowledge of the wholesaling of mobile phones whilst employed by Marsland. His evidence revealed that he was well aware of MTIC fraud and the need for due diligence, became aware of the legislative provisions introduced in 2003 relating to joint and several liability for VAT and the requirement to give security for future supplies, and was familiar with the contents of Notice 726. Officers Tarr and Ruler visited Regent on 12 January 2006, i.e. as soon as the Commissioners were informed of Regent's intention to open an account with Hawk, which was suspected of being involved in MTIC fraud. Mr Belfield claimed the meeting to have been held as part of his preparations to commence trading, whereas the Commissioners' evidence showed it to have been arranged in order to warn Regent of the dangers in trading in mobile phones and CPUs. We are quite satisfied that the meeting was held for the reasons given by the Commissioners. The officers' warnings were simply ignored.

20

25

30

258. We have dealt with a considerable number of Mr Foulkes' comprehensive submissions as to Regent's knowledge of its transactions being connected with VAT fraud, and at this juncture should say that we are satisfied of the correctness not only with those we have dealt, but all of them. However, we consider it unnecessary to rehearse the remainder, and content ourselves by simply stating that we have adopted them in reaching our conclusion.

35

259. We next turn to deal with Mr Pickup's submissions on the actual knowledge test in *Kittel*. We accept his claim that within each group of contra-traders' dirty chain transaction there must, or at least might have been, innocent unknowing traders, and the same must be true of clean chains. We also accept Mr Humphries' assertion that that is less likely in a contra-trading case than in one involving but a simple defaulter chain. We are, however, unable to accept Mr Pickup's further submission that within the trading groups identified by Mr Humphries there may have been some direction at the European ends of the transactions, but not necessarily within the chains themselves. There is nothing in the evidence before us to indicate that in the instant case direction was confined to transactions within Europe; indeed everything points to there having been direction in all the chains in which Regent was involved, and we find that that was the case.

40

45

50

260. It will be recalled that Mr Pickup submitted that the Commissioners' case on actual knowledge appeared to be founded on Mr Humphries' analysis of the deal sheets of the three groups of apparently connected contra-traders to determine where goods originated and their destination. In our judgment, Mr Pickup's subsection of that analysis to detailed criticism, identifying omissions which he claimed might have put a different perspective on matters, is unjustified. Mr Humphries may not have investigated every possible aspect of the deals of the apparently connected contra-traders, but in our judgment he investigated enough of them to reach the conclusions he presented to us. And, as Mr Foulkes submitted, any further investigation would have revealed only even more evidence of fraud. In this connection we adopt Mr Foulkes' submissions at para [203] in their entirety

261. Mr Pickup submitted that it was difficult to see how Deal 1 could form part of an overall scheme to defraud the revenue when two of its three constituent parts involved supplies made to UK companies, and only the third formed part of the disputed deals. We earlier set out our own analysis of the payments made by the various parties involved. On 20 April 2006 Cayenne and Base Interactive each paid Regent in full for phones it bought, in the one case paying £573,546.88, and in the other £529,687.50. Yet, if we accept the oral evidence of Mr Belfield and Regent's documentary evidence, it was not until one month (less one day) later that the goods were released to the purchasers. Without a full explanation for the late release, which we were not offered, we are not prepared to accept that those were genuine transactions. Any trader paying £½ million for a consignment of goods would have expected immediate delivery of them. The loss of interest alone on so large a sum for one month, even at the present very low rates, would have been sufficient to deter any ordinary trader from consenting to an arrangement for delayed delivery such as the one before us. Further, a trader such as Megantic, the third trader involved, would hardly have paid £600,000 on account on 20 April had it known that it would receive no immediate benefit therefrom. And when it did make full payment on 9 May 2006, Megantic would also have expected immediate delivery of the goods purchased. That three customers of Regent should have acted with such forbearance in the absence of contrivance, we are unable to accept. Similar and equally unlikely arrangements are evident in relation to Deals 2, 4 and 5, and again indicate their pre-arrangement. We are quite satisfied that, notwithstanding that there might have been some slightly unusual features in Deals 1 to 5, their form was nothing more than a device to frustrate the detection of fraud by the authorities.

262. We might also ask why, when Regent received the Global loan on 9 May 2006, and against a background of its claiming still to hold goods in relation to Deal 1 for which it had been paid in full in two out of three instances virtually a month earlier, none of it was immediately applied in payment of the small balance due to David Jacobs. In the absence of any explanation for non-payment by Regent, we accept that Global did designate its loan for use in relation to specific transactions not involving David Jacobs, as the Commissioners allege. That too indicates that Regent was directed and knew with whom it must deal.

263. Mr Pickup went to considerable lengths to portray Regent as a "victim" of the four contra-traders with which it dealt. The Commissioners did not accept that description as accurate. As Mr Foulkes explained, they consider contra-trading schemes to be designed to defraud the revenue by obtaining VAT repayments without

the associated output tax payments having been made and consider a trader making a repayment claim to be a crucial player. The Commissioners further maintain that one of the purposes of contra-schemes is to prevent verification of a contra-trader's broker deals, thereby providing that trader with protection, but say that that is simply part of the way in which the real "key player", the broker making the all-important repayment claim, is protected. That must apply a fortiori in a case such as the instant one where the financier behind the majority of the deals, Global, apparently suffered a substantial loss on its involvement in each financial carousel. We agree with the Commissioners' claim that a trader such as Regent making an input tax repayment claim is a crucial player.

264. We are unable to accept Mr Pickup's submission that Mr Humphries' evidence as to his analysis of various transactions was mere "supposition", considering it to be based on the overall effect not only of Regent's involvement in its broker and buffer deals, but also that of the various contra-traders whose activities he considered. That analysis with which we dealt earlier, in our judgment, thoroughly warrants his conclusions

265. Mr Pickup made much of an admission by Mr Davies that David Jacobs may not have known of frauds in its broker chains, and maintained that, in the absence of David Jacobs' knowledge, Regent could not have known of its own connections with fraud. He added that Mr Humphries accepted that the Commissioners had not determined whether certain of Regent's own transactions (those still under extended verification) formed part of an overall scheme to defraud the revenue. Mr Pickup submitted that in the absence of knowledge on the part of traders such as David Jacobs and a failure by the Commissioners to determine whether Regent's own transactions involved participation in fraud indicated that Regent could not have had knowledge of such involvement. In our judgment, individual officers were concerned only with the companies for which they were responsible, so that their evidence represents but a part of the picture. We, on the other hand, have had presented to us the overall picture and it is in reliance on the evidence in that behalf that we conclude that Regent's deals formed part of a contrived scheme or schemes to defraud the revenue, and that Mr Belfield knew that they did so.

266. We have now dealt with all Mr Pickup's submissions as to Regent's having no knowledge of a connection with VAT fraud, and record that we have considered with the greatest care his submissions as to its having a lack of means of knowledge. We are unable to find in them anything to disturb our conclusions on actual knowledge.

267. Next, we set out two examples of Regent's failure to carry out due diligence checks. In its documentation, Regent required potential suppliers and customers to provide the names of two referees. As we earlier found, Regent ordinarily sought a reference from only one of such referees, and then usually only by phone. Mr Belfield acknowledged that practice as constituting a "flaw" in its due diligence. Given the size of the transactions Regent entered into, we consider that anyone operating with normal commercial caution would not only have taken up both references, but would have done so in writing.

268. As we pointed out in relation to Deal 6, Regent required its suppliers, customers and freight forwarders to complete and sign a number of forms. Some of them were

completed satisfactorily; others were returned incomplete to a greater or lesser extent. But, in the case of the freight forwarders with which Regent dealt, they either failed to complete, or to return, their forms. And where forms were not returned or were returned incomplete, Regent failed to take matters further. That was another failure in due diligence: Regent's performance was insufficient to protect it from the risk of involvement in transactions which might turn out to have undesirable associations.

269. There is one other matter we would mention as relevant to our conclusion. Mr Belfield delegated day-to-day responsibility for the conduct of Regent's business to its manager, Mr Condron. Mr Condron was not called to give evidence, so that we do not know how much he knew of Regent's systems and procedures, and what part he played in events with which we are concerned. In his absence, we cannot be sure that Mr Belfield acted responsibly in delegating matters to him.

270. Mr Belfield, assuming his innocence, was all too ready, without careful and comprehensive checks to commit Regent to transactions that should have raised queries in his mind as to their genuineness. Such queries should have included the following:

1. Why was Regent, a newly formed company with no history of dealing in mobile phones and CPUs, approached with offers to buy and invitations to sell very substantial numbers of such items?
2. How likely in ordinary circumstances would it be for a company in Regent's position to be requested to supply large quantities of mobile phones and CPUs, and to be able to find without difficulty a supplier willing immediately to provide on credit exactly the products required?
3. Were the four contra-traders already making supplies direct to other EU countries? If so, Mr Belfield could have asked why they were not making supplies direct, rather than selling to UK traders such as Regent which in turn would sell to other countries.
4. Why were various people, particularly those directing Megantic, encouraging Regent to become involved in those transactions? What benefit might they be deriving by persuading Regent to do so? Why should they be inviting Regent to join in when they could do so instead and take the profit for themselves?
5. Why were two companies willing to lend a total £1.75 million on an unsecured basis effectively to a company owned and directed by a man who had very recently run a company which had gone into liquidation owing £1 million and had invested but £15,000 of his own money in the project?
6. Why having started to trade in January 2006 and received orders from foreign companies in that month were no further orders forthcoming from such companies in February and March 2006, but resumed in April 2006?

271. We consider there to be compelling evidence that Regent, by Mr Belfield, knew that its transactions were connected with fraud, and that there was a guiding behind the company's transactions. In our judgment, Regent failed to take all reasonable steps to ensure that its transactions were not connected with fraud, the evidence therefore having been dealt with earlier in our conclusion. We also consider there to be adequate evidence, again as earlier dealt with, that Regent failed to carry out due diligence to the extent required.

272. Mr Belfield's failure to make full enquiries and investigations resulted in Regent failing to discover information which ought to have led to his making further enquiries. The result was that Regent became committed, without sufficient protection, to enter into transactions with the four contra-traders (plus Ace Telecom and Megantic) linked by way of contra-trading to the other transactions of those traders established to be fraudulent. Had he asked the appropriate questions and been answered, he would have concluded that the uncommercial features being offered to Regent could only be explained by taking into account other transactions those traders were entering into, and that the only explanation was that those other transactions were in some way connected with fraud.

273. It follows that we dismiss the appeal.

15 MAN/2007/0630

**DAVID DEMACK
JUDGE**

20

Release Date: 12 February 2010

SCHEDULE 1

Deal 1 - (Invoices numbered 1016)

Transaction No:	Date	Supplier	Customer	No of Phones	Unit Price	Net Price	VAT	Total Price
1	10/4/06	Mighty Mobile *	David Jacobs (c)	5500	388.85	2,138,675.00		
2.	11/4/06	David Jacobs (c)	Regent	5500	390.00	2,145,000.00	375,375.00	2,520,275.00
3.a	11/4/06	Regent (1016a)	Megantic	3000	390.50	1,171,500.00	205,012.50	1,376,512.50
3.b	11/4/06	Regent (1016b)	Base Interactive	1250	390.50	488,125.00	85,421.88	573,546.88
3.c	11/4/06	Regent (1016c)	Cayenne *	1250	423.75	529,687.50		
4.a	11/4/06	Megantic	Senbetel Telecom*	3000	423.75	1,271,250.00		
4.b	11/4/06	Base Interactive	Globalfone *	1250	423.75	529,687,50		

Deal 2 – (Invoice 1017) Nokia 9300

Transaction No:	Date	Supplier	Customer	No of Phones	Unit Price	Net Price	VAT	Total Price
1	10/4/06	Adobcom *	David Jacobs (c)	1500	304.00	456,000.00		
2.	11/4/06	David Jacobs (c)	Megantic	1500	305.50	458,250.00	80,193.75	538,443.75
3.	11/4/06	Megantic	Regent	1500	305.50	458,250.00	80,193.75	538,443.75
4.	11/4/06	Regent	BRD *	1500	331.50	497,250.00		

Deal 3 – (Invoice 1018) Nokia 9300

Transaction No:	Date	Supplier	Customer	No of Phones	Unit Price	Net Price	VAT	Total Price
1	10/4/06	Mighty Mobile *	Svenson (c)	5750	304.85	1,752,887.50		
2	11/4/06	Svenson (c)	Ace Telecom	5750	306.00	1,759,500.00	307,912.50	2,067,412.50
3	11/4/06	Ace Telecom	Regent	1750	306.50	536,375.00	93,865.63	630,240.63
4	11/4/06	Regent	Globalfone *	1750	332.50	581,875.00		

Deals 4 and 5 - (Invoices 1019a and 1019b) 12/4/06

Transaction No:	Date	Supplier	Customer	No of Phones	Unit Price	Net Price	VAT	Total Price
1	12/4/06	Pol Comm *	David Jacobs (c)	4000	250.00	1,000,000.00		
2.	12/4/06	David Jacobs (c)	Regent	4000	251.00	1,004,000.00	175,700.00	1,179,700.00
3a	13/4/06	Regent (1019a)	BRD *	2000	270.75	540,500.00		
3b	13/4/06	Regent (1019b)	Globalfone *	2000	270.25	540,500.00		

Deal 6 – ((Invoice 1020) Nokia 6289

Transaction No:	Date	Supplier	Customer	No of Phones	Unit Price	Net Price	VAT	Total Price
1	7/4/06	Firma Hennar *	S&R (c)	4000	192.00	768,000.00		
2	19/4/06	S&R (c)	Regent	4000	193.50	774,000.00	135,450.00	909,450.00
3	19/4/06	Regent	Hi-Lo Sweden *	4000	209.00	836,000.00		

Deal 7 - (Invoice 1023) Intel SL7 Z9

Transaction No:	Date	Supplier	Customer	No of CPUs	Unit Price	Net Price	VAT	Total Price
1	11/4/06	FAF *	Epinx (c)	15750	79.20	1,247,400.00		
2	20/4/06	Epinx (c)	Regent	15750	79.55	1,252,912.50	219,259.69	1,472,172.19
3	20/4/06	Regent	Elandour *	15750	85.90	1,352,925.00		

* Indicates non-UK company

c Indicates contra-trader