



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

JOINT STANDING COMMITTEE ON THE NATIONAL CAPITAL  
AND EXTERNAL TERRITORIES

**Reference: Sale of the Christmas Island casino and resort**

WEDNESDAY, 18 APRIL 2001

PERTH

BY AUTHORITY OF THE PARLIAMENT

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**JOINT COMMITTEE ON THE NATIONAL CAPITAL AND EXTERNAL TERRITORIES**

**Wednesday, 18 April 2001**

**Members:** Senator Lightfoot (*Chairman*), Senators Crossin, Greig, Lundy, Watson and West and Mr Ross Cameron, Ms Ellis, Mr Nehl, Mr Neville, Mr Snowden and Mr Somlyay

**Senators and members in attendance:** Senators Crossin, Greig and Lightfoot and Mr Snowden

**Terms of reference for the inquiry:**

To inquire into and report on:

- (a) the development and implementation of the tender process followed in the sale of the Christmas Island resort; and
- (b) the outcome of the tender process, the current status of the resort and proposals for the resort's future development.

**WITNESSES**

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**Committee met at 9.03 a.m.**

**HERBERT, Mr Jeffrey Laurence, Liquidator, Christmas Island Resort Pty Ltd (Receiver and Manager Appointed) (In Liquidation)**

**POELZL, Mr Marco Gerhard, Senior 1, PPB Ashton Read, representing Christmas Island Resort Pty Ltd (Receiver and Manager Appointed) (In Liquidation)**

**ROCKE, Mr Clifford Stuart, Partner, PPB Ashton Read, representing Christmas Island Resort Pty Ltd (Receiver and Manager Appointed) (In Liquidation)**

**CHAIRMAN**—I declare open this public hearing of the Joint Standing Committee on the National Capital and External Territories inquiry into the tendering process followed in the sale of the Christmas Island casino and resort. The inquiry was referred to the committee by the Senate on 8 November 2000. The purpose of the inquiry is to examine: (a) the development and implementation of the tender process followed in the sale of the Christmas Island resort; and (b) the outcome of the tender process, the current status of the resort and proposals for the resort's future development. At the conclusion of the inquiry the committee will table its findings, conclusions and recommendations in the parliament in a report which will be publicly available.

The committee normally authorises submissions for publication and they are placed on the committee web site. To date the committee has received nine submissions from interested parties.

Resolved (on motion by **Senator Crossin**):

That the submissions tabled by Mr Frank Woodmore of Mercator Property Consultants and Mr Roger Mortleman of Coms21 Pty Ltd be accepted as evidence to this inquiry and authorised for publication.

**CHAIRMAN**—If you would like further details about the inquiry, please ask any of the committee staff present at the hearing for assistance. I now turn to proceedings at hand. Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments you would like to make to your submission?

**Mr Herbert**—No.

**CHAIRMAN**—The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearing be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

**Mr Herbert**—One thing we did not cover in our submission was the fact that we received some pressure from the Shire of Christmas Island for the payment of rates which were outstanding. The Shire of Christmas Island was a fairly substantial creditor and we were requested to pay rates that were outstanding from the 1 July 1998 to 30 June 1999. They wrote to us on 1 December 1999, at the time we had just sold the Christmas Island lodge, which is

referred to in the submission here, and asked for the payment of their outstanding rates and electricity. I do not remember the amount involved offhand, but it was a fairly substantial sum.

**CHAIRMAN**—Would you like to incorporate that into your opening submission?

**Mr Herbert**—I do not think I need to make an opening submission. Everything I really wanted to say is in this submission and in particular paragraph 7, which is a summary of some of the issues you are going to be mainly concerned with.

**CHAIRMAN**—Would you like those letters and the accounts from the Christmas Island local authority to be accepted by the committee?

**Mr Herbert**—Yes.

**CHAIRMAN**—There being no objection, it is so ordered. If there is no opening statement, Mr Herbert, we will proceed straight to questions.

**Mr Herbert**—Certainly.

**Mr SNOWDON**—I will make an observation at the outset and then perhaps you can respond. As I understand it, you spent around two years trying to get expressions of interest worldwide?

**Mr Herbert**—No, I do not think that is correct.

**Mr SNOWDON**—We will start from the beginning, shall we. What was the process which got you involved? I have read all the documents, so I have all your letters.

**Mr Herbert**—It was fairly long and convoluted. We were appointed as receivers firstly, and that happened in July 1998. We were then appointed as provisional liquidators in October 1998 and finally as liquidators in December 1998. There were some important processes that took place between those dates, but upon being appointed as liquidators in December 1998 our function was clearly to sell the assets of the company to realise as much money as possible to pay out the creditors of the company. Really the process of sale of the assets of the company, including the resort, the casino and the leases, started in December 1998. Of course, by that time, we had thought a lot about how we would sell the assets, including the casino. But the realisation process really started shortly after that.

**Mr SNOWDON**—What did that process involve?

**Mr Herbert**—Originally we were going to call for expressions of interest. We sought advice from Jones, Lang and Wootton, which subsequently became Jones, Lang La Salle. We wanted to advertise the resort for sale both nationally and internationally to try to capture the highest offer for the assets from across the world. We were going to do that in a phased program, and we were going to do that on the advice of JLW. That entailed, firstly, calling for expressions of interest and, secondly, short-listing people for a tender process. That step was going to involve the government, because it was anticipated that the purchaser would run the casino and that,

although we did not have a casino licence to sell, a part of the process would be its issue by the government.

**Mr SNOWDON**— So the licence had lapsed?

**Mr Herbert**—The licence had been cancelled prior to our appointment. In fact, that was the final straw that really precipitated Mercator's application for our appointment.

**Senator CROSSIN**—When you refer to the government, are you referring to the federal government as opposed to the WA government?

**Mr Herbert**—Correct. To be particular, I am referring to the Casino Surveillance Authority.

**Mr SNOWDON**—Mr Herbert, can we confirm that the minister ultimately responsible for the Casino Surveillance Authority is the minister for territories?

**Mr Herbert**—There were various divisions involved in this. The division that was concerned about the issue of a licence was the Casino Surveillance Authority, but this all came under the purview of the minister for territories.

**Senator CROSSIN**—You said it would involve the government. What was your understanding of that involvement?

**Mr Herbert**—We could not provide the purchaser with a casino licence. We could only provide the purchaser with the assets of the company, which consisted of leasehold interest in the properties, the casino being the major one, and with plant and equipment and other assets. The issue of a licence would involve the government and could only be effected by the government. The government put us on notice very early on that we were not to hold that we were in a position to be able to issue a licence.

**Mr SNOWDON**—I would like to explore that point.

**Mr Rocke**—If you turn to page 14 of Mr Herbert's submission, you will see that what the government said at paragraph (iv)—in italics—was how we could advertise the operations or the infrastructures involving the casino.

**Senator CROSSIN**—We do not have your page numbers.

**Mr Rocke**—It is at 3.1.4 (iv). It was at the minister's discretion as to who could obtain the licence to operate the casino.

**Mr SNOWDON**—I understand that. I just want to go back a couple of steps. The process for liquidation was initiated by Mercator?

**Mr Herbert**—No, the application for the appointment of a receiver was made by Mercator.

**Mr SNOWDON**—What happens then after the receiver is appointed?

**Mr Herbert**—The purpose of a receiver is to investigate the financial position of a company and to investigate options available to it. One of those options would have been recapitalisation of the company via the injection of further moneys by principal shareholders and then the return to normal life.

**Mr SNOWDON**—At the stage that you were doing that part as a receiver, who were the major creditors?

**Mr Herbert**—The largest creditor at that stage was the Bank of America and Standard Chartered Bank.

**Mr SNOWDON**—And that was about \$100 million?

**Mr Herbert**—Correct.

**Mr SNOWDON**—And that was settled subsequently?

**Mr Herbert**—Yes, that was paid out. They served demands on the guarantors, the guarantor being Mr Sumampow. Mr Sumampow paid them out and became a creditor by subrogation.

**Mr SNOWDON**—If we leave Mr Sumampow out of the picture for the moment, what was the remaining bill?

**Mr Herbert**—The next major category of creditors was employees.

**Mr SNOWDON**—How much were they owed?

**Mr Herbert**—They were owed between \$2.5 million and \$3.4 million. The reason for the variance in the range was due to the fact that part of their claim was for termination pay. There was a penalty clause under the award which was highly ambiguous and, depending on the interpretation of that clause, they were owed \$3.4 million or \$2.5 million or somewhere between. Behind them were a large number of creditors whose claims had been outstanding for a long time and who were owed substantial sums of money, a lot of which was disputed by the directors.

**Mr SNOWDON**—In terms of your function as receiver, what was the outstanding bill, excluding the banks?

**Mr Herbert**—We were not entirely sure at that stage, but I think total creditors' claims, excluding Mr Sumampow, came to about \$7 million.

**Mr SNOWDON**—And the major component of that was employees?

**Mr Herbert**—Yes, \$2.5 million to \$3.4 million.

**Mr SNOWDON**—Help me with the process here because I am not a lawyer or an accountant. You go to the receiver, you go through a receivership, you make an assessment that



money cannot be paid and you give them opportunities to satisfy creditors. When they do not do that, what do you do?

**Mr Rocke**—The appointment of the receivership was to prepare a report to the shareholders, being Mercator and Robby Sumampow. That report was filed with the court I think on about 29 September 1998.

**Mr SNOWDON**—So Sumampow had 90 per cent of the resort and 10 per cent for Mercator.

**Mr Herbert**—That is right.

**Mr Rocke**—We did that report and Jeff concluded that the company was insolvent. On the basis of the insolvency, a number of options were put through to Mr Sumampow to recapitalise the company. Those discussions took place over the period August through to 8 December.

**Mr SNOWDON**—Subsequent to that, what happened?

**Mr Rocke**—Subsequent to that, there was no alternative recapitalisation of the company from the present shareholders, and we embarked on a realisation of the assets. Essentially, the strategy was to sell non-core assets and preserve the infrastructure for a casino as long as possible to maximise the return for all creditors.

**Mr SNOWDON**—With the assets that were sold, what were you able to get rid of first and how much did you realise?

**Mr Herbert**—Do you mind if I go back a step.

**Mr SNOWDON**—Go right ahead.

**Mr Herbert**—Let us talk about the insolvency to the company for a while. We had no particular view on how the company should be administered while we were receivers. One of the things that we gave serious thought to early on was whether it could be restructured, because what became glaringly obvious shortly after our appointment was that Sumampow was a 90 per cent shareholder and was owed the vast bulk of amounts owed to creditors.

**CHAIRMAN**—By way of the guarantee?

**Mr Herbert**—Yes, although by that stage he was in the process of paying out the banks and became a creditor directly by subrogation—

**Mr Rocke**—\$100 million.

**Mr Herbert**—A substitution for the creditors previously owed about \$100 million. It was not a particularly popular move at the time with either Mercator or the government, but we gave serious thought to restructuring the company through something called a deed of company arrangement. It is a process available to creditors under the law called voluntary administration. Parties can put some money in to pay creditors out through a moratorium, under which claims

from creditors are frozen for a period of time—even a forgiveness of a part of their debt. It seemed to us that, when you looked at the assets and at the amounts that would be paid to creditors, an obvious solution for the company's problems would be for Mr Sumampow to put a bit more money in to pay out creditors—not necessarily 100 cents in the dollar. What struck us most strongly when we were first appointed was that other creditors were not owed a lot. The amount that Sumampow had to invest in the company to pay out creditors was a pittance—it was a pimple on the back of an elephant. It seemed to us absurd that the company should be liquidated, originally, for want of—

**Mr SNOWDON**—\$7 million.

**Mr Herbert**—That seemed to be a very minor amount compared to what Sumampow had already invested. What was also pressing was the fact that, unless something was done very quickly, the company would have to go into liquidation. We started a process then of trying to contact Sumampow, to talk to him and explain the position. In the initial phases of that there was some sensitivity, because Sumampow originally thought that we were there at the behest of Frank Woodmore and that we were Frank Woodmore's men. We went through the usual kind of process of trying to establish our credibility, independence and sincerity in this.

Eventually after some period—and it was not easy to do—we managed to arrange a meeting in Jakarta with Sumampow to explain the position to him. I went up there with Cliff. We took some material. By that stage we prepared our report in accordance with the court order demonstrating that the company was insolvent. It was insolvent because it had ceased trading, which had happened in April; it had lost its licence and it owed a lot of money—ignoring amounts owed to Sumampow—which it could not pay. It had no source of income other than amounts being injected by the directors. Their preparedness to put more money in was by no means clear. No money had gone in. The fact is that it had ground to a halt because it was unable to meet claims of creditors. Employees were owed a lot of money that was not being paid. We went up there basically to say, 'This is something that can be solved.' There is a process that is going on with the law which is called voluntary administration. It does not necessarily require huge amounts of money by you, but if you are prepared to put some more money in this is how it can be sorted out.' This is what it says in the report.

Cliff and I went up there. We had this meeting in August in Mr Sumampow's house in Jakarta. We went through the process and gave a presentation using overheads and so on and we said what the options were. We said that, failing this kind of arrangement, the company would go into liquidation because creditors were pressing for the company to be wound up. There was a lot of bad feeling at the time about the Indonesians, the company and so on. There was a lot of scepticism about whether they were sincere about putting any money in. The outcome of that is dealt with in the report.

After we had finished our presentation, which took about one hour and a half, Mr Sumampow, through an interpreter, said words to this effect: 'I am not interested in compromising the claims of creditors. I've always taken the position that creditors who are genuinely owed money should be paid 100 cents in the dollar. I do not intend at this stage to do any less than pay them everything that they are owed. Thank you for your presentation. It is very interesting but it really does not have application, because we will pay creditors everything they are owed.' I said that that was surprising but good to hear because, if creditors could be

paid everything they are owed, the directors of the company could be given back control—indeed, there would be no reason not to give it back. But I asked how that was going to be effected.

There was a bit of discussion about how they would do that. Sumampow said, ‘The money will come but it may take some time. It may take us three months. We agreed to go back and think about a process for holding creditors at bay for a period of three months. Why don’t we do it through a deed of company arrangement which imposes a moratorium, which freezes debts? At the end of that period, creditors could be paid out.’ There was also discussion about guarantees that creditors could be given that they would be paid out. There was discussion about guarantees because, based on previous performance, there was a lot of scepticism about whether the directors were sincere about any of this.

In the meeting with Mr Sumampow we chucked around various ways of providing guarantees to creditors. Cliff referred earlier to non-core assets—assets that were not necessary for the operations of the casino. Mr Sumampow said, ‘If we don’t pay, the non-core assets can be realised and they can be provided as a guarantee.’ We said, ‘We’ll think about that, but that may not be enough because the claims of creditors, of the employees themselves, are \$2.5 million to \$3.4 million, and non-core assets will not provide enough to pay out all of the employees, so you will need to do more than that. But we will think about that and come back and give you some suggestions.’ That happened in August. We then went back and tried to think through a mechanism for a voluntary administration which would provide a period of three months for the directors to come up with the money needed to pay creditors but also provide guarantees to creditors so that if, at the end of that three-month period, creditors were not paid out steps would be taken under which the creditors would be paid what they were owed. We put that all in writing, we spoke to our lawyers and we devised a mechanism for that.

We had discussions with Sumampow’s right-hand man, Herman Gani, on almost a daily basis—maybe not daily but certainly weekly. We provided stuff to him in writing and we thought, right up until October, that they supported this and that this would happen. We were in the process of making application to the court for appointment as voluntary administrator so we could put this into effect and, for reasons that were never explained, at the very last minute, the day before the application was due to be made to the court for the appointment of a voluntary administrator, they withdrew support and refused to talk to us.

**Senator CROSSIN**—Mr Herbert, did you speak to Mr Woodmore and the minister during this period of time?

**Mr Herbert**—Yes, I did.

**Senator CROSSIN**—On a weekly or a daily basis?

**Mr Herbert**—I certainly put them in the picture on an ongoing basis about what was happening. I do not remember the dates. At the time we were dealing with Sema Varova.

**Mr Rocke**—She came over to Perth in the early stage of the administration.

**Mr Herbert**—Yes. The representatives from the ministry were not generally supportive of attempts to try to restructure the company because by that stage I think they had reached the

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conclusion that the directors could not be relied on and that this was simply another stalling tactic and would just get in the way of the final resolution of the problem. What I explained to her and to Frank Woodmore, who also was not supportive of this step, was that our obligation was to the creditors of the company and the shareholders and that if this process gave the best outcome it was one that we had to support, so we pressed on with it.

**Mr SNOWDON**—Ultimately, you made application for appointment as provisional liquidator on 14 October?

**Mr Herbert**—We did, because at the point that the directors withdrew their support and then refused to talk to us we really had no option.

**Mr Rocke**—On that point, the reason we did the provisional liquidation was that during the conduct of the receivership we only had a status quo mandate, we could not realise assets.

**Mr SNOWDON**—I appreciate that. I am more interested in discussing some background issues, not particularly your involvement in that part of the process. Did Mr Woodmore ever mention to you the prospect of a phoenix strategy?

**Mr Herbert**—A phoenix strategy?

**Mr SNOWDON**—It is new to me, but I understand it is a strategy in which a company is liquidated, with the assets brought back through a nominee at a heavily discounted price.

**Mr Herbert**—No. We were interested in the reconstruction of the company through the injection of additional money by the directors through the process of a deed of company arrangement. We proposed that that happen. What Mr Woodmore was interested in was the sale of the assets by public tender so he could get paid out moneys that he was owed. He was owed moneys in two capacities. Firstly, he was actually a creditor of the company—Mercator was owed amounts due under a service contract: a fairly substantial claim, which was disputed by the directors. Incidentally, I should say, as a side issue here, that the directors dispute almost every claim of every creditor. It seems to be a modus operandi of theirs—

**CHAIRMAN**—If I could just interrupt, is the phoenix strategy a term that you are familiar with?

**Mr Herbert**—It is.

**CHAIRMAN**—Is it a term that liquidators use?

**Mr Rocke**—It is basically the phoenix—

**CHAIRMAN**—I understand the ashes.

**Mr Herbert**—The mythological origin of it.

**CHAIRMAN**—I am fairly familiar with the mythological part of it.

**Mr SNOWDON**—We know you know a lot of myths!

**Mr Herbert**—The practice where an old business conducted through company A is resurrected through company B when company A becomes insolvent.

**Mr Rocke**—And company A creditors are not paid when the assets are using company B to do the same business.

**CHAIRMAN**—Yes. I think it is distorting the Greek mythology a little, but nonetheless I see the point.

**Mr Herbert**—Poetic licence.

**Mr SNOWDON**—Can I just take you to your involvement with the Commonwealth around this time. In your documentation at paragraph 2.3 you list six reasons for your application. In what form was the Commonwealth's advice to you, in particular in relation to paragraphs (iii) and (iv)?

**Mr Herbert**—That statement is really based upon discussions that I had with Sema Varova.

**Mr SNOWDON**—So there was nothing formal; it was a discussion?

**Mr Herbert**—It was a discussion.

**Mr SNOWDON**—What about the advice that they would not reissue a casino licence to any company controlled by Mr Sumampow?

**Mr Herbert**—That was verbal.

**Mr SNOWDON**—What reasons did they give?

**Mr Rocke**—That advice was quite emphatic actually.

**Mr SNOWDON**—On what basis do you think they had the right to give that advice?

**Mr Rocke**—They were giving out the licence.

**Mr Herbert**—They had to control the issue of a new casino licence that had been cancelled by this time. The Casino Surveillance Authority has got a mandate to ensure that a casino licence is in fact issued.

**Mr SNOWDON**—But Sema Varova is not the casino authority; Sema Varova was a senior bureaucrat in the department of territories.

**Mr Herbert**—Correct.

**Mr SNOWDON**—On what basis would she have been able to make this statement?

**Mr Herbert**—We did not query that, so you would really have to ask her that question, but we understood that it all came under the purview of the minister for territories and that she may have had input into the process.

**Mr SNOWDON**—Were you taking her advice as to be speaking on behalf of the minister for territories or the government?

**Mr Herbert**—Yes.

**Mr SNOWDON**—So it was your view, as a result of discussions with Ms Varova, that the Commonwealth would not reissue a casino licence to any company controlled by Mr Sumampow?

**Mr Herbert**—Absolutely. She said that quite emphatically. In fact, there is a bit of history to this, as with everything, and Frank Woodmore is probably a better source of this information than I am. As you may know, a dispute developed between Christmas Island Resort under Sumampow's control and Casinos Austria. What was behind that precisely is a matter for speculation, and I will not go into that now because I do not think it is particularly helpful. What Sumampow wanted to do was to terminate Casinos Austria's contract and then to replace them with a company controlled by himself. As I understand it, one of the principles underlying the issue of a licence is that the operation of a casino is separated from the ownership of the asset.

**Mr SNOWDON**—I am not questioning or querying your judgment about this. I am interested in the fact that we have here one of the principal reasons for your being the provisional liquidator is verbal advice from the Commonwealth—not formal written advice from the Attorney-General or anyone else but verbal advice from the Commonwealth.

**Mr Herbert**—Correct. But, just to finish that point, Sumampow had entered into discussions with the Commonwealth about the issue of replacing Casino Austria with a company actually controlled by him then. As I understand it, he had been advised that the government would not consent to that.

**Senator CROSSIN**—Can I just clarify that. Your attachment No. 9, which is in fact a letter to you from Sema Varova, actually talks about the fact that any advertisements should refer only to a potential licence.

**Mr Herbert**—Correct.

**Senator CROSSIN**—Technically that is correct, but there is a conflict here. Are you saying that you were led to believe by this person that you should not in any of your advertisements whatsoever refer to casino, future casino or potential casino, and that in fact in advertising the sale of this you should stay well clear of any reference to a casino?

**Mr Herbert**—What we could not do is advertise a casino for sale with a licence. We could advertise for sale the assets of the company, which consisted of a leasehold interest in the property together with the infrastructure, and we could make it clear to interested parties that the

issue of a casino licence would be possible but would be subject to the probity review and the requirements of the government under the relevant legislation.

**Senator CROSSIN**—That is correct, but it goes even further than that, doesn't it? In fact, anyone who was interested in buying this would be, under the lease, expected to apply for and operate a casino in the future.

**Mr Herbert**—I do not think it said that.

**Senator CROSSIN**—I think we have got a copy—

**Mr SNOWDON**—I have not got a copy of the lease.

**Mr Herbert**—They never said that to us. It was never my understanding.

**Mr SNOWDON**—Can we just establish what they did say to you. In pursuing the liquidation process, what were the instructions or advice given to you by the Commonwealth as to what you may be able to advertise for liquidation and the conditions under which the liquidation would take place?

**Mr Herbert**—Most of the discussions we had with the Commonwealth were really about the issue of a casino licence, which we discussed. In terms of the lease itself, I am not sure there really was anything that the government could have done about preventing the sale of the leasehold interest to a party by the liquidator. They might not have liked the purchaser. They certainly, through the relevant departments of the government, could have withheld the issue of a casino licence. But, in stopping the assignment of the leasehold interest in the properties through a sale by the liquidator, I think their powers were limited.

**CHAIRMAN**—The Foreign Investment Review Board does not come into it because it is less than the required amount. Is that correct?

**Mr Herbert**—Yes. When we started this process, we had no idea what the values were. There were some telephone numbers in our financial statements. The company was capitalised to about \$100 million and the assets might have been worth a lot of money. But, as it happened, the limits that apply to approval by FIRB were well in excess of the amounts that were actually offered for the assets.

**Mr SNOWDON**—Are you aware of the agreement signed by the Commonwealth with Frank Woodmore on 4 June 1987? Was that part of your deliberations as to what this facility might be used for?

**Mr Herbert**—Not really. As we understood it, that agreement actually related to the establishment of the casino on the island.

**Mr SNOWDON**—That is right.

**Mr Herbert**—By the time we were appointed, the terms of that agreement had been complied with.

**Mr Rocke**—Are you talking about the casino ordinance act?

**Mr SNOWDON**—The control ones, yes, and an agreement subsequent to it.

**Mr Herbert**—The approval to establish a casino was actually given subject to a number of conditions which were set out by the government. Those conditions were all met. Our understanding was that at the time that we offered the assets for sale the conditions had been met, but we were able to advertise the assets for sale, other than the casino licence, as I have described, and subject to the consent of the government to the assignment of the lease to the successful party.

**Mr SNOWDON**—Was it your understanding, though, that the government required any prospective purchaser to run a casino?

**Mr Herbert**—No. It did not.

**Senator CROSSIN**—What do you mean—‘It did not’?

**Mr Herbert**—The government imposed no conditions on the assignment of the lease. Our understanding was that it could not.

**Senator CROSSIN**—Even though this letter back in September actually talks up, in one sense, a desire by the government that it is in the interests of the Christmas Island economy to have an operating and viable casino, you are saying that they said the right words but made no conditions on the future purchase?

**Mr Herbert**—No, I am not saying that. I am saying that they could not impose conditions with respect to the assignment of the lease because it was not in their power to do it. Everybody wanted the thing to be sold as a casino—the government obviously because it was good for the community and us because we thought it would maximise the value from the sale of the asset.

**Mr SNOWDON**—What was the nature of the lease?

**Mr Herbert**—It was a 99-year lease.

**Mr SNOWDON**—I understand that, but it must have a purpose for which it was given.

**Mr Herbert**—It was not a 99-year lease that you could do whatever you like with.

**Mr SNOWDON**—You had to have a casino on it.

**Mr Herbert**—The government didn’t specify to us any conditions with respect to the nature of the purchaser.



**Mr SNOWDON**—Hang on. What I am confused about here are the conditions which prevailed upon the original lease which was then going to be the subject of transfer to any potential bidder or purchaser.

**Mr Herbert**—There were no conditions specified to us with respect to the nature of the principal.

**Mr SNOWDON**—Did you have a copy of the lease?

**Mr Herbert**—Yes.

**Mr SNOWDON**—What did the lease say? We have not seen a copy of the lease, by the way.

**Mr Herbert**—This is a legal issue. As we understood it, we had the power to advertise the asset for sale. The only condition that the government specified to us with respect to the sale was that we could not advise prospective parties that they would be given a casino licence, and we have spoken about that. Other than that, there were no conditions imposed. We all thought that the sale of the assets would be to a party who would operate a casino.

**CHAIRMAN**—But the government did not say—I am sorry to interrupt—that it would not be operated as a casino; all they were saying was that it would not necessarily be granted a licence if it were sold?

**Mr Herbert**—The government said, ‘You may not advertise the casino for sale with a licence’—

**CHAIRMAN**—That is right.

**Mr Herbert**—because it did not have a licence.

**CHAIRMAN**—What you are saying is that the casino did not have a licence and it really was not a casino without a licence but the government did not say that it would not be necessarily granted a licence; it was saying that it could or it could not. It was ambiguous, wasn’t it?

**Mr Herbert**—We spent a lot of time with the government actually working out a process by which a probity review could be conducted. Everybody thought that the asset could be sold to somebody who would operate a casino. I think it was obvious, yes.

**CHAIRMAN**—But that does not answer my question. The government did not inhibit the sale by saying it would not be granted a licence; it was merely saying that it would not necessarily get a licence. If it met certain conditions the government would have said, ‘Well, we will re-licence it.’ That is the way I understood it.

**Mr Herbert**—Absolutely. Yes.

**CHAIRMAN**—That is what I wanted.

**Mr SNOWDON**—I appreciate that fact. The licence could be cancelled. You could not guarantee any potential purchaser anything until they had gone through the process of applying for the licence. I do not think that is in dispute. What I am concerned about, though, is the nature of the original lease, what the provisions of the original lease were, and what covenants, if any, existed upon that lease to require any potential purchaser to run it as a casino and resort.

**Mr Herbert**—Yes.

**Mr SNOWDON**—As I say, it would still require further—

**Mr Herbert**—I do not think that is a thing we should comment on now. I think you should ask the government—

**Mr SNOWDON**—I have.

**Mr Herbert**—what its obligations were—

**Mr SNOWDON**—They were not particularly helpful.

**Mr Herbert**—as they saw them in that respect. As I say, we all went into this process with a common expectation about what would happen, how the asset would be used after the sale process, but as it happened that expectation was not met in the way events actually unfolded. We were not told by the government at any stage that we could only sell the asset on the basis that the purchaser operated a casino.

**Senator CROSSIN**—But doesn't the original lease of the land actually specify that as a condition under which the land is granted as a lease?

**Mr Herbert**—That is exactly the question we just addressed a moment ago. At the time that we sold the asset, at the time that we went into the marketing process, we thought we would be selling to somebody to operate a casino and, for that matter, we understood that Soft Star would be operating a casino within time. We were not told by the government, as the lessor, that a purchaser would have to operate a casino or that the operations would have to commence within a certain period of time. We were not told that.

**Senator CROSSIN**—You had a copy of the original lease, though, of the land?

**Mr Herbert**—We did.

**Senator CROSSIN**—Did you actually question the government then about why you were not told or given those—

**Mr Herbert**—It is a long time since any of this happened and a lot has transpired on this, so I do not remember all of this, but my understanding was that there was nothing that the government could do to stop the assignment of the lease to a party we sold the assets to irrespective of that. So that is a legal matter.

**Mr SNOWDON**—There is no point in us disputing this, but it seems strange, if you have a lease which is prescribed for a particular purpose, that potential purchasers should not abide by the same covenants. If I buy a pastoral lease, I have to run it as a pastoral lease. I do not have a choice—I cannot run it as a casino.

**Mr Herbert**—That is really a matter for the government of the moment. If the government feels that Soft Star is not fulfilling its obligations—

**Mr SNOWDON**—We will get to Soft Star shortly.

**Mr Herbert**—it is open to terminate the lease. We were only interested in selling the assets for the highest value, maximising the return to the creditors and obtaining the government's consent to the assignment, which we did.

**Mr SNOWDON**—What undertakings, if any, did the government give you about their intentions relating to the possible freehold of the lease?

**Mr Herbert**—None.

**Mr SNOWDON**—So there was never any discussion with you about the potential of that lease being freehold?

**Mr Herbert**—We had a discussion with them in the early stages about possible changes to the lease. This goes back to about August 1998. We identified that the government were not initially satisfied with all the conditions of the lease. We sought a meeting with members of the ministry; we discussed possible changes. We wanted to try to settle the lease so that, at the date the sale actually occurred, we did not have a situation where all the parties were negotiating separately with the government as to the terms of the lease. We thought that would be an unwieldy and unmanageable process. So our discussions with the government started in about August 1998 and, between then and August 1999, we got nowhere with that question; so it was not possible to settle the terms of the lease prior to that time.

**Senator CROSSIN**—Were all the tenderers who put in their bids made aware that there was a possibility that the land would be granted freehold?

**Mr Herbert**—No. All the parties had separate discussions with the government about the terms of the lease, including ComsWinfair. They met separately with representatives of the government. The government went through the changes that they wanted to the terms of the lease and ComsWinfair set out what it wanted.

**Senator CROSSIN**—What sort of changes are you talking about?

**Mr Herbert**—There were many changes to the lease that the government wanted, some of which were fairly major and some of which were fairly minor.

**Senator CROSSIN**—Are you suggesting that those changes might have varied, depending on which tenderer they spoke to?

**Mr Herbert**—No, I think the government's position was pretty common. Bear in mind that, by the time we got through to the final stages of the marketing process, there were only a couple of parties actually involved. The only one that really did any serious work on this was ComsWinfair. We never took the other parties terribly seriously because they were—

**Senator CROSSIN**—Do you think that the government at any stage indicated to ComsWinfair that it may look at granting the land freehold?

**Mr Herbert**—I am not sure whether ComsWinfair actually raised that question with them.

**Mr SNOWDON**—Can I draw your attention to your own document. To clarify this, in correspondence which you sent to Ms Varova, dated 28 October 1998, you requested consent to convert these titles, except for the casino site, from leasehold to freehold.

**Mr Herbert**—Yes.

**Mr SNOWDON**—So you actually initiated discussion yourself with the Commonwealth about the question of freehold leases?

**Mr Herbert**—We did, and we did that specifically for the purpose I said a little earlier. We wanted to try to settle the terms of the lease, obviously as attractively as possible from the point of view of the vendor so that when we began the marketing process we could say to the parties, 'Here is the lease,' rather than, 'Here is a lease which contains certain terms that the government would like to change.' As in fact occurred, there was a complicated process that developed between October and December about what the terms would be. It became a three-cornered discussion, which we tried to avoid when we wrote that letter originally that you are referring to, Mr Snowdon. The letter that we wrote there was based on discussions we had with Frank Woodmore and his previous involvement with the government on how changes could be made to the lease for the benefit of all parties.

**Mr Rocke**—I thought that letter there was referring to Christmas Island Lodge and Christmas Island—

**Mr SNOWDON**—I think that what you are saying is correct. Whether the casino and the resort were to be separated—whether there were separated titles that existed I am not certain—but I suspect that your advice is correct, that this related to all the other—

**CHAIRMAN**—You can talk amongst yourselves if you wish, but for the sake of Hansard please address your comments through the chair.

**Mr SNOWDON**—I beg your pardon, Mr Chair.

**CHAIRMAN**—That is all right, Mr Snowdon.

**Mr Rocke**—That letter refers to other properties not associated with the casino resort that we were trying to sell at that stage.

**CHAIRMAN**—As part of the company.

**Mr Rocke**—Yes. It was Christmas Island Lodge and Seaview Lodge.

**Senator CROSSIN**—Do you believe that ComsWinfair might have acted differently or approached this in a different manner if there had been some discussions or some affirmation that the land may have been granted freehold to them?

**Mr Herbert**—I very much doubt it. There is not a lot of difference in value—except perhaps psychologically—between a 99-year lease and a freehold title. ComsWinfair was interested in a whole range of issues, including the casino tax rate, that it entered into negotiations about. For all I know, it may in fact have discussed the possibility of a freehold title with the government. I do not know that.

**Senator CROSSIN**—There seems to be an enormous amount of emphasis put on a freehold lease by Soft Star.

**Mr Herbert**—Yes, I know.

**Senator CROSSIN**—In fact, given that Mr Kwon is a property developer in Sydney, I suggest to you that perhaps that freehold lease is uppermost in his mind.

**Mr Herbert**—It was uppermost in his mind, and I think it is uppermost in the minds of some people in that they seem to think that an asset owned in perpetuity is necessarily worth a lot more than an asset which is just owned for 99 years. But, if you talk to most valuers, they will dispute that there is a great deal of difference in the value.

**CHAIRMAN**—If it was collateral, it would be worth more, wouldn't it?

**Mr Herbert**—It would, but I am not sure it materially changes the picture. We asked the government in fact if it would consider the issue of freehold terms. In that case, I think the inquiry was specific to the two properties that we were trying to sell at that time. But we were interested generally in their attitude to this. I remember a meeting with the minister, when Frank Woodmore was present, when the minister actually asked Frank what his views as a valuer were about the difference between freehold titles and 99-year leases. The government was generally looking at the whole question of whether it was appropriate for these sorts of properties to be the subject of 99-year leases or whether the government should actually consider the conversion of these leases to freeholds. This was fairly late on in the piece, much after the letter you are looking at there, Mr Snowdon. One of the things that I think the minister was prepared to do was to get a report from a valuer as to an amount that should be paid for the right to convert from a 99-year lease to freehold.

**Mr SNOWDON**—That is clear in the correspondence.

**Mr Herbert**—They never got that report.

**Mr SNOWDON**—Although they did use that correspondence, which I note reflects an interest in the issue by the Commonwealth in mid-1998. Moving on a bit, when you advertised for expressions of interest, when did they close?

**Mr Herbert**—The marketing process was interrupted by a number of events. Paragraph 3.1.6 of my submission contains details of the original timetable for the marketing of the property. We were appointed liquidators in December 1998. We wanted to commence the marketing process in January, not December, because by commencing in December there would have been an interruption over the Christmas period. We initially advertised for expressions of interest. That phase was to close on 26 March. We were then going to short-list parties for the formal tender process. Between 26 March and 15 April, we envisaged consulting with the Casino Surveillance Authority to try to weed out parties who were obviously unsuitable.

**Senator CROSSIN**—Could you clarify that. Was there any stage of the tender process where potential tenderers were actually obliged to prove their bona fides in terms of operating a casino licence and their genuineness?

**Mr Herbert**—Yes.

**Senator CROSSIN**—Can you outline that process for me?

**Mr Herbert**—It was a two-phased process. There was an initial review. That was to be conducted between 26 March and 15 April. We asked parties to submit details of their companies, their ownership, their directorships and their shareholdings, and some details of their assets, their level of capitalisation and so on. We then intended to submit those details to the Casino Surveillance Authority for a preliminary screening to be carried out. If there was anybody who was considered to be unsuitable because they were known to be undesirable parties or because the Casino Surveillance Authority thought they would not meet the criteria for the issuing of a licence, at that stage we were going to remove them from the list and proceed only with parties that passed that initial screening. That was the initial phase.

**Senator CROSSIN**—You are talking about 16 March to 15 April 2000. Is that correct?

**Mr Herbert**—No, 1999. After that initial phase, we were going to go through a formal tender process with a period for due diligence to be carried out. After that, we were going to select parties for a probity review. We thought we might end up with a number of parties that submitted offers that we could put forward for probity review and that there would then be a period of up to six months during which the Casino Surveillance Authority would examine details submitted by those parties to determine which parties it was prepared to issue licences to.

**Mr Rocke**—That process was made in consultation with the CSA as to what questions should be asked for them to conduct a preliminary assessment and what length of time they would require to do a probity review if, for instance, five or six tenders were received from applicants.

**Senator CROSSIN**—Did Soft Star go through the same process?

**Mr Herbert**—No. Soft Star was not a party that submitted an expression of interest.

**Senator CROSSIN**—No, but did Soft Star go through the process with the CSA and you when it came onto the scene as being a possible purchaser?

**Mr Herbert**—No.

**Senator CROSSIN**—Why not?

**Mr Herbert**—This is dealt with in detail in this submission and, to get a proper appreciation, I think you would have to go through that. By the time we started negotiations with Soft Star, we had serious concerns about the financial position of the company and the position it would have been in had it gone through a probity period. We really aborted the tender process around February 2000 and decided that we would try to sell. If we could obtain an offer for the assets on an unconditional basis, we would do that. In other words, we would sell it to someone who then took on the risk as to whether or not a casino licence was issued to them.

**Mr SNOWDON**—Can we come back to that a little later.

**Mr Herbert**—Can I just explain it a little better. When we originally started the marketing process we thought that the successful tenderer would be somebody who wanted to operate a casino. We thought that that would maximise the value of the asset. Obviously it is a casino. Apart from having 156 rooms, there was a casino complex that was put up at some expense.

**CHAIRMAN**—But that was always only inferred, wasn't it? There was no guarantee that it would open up again as a casino.

**Mr Herbert**—No. We went through a process by which we would advertise for expressions of interest, conduct a tender process, submit the names of successful parties to the Casino Surveillance Authority for a probity review to be conducted and, at the end of that process, select the best offer that met the criteria for the issue of a casino licence by the CSA. We thought that would get us the best return for all the creditors of the company. As it transpired, the offers by the interested parties that went through that process were so difficult to deal with and so uncertain that we concluded that we would obtain a better result for the company by totally aborting that tender process and just offering the assets for sale on a cash unconditional basis—in other words, on the basis that whoever bought the assets then applied to the government for a casino licence and took the risk of whether or not they passed that test. In fact, we ended up with a better financial outcome for the company by doing that than we would have had we gone ahead with an offer submitted by the parties that actually participated in the tender process.

**Senator CROSSIN**—What makes you come to the conclusion that you ended up with a better outcome financially?

**Mr Herbert**—We had offers from HGI and ComsWinfair—

**Mr Rocke**—And JLW, was it?

**Mr Herbert**—We really discounted HGI's offer fairly early on because it was subject to capital raising. It was extremely speculative. We could not have stuck around and waited for them to get that. It was highly uncertain.

**Mr Poelzl**—They pulled out anyway in January.

**Mr Herbert**—Yes. The offer that we got from ComsWinfair was for \$5.5 million. When they originally put in an expression of interest, they actually put it in at \$11.5 million.

**Senator CROSSIN**—We will get to that in a minute. There was an offer from ComsWinfair for \$5.5 million, but then you ended up selling it to Soft Star for only \$100,000 more. Is that correct?

**Mr Herbert**—We sold it for \$5.7 million, but—and this is the important difference—we sold it on a cash unconditional basis. So we did not take the risk that we had to enter into a contract which was then subject to the satisfaction of a large number of conditions that were totally beyond our control.

**Mr Rocke**—Including a six-month probity review plus a settlement date time. So we might have been looking at six to nine months with no guarantee of settlement, rather than the settlement we achieved a lot earlier.

**Mr SNOWDON**—Did you not give ComsWinfair a timetable which had a settlement of contract around August 2000?

**Mr Herbert**—Yes, but we had to interrupt that timetable for a number of reasons. We finally extended the period for the conducting of the due diligence phase of the period to 15 December, and ComsWinfair—to their credit—sent somebody to the island. They conducted a detailed review and they did a lot of work, so that process was extended. But I will come back to the point that I want to make. We deal with this in detail here in paragraph 7 and also in the other provisions of this submission. I want to try to explain the predicament that we were in.

**Senator CROSSIN**—Before you do that, I want to go back to what Mr Rocke said a moment ago about an extended six- or nine-month time line versus what I guess you are implying would have been an instant settlement and an instant outcome. But is it not so that ComsWinfair was highly likely to operate a casino, as opposed to Soft Star, who has now done nothing about that? And wasn't it ComsWinfair who in fact had the support of the creditors at the time?

**Mr Herbert**—No. Both of those statements are wrong.

**Mr SNOWDON**—What was the attitude of the committee of inspection to the ComsWinfair offer?

**Mr Herbert**—I want to go back a step and say something in response to the matter that you raised. I want to try to explain—since this is crucial to this whole question about ComsWinfair and the way they were dealt with and the irregularities in the tender process and all those sorts of things—what our predicament was in about December 1999. By December 1999, ComsWinfair had conducted their due diligence. We were really running with only two parties



at that stage and that was a great disappointment. The reasons for that we won't go into detail here. But first let me tell you that there had been a deterioration in a lot of conditions relating to the operating of casinos—the East Timor problem had arisen and the Indonesian authorities were acquiescing to the operation of casinos on mainland Indonesia. So a lot of the rationale for the establishment of the casino in Christmas Island started to become unravelled. There were not regular flights to the island. It became an extremely difficult financial proposition to establish a casino on the island at that time. The company, prior to being put on the market, had incurred substantial losses. So anybody looking at this had to grapple with some extremely onerous problems.

As a result of those problems, by December we had two parties we were running with: the first was ComsWinfair and the second was HGI—Hospitality and Gaming Investments. Their offer, however, depended upon a successful capital raising and there were all sorts of problems with that which I will not go into now because it is off the essential point.

When we eventually got an offer from ComsWinfair, it was for \$5.5 million. It was like a fire-sale value. It was extremely debatable that we could not have done it better. In fact, we did better by simply selling the assets than by accepting that offer. But, importantly, it was subject to a number of conditions. The first was that the government agree to a submission made by them with respect to a change in the casino gaming tax rate. They wanted major concessions by the government to establish a casino on Christmas Island. We had no control over that. Not only did we not have control of that but also it involved the department of territories and the Department of Finance and Administration. It was anybody's guess as to how long the process might take before the government finally agreed to submissions from ComsWinfair.

Secondly, they wanted the lease to be amended to their satisfaction. We had no control over that—that was a matter between the government and them. Thirdly, they wanted changes to the casino ordinance relating to the operation of the casino on the island, because they thought the terms of the ordinance at the time were onerous, because they were required to put in too many guards and those sorts of things, and they wanted the operational costs to come down.

Our problem in December was that we were running out of money. There was a two-phase process from there: first, the satisfaction of all these conditions and, second, the probity review. The government had told us that, where foreign companies were involved, the probity process may take up to six months. ComsWinfair was a company that was ultimately controlled by foreign interests, so we had the possibility of a six-month probity review and a preparatory period for the satisfaction of these conditions.

It may have taken nine months for this to happen, and they may have walked away at any time, because the government did not agree to something which they, at their sole discretion, could accept. We were running out of money in December 1998. Our concern was that we could go through the entire nine months, end up without an offer and then be in a position where we did not have the capacity to offer the assets to the market again because we were out of money.

**Senator CROSSIN**—Was that 1999 or 1998?

**CHAIRMAN**—It was December 1999.

**Mr Herbert**—Yes, it was December 1999 when these things started pressing down on us. We tried to get a discussion going between ourselves, the government and ComsWinfair to see if we could satisfy some of these conditions precedent that they had imposed. We had discussions with the minister's aid, Robert Reid, about trying to hasten the process. We tried to get the government to meet with us so that we could put a process in place with definite deadlines so we could knock over as many of these conditions as possible and then complete a contract with ComsWinfair on a reasonably certain basis. We thought that they would probably pass the probity review, but we did not know that.

**Senator CROSSIN**—But your time line says that you advised in January 2000 that ComsWinfair was the only acceptable tender. I assume you advised the creditors and the government.

**Mr Herbert**—Yes.

**Senator CROSSIN**—So a meeting of creditors decided to proceed with ComsWinfair?

**Mr Herbert**—It was not a meeting of the creditors; it was a meeting of the committee of inspection.

**Senator CROSSIN**—Your time line says 'meeting creditors'.

**Mr Herbert**—We did not have a meeting with creditors in January, but we had regular meetings of the committee of inspection at which we discussed the issue, including the problems that are spoken about at the moment.

**Mr SNOWDON**—Can we just go back for a minute. Who was at the committee of inspection meeting on 11 January 2000?

**Mr Herbert**—David McLane, Frank Woodmore, Paul Vaile and Derek Schapper.

**Mr SNOWDON**—So, effectively, they represented the major creditors outstanding?

**Mr Herbert**—No, they did not represent the major creditors. They represented some of the major creditors.

**Mr SNOWDON**—The employees?

**Mr Herbert**—They did not represent the employees. They represented a number of employees—perhaps three.

**Mr Poelzl**—It was based on proxies that the employees submitted at the creditors' meeting, and I do not know what the number was.

**Mr SNOWDON**—It does not matter; it is incidental to the argument. What I am trying to establish here—

**CHAIRMAN**—The answer is that they represented a number of employees. Is that right, Mr Herbert?

**Mr Herbert**—Correct.

**Mr SNOWDON**—I want to go back a couple of steps. We will return to where Trish was, because I think she has raised some points we need to explore further. You went through a process, there was correspondence between you and the minister, emails between you and the minister's office and correspondence between ComsWinfair and the minister about these conditions precedent?

**Mr Herbert**—Correct.

**Mr SNOWDON**—On the 27 January, ComsWinfair received a letter from the minister. In their submission to us this morning they said:

The essential lease and licence conditions of importance to our tender were largely satisfied by the Minister's letter of 27 January 2000.

**CHAIRMAN**—Can you identify the minister who sent the letter. Is it correct that it was Senator the Hon. Ian Macdonald?

**Mr SNOWDON**—I assume it was. The submission does not say.

**CHAIRMAN**—Is that how you understand it, Mr Herbert?

**Mr Herbert**—Certainly, although I have not had a chance to look at the submission and properly consider it.

**Mr SNOWDON**—There is one paragraph that is relevant, and the minister referred to is the Minister for Regional Services, Territories and Local Government. The submission says:

... were largely satisfied by the Minister's letter of 27 January 2000. We have no reason to believe that the outstanding issues would not have been resolved, or waived by ourselves, given the opportunity.

That raises significant questions. At what point did you start investigating the option of looking at others apart from the tenderers who had put in tenders?

**Mr Herbert**—It was around that time; it was around January 2000.

**Mr SNOWDON**—Wasn't it in December that you made it clear that you thought it possible that you needed to look elsewhere?

**Mr Herbert**—It may have been December. I said 'around that time'.

**Mr SNOWDON**—What I am getting at here is that it is difficult to comprehend how you could be going through a process with a set of people who presumably believed that you were dealing with them on the basis that they were tenderers—and, as of 11 January, presumably they

were seen to be the preferred tenderers—but that simultaneously there were negotiations going on with either you or others and another party who was not a tenderer.

**Mr Herbert**—I have tried to explain the reason for that. This is why—

**Mr SNOWDON**—I understand it, but I just want to make it very clear that I personally find it extremely worrying—and I hope it is not normal commercial practice, because if it is normal commercial practice we have a problem—that somehow or other you can be going through a tender process and, quite to the side of the tender process, you can also be talking about approaches from people who may have no conditions on their proposal.

**Mr Herbert**—Yes.

**Mr SNOWDON**—Let us go back a couple of steps. We have a situation where everyone—those who would have been going for expressions of interest and for the tender—would have had the impression, an understanding, a belief, that they would be looking at opening a resort and a casino.

**Mr Herbert**—Yes.

**Mr SNOWDON**—It would have been very clear—even though the lease may not require it. We do not know what the lease requires because we do not have it, but there is at least some question about the covenant on the original lease.

**Mr Herbert**—Yes.

**Mr SNOWDON**—We get to the position in December 1999-January 2000 where you are dealing with the committee of inspection. There is a discussion about who the preferred tenderer ought to be and, effectively, it is agreed that the preferred tenderer ought to be ComsWinfair—as I understand it?

**Mr Herbert**—Yes.

**Mr SNOWDON**—Simultaneously, there is a discussion going on with someone else. I would like to know exactly when in January discussions took place between you and Mr Kwon or Mr Kwon's representatives?

**Mr Herbert**—Firstly, let me comment on the appropriateness of that. One thing we had to do was to consider what would happen if we could not solve some of the problems that we were facing at that time. We understood that there was a process in train at that moment and that we could not do anything formally while that process was in train. We did not do anything formally until the tender process had been terminated—nor would it have been proper to do anything. We are not suggesting for a moment that it would be.

By the way, I would like to say that I think our position was extremely difficult. We had to consider various options and alternatives. Any suggestion that we acted in an improper way is one that I should refute very strongly. As I said when I tried to explain the position we were in

in December 1999, we had an extremely uncertain and difficult process going on. We did not know whether the conditions that ComsWinfair had specified were going to be satisfied. We also say here that, when we tried to have discussions with ComsWinfair, their attitude to these conditions was really quite adamant.

What we tried to do was to initiate a series of meetings with the government and ComsWinfair to see if we could knock these things over. They were not prepared to meet with the government and to try to remove these conditions until we had signed a letter of acceptance of their offer. Our predicament was that, if we had signed a contract at that stage, we would be tied into a process through which there was no certain outcome with respect to the sale. If we got locked in, we could run out of money. We were forced to consider that. It was not a remote possibility; it was a distinct possibility. Their conditions were phrased in such a way that they could only be met at their discretion. We had to consider alternative options. We would have been negligent had we not done that.

**Mr SNOWDON**—Did you inform ComsWinfair?

**Mr Rocke**—My understanding is that ComsWinfair offered \$5.5 million. We sold the property for \$5.7 million, so that is financially beneficial. The duty of a liquidator is to realise the maximum price available at the time an asset goes to market. A liquidator is not able to speculate on the outcome of a realisation process. That is why we got the Asia Pacific Space Centre. With regard to a committee of inspection, the committee of inspection offers comments to the liquidator in the conduct of the administration. However, the liquidator does not have to abide by or carry out the intentions or wishes of that committee.

**Mr Herbert**—I have a bit more on the point you are discussing. Generally, when we were having meetings with the committee of inspection around that time, we were discussing the dilemma that we faced. We had a small number of tenderers and there was a serious risk to the company. We were running out of money; we did not have a lot options at that point. If we had accepted the offer and the conditions were not satisfied to the discretion of ComsWinfair and they walked away, we could have been economically impaired. These matters were all discussed with the committee of inspection.

You refer to the meeting of the committee of inspection held on 11 January 2000, which was attended by me, Cliff and Marco, Frank Woodmore, Schapper, a representative from the Christmas Island Shire Council, Jo Boots, by teleconference, and Paul Vaile also by teleconference. The first matter discussed was the question of tenders received. What we discussed at that time was the problem that faced the company as a result of the conditions that were attached to the offer. One of the things that I made crystal clear to the committee of inspection was that none of the tenders were complying. We had constructed the process so that offers would be received on an unconditional basis but ComsWinfair's offer was highly conditional.

**Mr Rocke**—The only condition we were going to accept was subject to receiving a casino licence.

**Mr Herbert**—At the meeting, I said—and the minutes state this—that Herbert said that in any case a decision would have to be made and the tenderers would have to be informed as to

whether the tender would proceed. We spoke about the minister; we spoke about the processes and so on. We did not tell them at that meeting that we would be accepting this offer but what we did do was to discuss at length the difficulties that were presented to the company by the ComsWinfair offer.

**Senator CROSSIN**—If you have not seen the submission by ComsWinfair and these letters, perhaps I can give you a copy to have a read of.

**Mr Herbert**—I have a copy here.

**Senator CROSSIN**—If you go to the last page, Mr Mortleman refers to a letter that was received from the minister on 27 January. I think they have been led to believe that those conditions would have been met fairly easily and would have been satisfied, given the content of the minister's letters of 27 January. If you read the paragraph above that, he says that he believed, based on negotiations, that the value of the properties was closer to \$11.5 million, which, in fact, is what they had originally expressed interest in purchasing them for. On the one hand you are telling us that ComsWinfair had a large number of conditions that were making it almost impossible for you to deal with them, yet on the other hand we hear that they received a letter from the minister on 27 January saying that they believed they would be largely satisfied.

**Mr Herbert**—They never said that to us.

**Mr Rocke**—Could we have a copy of that letter?

**Senator CROSSIN**—I am assuming this is a copy of the minister's letter of 27 January to ComsWinfair.

**Mr SNOWDON**—There is a letter from the minister to Mr Herbert, dated 27 January.

**Mr Herbert**—The letter on 27 January refers mainly to issues concerning the casino tax rate that would apply. If you look at my submission at paragraph 3.10.1, we set out, incidentally, the sequence of events that occurred between us and ComsWinfair. It might give you some appreciation of the difficulties that we faced with their offer. If you go to paragraph (i), by 28 January, which is after the date that you referred to—

**Mr SNOWDON**—That is January 2000.

**Mr Herbert**—Correct. What was still up in the air was the whole question of the casino tax rate that ought to apply. ComsWinfair by that stage had made a submission to the government about concessions that it required with respect to the casino tax rate. The government was considering that but, prior to confirming whether it would accept that or not, the government wanted all other parties to the tender to be advised of the tax rate concessions that it was prepared to make. It was only prepared to agree to the submissions or to consider them further if all other parties were made aware of that, so the government wanted a level playing field. So in paragraph (i), we are saying:

A very important part of the Commonwealth's response to ComsWinfair's conditions was that, prior to granting any concessions in the Casino tax rate, the Commonwealth required that those parties expressing an interest be informed of the possible concessions to see whether the gaming tax concessions would induce them to tender.

Parties expressing interest included Burswood Casino, Crown Casino and so on. We then met with ComsWinfair on 2 February to discuss their position and the Commonwealth's response.

**Senator CROSSIN**—Mr Herbert, I want to get clear in my mind a number of these issues. You indicated earlier that it would be highly improper to talk to another tenderer before the tender process is terminated. Is that correct?

**Mr Herbert**—No, I did not say that. I said that it would be improper to enter into a formal process. I think it was necessary to think of options at the time we became aware that there were serious difficulties with respect to the offer that was submitted by ComsWinfair. Bear in mind that ComsWinfair's offer was non-compliant.

**Senator CROSSIN**—We have been through all of those difficulties.

**Mr Herbert**—We put in train a process under which offers would be submitted that were unconditional—barring the condition that a casino licence be issued by the government. ComsWinfair's offer was conditional on almost everything—so they had a non-complying offer.

**Senator CROSSIN**—We have been through that a number of times, and I will get to it in a moment. You started talking to Soft Star prior to the tender process being terminated; is that correct?

**Mr Herbert**—Formally terminated; that is correct. However, let me say that we had not received the complying offer at that stage. The status of the tender at that time was up in the air anyway.

**Senator CROSSIN**—The letter to you from the minister, dated 27 January, which I am assuming is the same letter that Mr Mortleman is referring to in the submission which we have been given today—

**Mr Herbert**—I do not know that that is a valid assumption.

**Mr SNOWDON**—It does not matter. Let us just go through this letter, because what he says here is quite important.

**Senator CROSSIN**—I think it is a valid assumption because they say—

**Mr Herbert**—The letter we have is about the casino.

**Senator CROSSIN**—That is right, and there is a statement here—

**Mr Rocke**—That letter is addressed to Mr Herbert, not to Mr Mortleman.

**Senator CROSSIN**—We will talk to ComsWinfair and I am sure they will suggest that the letter of 27 January to you is the letter that they are referring to in their submission.

**Mr Herbert**—Wasn't the letter of 27 January a letter to them?

**Senator CROSSIN**—What would lead you to believe that the letter of 27 January which the minister wrote to you—

**CHAIRMAN**—That is 27 January 2000?

**Senator CROSSIN**—That is correct—would be substantially different from the one he would have sent to them?

**Mr Herbert**—I do not think we need to assume that. I do not think you can assume that it is the same letter.

**Senator CROSSIN**—I put it to you that it is either a copy of the same letter or it is substantially the same.

**Mr Herbert**—That is speculation.

**Senator CROSSIN**—It may well be. Nevertheless, in relation to the casino licence fee and the minimum fee, the minister outlines a number of paragraphs and says at the end that he would be prepared to consider such an arrangement.

**Mr Herbert**—Yes.

**Senator CROSSIN**—He goes on to talk about a number of other matters and indicates that he is actually prepared to enter into negotiations. Under 'Casino operational matters' he says:

I would be prepared to consider reactivating this matter.

I put it to you that I believe the minister's words have led ComsWinfair to believe that the outstanding issues would have been resolved. What led you to a conclusion that that might not have been the case?

**Mr Herbert**—What I was trying to do during this period was to get a removal of the conditions so that I could proceed into a contract with some certainty because, after all, the basis on which the tender was originally conducted was that we receive unconditional offers. ComsWinfair was not prepared to remove any conditions, even at this stage. They may have reached—

**Senator CROSSIN**—Do you have some evidence of that, given the submission they have presented to us today?

**Mr Herbert**—Did you read my submission, at 3.10.1(i)(o)?



**Senator CROSSIN**—That is your submission and your writing but, given what Mr Mortleman has given to us today, that does not lead me to the conclusion that they were not prepared to enter into further negotiations with the minister about those outstanding conditions.

**Mr Herbert**—I tried very hard during this process to try to get the conditions removed so that we could enter into an unconditional contract. That is what we were trying to do. Had ComsWinfair been prepared to remove the conditions, I would have entered into a contract with them.

**Mr Rocke**—On 23 March ComsWinfair said they would consider a new offer if Mr Herbert was prepared to accept conditional offers. It has been said. They said that in writing on 23 March.

**Senator CROSSIN**—Let us go back to 27 January. Why was there not an attempt made then to further pursue the negotiations between the minister and ComsWinfair as a result of these letters?

**Mr Herbert**—There was an attempt made. That is what I was trying to do. I was trying to bring them together with the government to see whether their conditions could be removed. Had that happened, I would have entered into a contract with them. There is no question about that. At no stage did they say to me that they were prepared to remove their conditions, or even that they were entirely confident that they would be satisfied. Had they said they were confident that they would be satisfied, bear in mind that their conditions were such that they could only be satisfied at their discretion.

**Senator CROSSIN**—What date did you begin discussions with Soft Star?

**Mr Herbert**—Some time in January, I think.

**CHAIRMAN**—January 2000?

**Mr Herbert**—I think so, yes.

**Senator CROSSIN**—Have you got an idea of what time in January 2000? It seems to me—

**Mr Herbert**—There is a section in my submission that deals with alternatives. What does it seem to you?

**Senator CROSSIN**—In this letter of 27 January, the last paragraph says:

You asked whether the Commonwealth would consent to the assignment of the lease to the resort to APSC,

**Mr Herbert**—Yes.

**Senator CROSSIN**—I am assuming that that is in a letter or some kind of correspondence to the minister prior to 27 January.

**Mr Herbert**—Yes. I was certainly considering other options by this stage, for the reasons that I have given to you. I was not certain that the tender process could be completed and I was only prepared to enter into a contract if I had reasonable certainty that these conditions would be satisfied. A non-complying tender is a non-complying offer, and I was not going to leave the company exposed to the risk that ComsWinfair retained the discretion to accept or reject matters solely at their discretion, for the reasons I have outlined. I started thinking about options around about the time that I had serious doubts about whether all the conditions could be met.

**Mr Rocke**—We even tried to contact ComsWinfair, saying, ‘We have got this increase in the vicinity of \$6 million. Are you prepared to increase it?’ and they said no they were not unless we accepted a conditional tender. We tried all that.

**Mr SNOWDON**—When was your first understanding of the offer of \$5.5 million from Soft Star?

**Mr Rocke**—\$5.7 million.

**Mr SNOWDON**—No; these documents show their original submission was \$5.5 million and then it was up to \$5.7 million. When did they originally mention \$5.5 million?

**Mr Herbert**—In fact I think in that first discussion I had with them they indicated an offer of \$4.5 million.

**Mr SNOWDON**—Right. That is also in this submission.

**Mr Herbert**—I do not know the exact date that that discussion started, but I think it would have been about December-January when I was concerned about this condition issue with the ComsWinfair offer, as I have described.

**Senator CROSSIN**—So you might have started approaches to the APSC in December, now, as opposed to January?

**Mr Herbert**—Oh, look, I do not remember.

**Mr SNOWDON**—Well, this is quite germane. Let us understand this. You had an offer from ComsWinfair of \$11.5 million on 29 October 1999. Then on 15 December that offer was at \$5.6 million or thereabouts.

**Mr Herbert**—Yes.

**Mr SNOWDON**—Let us just ask a question about that. What was their rationale for reducing the offer?

**Mr Herbert**—It was stated. Their rationale for reducing the offer was that commercially it was an extremely risky proposition to invest on that because of the issues I have spoken about before: lack of flights to the island, the developments in East Timor and the deterioration of relations between Australia and Indonesia, and the opening of casinos on mainland Indonesia. I

tried to get them—incidentally—to increase their offer. Back to the point that you are making here, of when did I start thinking about other offers: I started thinking about other options after I received the ComsWinfair offer. I was surprised, firstly, at the reduction in their offer from the price that was originally indicated by them, of \$11.5 million, to \$5.5 million. I had serious doubts at that stage about whether I might not be able to do better just by selling the assets on a sort of fire sale basis. In addition to that, I was extremely concerned about the number and nature of the conditions that they imposed. So I started wondering. Remember that their offer was noncompliant and I had to make a decision about whether to continue with the tender process on the basis of those conditions or not.

**Mr SNOWDON**—I am sorry to labour this point, but it is difficult I think for novices like us to understand how this could possibly be. For your information, I am finding it difficult to understand how the government, for example, could contemplate acceding to the desire to have an unconditional sale to a person who may not want to open a casino when the tender process and the expressions of interest process were all presumed on the basis of a casino and operating resort. The figures demonstrate the potential for an income stream, which can be quite large, to the Commonwealth and the community via the operations of the casino. Now we get to the point where it is sold, it appears, to a company that has no real desire to open a casino or a resort, so the benefits which you say go to the creditors ultimately will not go to a substantial number of the creditors because there will be no operating casino or resort.

**Mr Herbert**—That is not a matter for me.

**Mr SNOWDON**—It may not be, but it is a matter for us and it is a matter for us to make comment about the way in which the government handles it.

**Mr Herbert**—Fair enough.

**Mr SNOWDON**—And I want to make the observation that, in that context, I just wonder whether or not, given your experience in these matters, you may not have been able to bludgeon more money out of ComsWinfair had they been aware that you were doing a side deal with someone else.

**Mr Herbert**—We had no reason to sell to Soft Star or any party in this. Our only concern was trying to maximise the sale process.

**Mr SNOWDON**—I appreciate that.

**Mr Herbert**—When we got an offer of \$5.5 million from ComsWinfair, the first thing we tried to do was get them to increase their offer. They were quite adamant that \$5.5 million was all they were prepared to offer because that was all it was worth, taking into account the commercial problems I have spoken about. That is documented in this submission. So they refused to increase their offer.

**Mr SNOWDON**—But they presumably would have made an assessment based on the returns they could expect to receive by investing in upgrading the resort and getting the casino functioning, and they would have put in their final offer what they thought was an appropriate business plan to give them a return at the end of the day.

**Mr Herbert**—Yes.

**Mr SNOWDON**—Are you aware if Mr Kwon had such a business plan?

**Mr Herbert**—I did not discuss that with him. I am aware that he did have a business plan, but I did not discuss it with him.

**Mr SNOWDON**—I do not know whether you have read the *Hansard* but he does not appear to have had any business plan in relation to this resort. I am interested to know how he could target his bid at \$5.5 million and get it at \$5.7 million, bearing in mind he has had no experience in the operation of resorts or casinos anywhere in the world, he has not involved himself with anyone in the process who is involved with casinos or resorts anywhere in the world and he says he goes to the island with his construction team and they make an assessment and give you a figure.

**Mr Herbert**—Yes.

**Mr SNOWDON**—Does that strike you as passing strange?

**Mr Herbert**—No, it does not.

**Mr SNOWDON**—In the context of this, given we have gone 12 months down the track of a tender process, I walk in the door and say, ‘Mate, I’ll offer you \$5.5 million. Are you prepared to accept it?’ ‘No, make it \$5.7 million and I’ll take it.’

**Mr Herbert**—He did not offer \$5.5 million. He first offered \$4.5 million. I think it is important to get this right. My consideration of alternatives started about the time that we received the ComsWinfair offer. As I said, after we saw the price which they were prepared to offer for the assets, we seriously questioned whether we could not do better just by selling the assets on the basis that the purchaser take on the risk themselves to take on the casino. When we first had discussions with David Kwon—and this is documented in the submission, too—we suggested to him, through Frank Woodmore, that the assets would be available at \$10 million. In my first discussion with him, he suggested that they would be prepared to offer \$4.5 million. How he found out, if indeed he found out, that ComsWinfair’s offer was \$5.5 million, I do not know.

**Mr SNOWDON**—He told us he found out. He told us he found out on Christmas Island.

**Mr Herbert**—Right. But, as I have said in this submission, we certainly did not tell him, and if it came to—

**CHAIRMAN**—Who is ‘he’ in this case?

**Mr Herbert**—David Kwon.

**Senator CROSSIN**—Who would have known that ComsWinfair had put in \$5.5 million?

**Mr Herbert**—All the members of the committee of inspection, including Dave McLane.

**Mr Rocke**—And Derek Schapper.

**Senator CROSSIN**—And the minister?

**Mr Herbert**—The minister certainly knew.

**Senator CROSSIN**—And Mr Woodmore?

**Mr Herbert**—Yes. Let me say just quickly, to try to disabuse that point that Mr Woodmore very much wanted the price to be considerably in excess of \$5.5 million: I went to a meeting with him to ASPC's offices at which we tried to get \$7.5 million. We both sweated blood to try to get the offer upgraded above that level and they were not going to get there. This is when we managed to get it to \$5.7 million. The other thing I would like to make clear at this stage is that we kept discussions going with all parties, including ComsWinfair, right up to the date that we signed the contract with ASPC.

**Mr SNOWDON**—At what point did you terminate the discussion? It was 4 February, wasn't it, that you wrote to ComsWinfair?

**Mr Rocke**—It was 23 March.

**Mr SNOWDON**—That was the last piece of correspondence.

**Mr Rocke**—Yes.

**Mr SNOWDON**—What happened between the end of February and 21 March?

**Mr Herbert**—Can I just clarify: firstly, what we did on 4 February was formally notify them that we would not be proceeding under the tender. We did not say that we were terminating discussions with them.

**Mr SNOWDON**—So what happened subsequently?

**Mr Herbert**—Subsequently we told them that we thought we could do better by selling the assets on an unconditional basis, and we tried to find out whether they were interested in participating in that.

**Mr SNOWDON**—Were you ever of the view that Mr Kwon knew of the sum offered by the preferred tenderers ComsWinfair?

**Mr Herbert**—No.

**Mr SNOWDON**—That was never a view you had?

**Mr Herbert**—No. Sorry, can I rephrase that? I certainly did not tell him.

**Mr SNOWDON**—I am not arguing that you did.

**Mr Herbert**—No, I know you are not. He may have found that out from some other source, yes. Of course, I suspected that he might have known the price from some other source. But I did not know that, and we certainly did not tell him. My interest was trying to get the best return for the company.

**Mr SNOWDON**—I appreciate that.

**CHAIRMAN**—You have no evidence whatsoever. Is that what you are saying, Mr Herbert?

**Mr Herbert**—He never said, ‘Look, I know the price.’ We thought obviously—

**CHAIRMAN**—And you have not had any subsequent evidence from the last conversation with him?

**Mr Herbert**—No.

**Mr SNOWDON**—But you have a view?

**Mr Herbert**—You said a bit earlier, didn’t you, that he admitted that he knew from someone on the island that there was an offer of \$5.5 million?

**Mr SNOWDON**—I did. We spoke to them in Canberra. When did Soft Star sign the contract to purchase the resort?

**Mr Herbert**—March 30.

**Mr SNOWDON**—Was it a cash sale or subject to a mortgage or other security against the property?

**Mr Herbert**—It was a cash sale, unconditional.

**Mr SNOWDON**—After the contract was signed, did Soft Star indicate any conditions or requirements additional to the contract before they would settle?

**Mr Herbert**—Yes, they did. They took issue with a couple of the terms of the contract. In fact, we had so much difficulty getting to settlement that at one stage I seriously thought that they were repudiating the contract.

**Mr SNOWDON**—So we had an unconditional contract which became conditional after it had been signed?

**Mr Herbert**—It did not become conditional. It was an unconditional contract; there was dispute as to some of the terms of the contract.

**Mr SNOWDON**—How was this difference over the conditions resolved?

**Mr Herbert**—There was a bit of a disagreement about some of the plant and equipment. We resolved that eventually by agreeing that various items that we thought had been excluded should be included, but the value was not material.

**Mr SNOWDON**—What about the question of the Commonwealth's interests in easements and the three issues which were going to be a precedent, from the Commonwealth's perspective, on the issue of the lease? What happened to those?

**Mr Herbert**—The minister agreed to assign the lease in the form that it existed previously.

**Mr SNOWDON**—So, even though the Commonwealth had conditions precedent which it applied to the tender process, it did not apply them to the sale of the property to Soft Star.

**Mr Herbert**—Correct. But, having said that—no, correct.

**Mr SNOWDON**—Which of the creditors have been paid out as a result of the sale?

**Mr Herbert**—None of the creditors have been paid—

**Mr Roche**—The Shire of Christmas Island have been paid out.

**CHAIRMAN**—Completely?

**Mr Roche**—And Christmas Island administration.

**CHAIRMAN**—Completely?

**Mr Poelzl**—Yes—well, the Shire of Christmas Island not completely. They have a small debt still outstanding.

**Mr Roche**—Dollars, isn't it?

**Mr Poelzl**—About 13 grand.

**CHAIRMAN**—That was 100c?

**Mr Herbert**—Yes.

**Mr Roche**—Yes, they are rates and taxes.

**Mr SNOWDON**—So where are we with the other creditors in terms of—

**Mr Herbert**—We are locked up in legal difficulties with one.

**Mr SNOWDON**—But it is likely, presumably, that at some time or other these creditors such as the employees will be paid out?

**Mr Herbert**—It is very likely. The directors since the beginning of this administration have tried to put every possible obstacle in our way. They were greatly aided when the High Court handed down the decision in the Wakim matter relating to the jurisdiction of the Federal Court in state matters. That really was the first time the directors had any reasonable basis from which to mount an attack. They still have an appeal in front of the High Court despite the fact that the High Court recently handed down a decision on a matter that was on this point, called the Emmanuel decision. That is covered in here too.

**Senator CROSSIN**—Is there an injunction against you in terms of paying out the other creditors?

**Mr Herbert**—No, there is not.

**Senator CROSSIN**—What is stopping you from paying those creditors?

**Mr Herbert**—Legal advice that, if I pay the creditors and the High Court finds in favour of this application by the directors, I will be personally liable for any amounts paid.

**Mr SNOWDON**—That is a reasonable excuse.

**CHAIRMAN**—Whose advice was that? Was that advice that you had sought?

**Mr Herbert**—That is right, from Clayton Utz. Various courts have made it quite clear on the way through that, given the nature of the application being made by the directors, if it is found that we are not validly appointed, which is essentially what the directors are arguing—

**Senator CROSSIN**—Which directors are you talking of?

**Mr Herbert**—Christmas Island—Sumampow.

**CHAIRMAN**—Could you make a copy of the advice from Clayton Utz available to the committee?

**Mr Herbert**—Yes, I think so.

**Senator CROSSIN**—Can I get this time line? You sold the resort to Soft Star and received the money from Soft Star?

**Mr Herbert**—No. That happened subsequently at settlement.

**Senator CROSSIN**—Has the settlement happened?

**Mr Herbert**—Sorry. We have sold and received the money from Soft Star. It is sitting in our account.

**Mr Roche**—Section 5 details the current position.



**Senator CROSSIN**—Subsequent to that, further action was taken by the directors of the original resort?

**Mr Rocke**—Yes. They have been taking actions all the way through.

**Mr Herbert**—Four days after we settled, the directors advised us that they were mounting a challenge in the High Court against the validity of our appointment.

**Senator CROSSIN**—I am aware of that.

**Mr Herbert**—Had we not settled, they would possibly have injuncted the whole process and it would have all been frozen. We were also concerned about that because, had that happened, we would have been in a very invidious position.

**Mr SNOWDON**—Can you confirm that, through December and January, you were having discussions with Soft Star or APSC? You had authority to do that from the Commonwealth? The Commonwealth said you could pursue a discussion?

**Mr Herbert**—We let the Commonwealth know that we were having discussions. We referred to a reference in their letter of 27 January to a question put to them by me previously as to whether they would be prepared to sign a lease to APSC.

**Mr SNOWDON**—But presumably there were discussions about the proposal from the Commonwealth's perspective to have the resort open as a resort and casino and for Mr Kwon to give undertakings to that effect?

**Mr Herbert**—The Commonwealth obviously was concerned about the future of the casino. We had meetings on the island with representatives from various bodies at which the minister said that he supported the sale as quickly as possible for the benefit of the economy.

**Mr SNOWDON**—I put it to you that, whether or not he made these observations to you, undertakings were given, because Soft Star released a press statement, the date of which is unknown—presumably around March or April whenever the purchase was finalised—indicating their intention to open up as a resort and casino. I presume that in the discussions either with you or separately with the Commonwealth those undertakings would have been given.

**Mr Herbert**—We were not concerned about undertakings ourselves. Our function was to sell the property at the best price.

**Mr SNOWDON**—It is possible that Mr Kwon had lengthy discussions and negotiated with the Commonwealth, while simultaneously having discussions with you?

**Mr Herbert**—It is possible.

**Mr SNOWDON**—So it is possible that Mr Kwon could have been led to believe that a range of matters could be dealt with on the basis of his unconditional purchase?

**Mr Herbert**—I can only comment on what I know. I do know that we had a meeting with the minister and with APSC prior to 30—

**CHAIRMAN**—The minister being Senator Macdonald?

**Mr Herbert**—Correct. The issue of the signing of the leases was discussed. We were still grappling with the question of the amendment to the leases as required by the government. It became as problematic with APSC as it had previously been with ComsWinfair. That matter was finally resolved by the minister agreeing to the assignment of the lease on its present terms without any issue about freehold title and so on. We were in on those discussions with them. Whether ComsWinfair had separate discussions with the government and whether they were related to the casino or other matters that ComsWinfair had on the island, I do not know because I was not a party to that.

**Mr SNOWDON**—When you originally embarked upon this course, did you have a figure in your mind as to what you expected to receive, and how did you formulate that figure?

**Mr Herbert**—On the basis of evaluations we received from Richard Ellis and Jones Lang Wootton. JLW's evaluations were, in fact, fairly pessimistic and not very far from the mark, as things actually transpired.

**Mr SNOWDON**—Did they say \$14 million or \$15 million?

**Mr Herbert**—No, they said \$4 million, \$4.5 million, \$5 million.

**Mr Rocke**—Richard Ellis came in at \$10 million and then revised it to \$5 million.

**Mr Herbert**—The problem with the assets—

**Mr SNOWDON**—In that case, the offer made by ComsWinfair was very close to the mark.

**Mr Herbert**—Yes. Had it been capable of being fulfilled, we would have accepted it. The problem with an asset of this sort is that the company had made substantial losses. The economics of it really were very difficult.

**Mr SNOWDON**—What was the cost of maintaining the property whilst you were in charge of it?

**Mr Herbert**—We say in this submission that maintaining the property cost something like \$40,000 a month. It was a very expensive process. The environment is fairly destructive. There was a lot of maintenance that had to occur on an ongoing basis.

**Mr Rocke**—Electricity is very expensive. When I first got up there on 4 August, the power had been cut off.

**CHAIRMAN**—That is 4 August 2000?

**Mr Rocke**—No, 1998. When I first got to the island the electricity was cut off. I had to go through quite extensive negotiations with the Christmas Island administration to get electricity put on, to the extent that Jeff had to personally guarantee payment—he had no ready realisable assets and no money. We had to do it to preserve the building.

**Mr Herbert**—As we said many times during this meeting, we had a lot of difficulty thinking through the economics of all of this. We seriously thought we could run out of money. Had we run out of money, we would have had no option but to abandon the property.

**CHAIRMAN**—Mr Herbert, you are bound by law not to incur or put the company further into debt, are you not, as the liquidator, or as the receiver?

**Mr Herbert**—If the liquidator has debts that he cannot cover, he can become personally liable for those.

**CHAIRMAN**—Are there any further questions?

**Senator CROSSIN**—No. Are you happy to take any further questions we might put to you on notice?

**Mr Herbert**—Yes, of course.

**CHAIRMAN**—Thank you very much for your appearance this morning, Mr Herbert, Mr Rocke and Mr Poelzl. If there are any matters on which we might need additional information, the secretary will write to you. You will be sent a copy of the transcript of your evidence to which you can make editorial corrections.

**Proceedings suspended from 10.55 a.m. to 11.09 a.m.**

**WOODMORE, Mr Francis Philip, Managing Director, Mercator Property Consultants Pty Ltd**

**CHAIRMAN**—Although the committee does not require witnesses to give evidence under oath, you should understand that these hearings are legal proceedings of parliament and warrant the same respect as proceedings of the parliament itself. Giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Are there any corrections or amendments you would like to make to your submissions, Mr Woodmore?

**Mr Woodmore**—No. I am happy with them as they stand, Mr Chairman.

**CHAIRMAN**—Thank you. The committee prefers that evidence be taken in public, but if you wish to give confidential evidence to the committee you may request that the hearings be held in camera and the committee will consider your particular request. Before we ask you some questions, do you wish to make an opening statement?

**Mr Woodmore**—I will very briefly explain what motivated me to appear, if I may. When I first heard of this committee it did not seem to have any great relevance, although, having heard the cut and thrust of the questions, I can now begin to understand what the angles are. I was somewhat disappointed, to put it mildly, at the allegations that appeared in the *Hansard* that were issued by another witness, Dave McLane, in which he claimed that the tender was a sham and a facade conducted for my benefit. I have responded to those in written form. I am happy to answer any questions or to discuss any part of those issues. The line of the allegations and the questions that have followed through this inquiry to date appear to me to be very similar to those pursued by Mr Sumampow's lawyers when I took him to the Supreme Court and successfully sued for specific performance of the contract.

**CHAIRMAN**—What contract was that?

**Mr Woodmore**—It was a contract in which he had agreed to purchase Mercator's shares in order to sell half of the company to another party. He consistently failed to provide the funds at the successive settlements that we continued to extend to him. Ultimately, I had no choice other than to take him to court. I would also add to this opening comment the fact that the resort was exceptionally successful in its first two years of operation. Its demise was brought about entirely by the attitude of the major shareholder, who wanted to gain control of the casino for himself.

**CHAIRMAN**—Who was the major shareholder in this case?

**Mr Woodmore**—Robby Sumampow. During the ensuing three years the place literally fell apart, and the details are given in my submission. My comments really are in reference to the submission. To express an opinion—I heard the latter half of the presentation of the liquidator a short while ago—I was always hopeful that the casino would be a viable proposition. Obviously it would have got a better price if it had been a viable proposition. In my opinion, as things now stand, I do not think it is a viable proposition. I was the founder of the original one and did the entire feasibility study on the original one. I think you would find that there is nobody in the Australian casino industry who today would agree that that casino is a viable proposition. I think everyone would agree that it is not a viable proposition.

**CHAIRMAN**—It is not operating, is it?

**Mr Woodmore**—But the reason that it is not operating is perhaps proof that it is not going to operate.

**CHAIRMAN**—I thought it was self-evident.

**Mr Woodmore**—The big problem is drawing the market out of Indonesia. It is very much dependent upon the Indonesian market. The only thing that is ever going to save it will be another project on Christmas Island, such as that which is currently under consideration. It remains to be seen whether that gets off the ground. If it does, I think Mr Kwon will have brought himself a very good deal because, as part of his project, he will be able to deliver air services which will generate traffic for the hotel and, on the back of that, it would then be economically feasible to bring in gaming customers from other parts of Asia. The volume from other parts of Asia is not sufficient to support a dedicated air service, but they certainly could be brought in on an ad hoc basis if there were a regular schedule from, say, Singapore or somewhere like that. I think getting business out of Indonesia now is almost a lost cause, given the politics of Indonesia and the difficulties that Chinese Indonesians would have in departing for what is obviously a gambling destination on Christmas Island.

Looking back on the events that have occurred—and, of course, I understand that you have other issues to consider—from the creditors' point of view, the outcome is disappointing but it is about the best that could ever have arisen simply because it puts the liquidator in cash and puts the full wages there for the staff, so none of the staff are disadvantaged in any way. The only people who will suffer are the unsecured creditors, including my company. We are severely disadvantaged by the low sale price.

**CHAIRMAN**—Do you think another casino or this resort will ever open again as a bona fide casino?

**Mr Woodmore**—I think it would only open again if something happens on Christmas Island that creates regular air services from Asia.

**CHAIRMAN**—When you say Asia, you obviously include Indonesia.

**Mr Woodmore**—Indonesia would be helpful, but I really think there will be problems in boarding passengers at Indonesia who are clearly clients for a gaming facility.

**CHAIRMAN**—So you think diversifying the resort in the way that has happened is not necessarily bad for Christmas Island?

**Mr Woodmore**—I think it is important. In fact, when I first put the feasibility study together, the analysis showed that we were going to get gaming customers on the weekend from Indonesia and the customers midweek would be essentially back loaded—that is, they would be carried at a lower cost on the flights that were effectively subsidised by the casino operations and they would be general tourists. Unfortunately, Sumampow did not agree with that and, as the figures showed, during the week the resort was very largely empty. He could not understand that you could fly someone on an aircraft at a cost of a ticket that was below your flying cost per

seat and generate a profit as a result of it. He did not understand that system, and in two years I could never make him understand it.

**CHAIRMAN**—Have you any idea what the resort would have been worth had it been sold as a going concern with an operating licence?

**Mr Woodmore**—Yes. If it had been operating at the time, I think it would have sold for about \$30 million. Those were the sorts of figures that were first bounced around by the parties who were interested in expressions of interest. People who were interested used to ring me and say, ‘We’re thinking of putting in a bid on this. What do you reckon about 15 million?’ Of course I would be very negative about prices like that. The highest price that was ever suggested was \$32 million. None of those parties in the end ever put forward an offer of any sort.

**Senator CROSSIN**—Mr Woodmore, let us go back to July-August 1998 when Mr Alex Somlyay was then the minister for the territory. Do you believe it would have been possible for the Commonwealth to have taken over the casino licence?

**Mr Woodmore**—No. Under the casino ordinance, the casino was already operating under an administrator who had been appointed by a previous minister for territories, Warwick Smith. Because the casino had fallen into a financial crisis at that point, the administrator/casino operator resigned and left the island, leaving the casino without any means of legally continuing to trade. So for the Commonwealth to have taken it over as an operating system, it would have had to have funded the casino and entered into an area that the Commonwealth does not normally enter into. Imagine the Commonwealth owning a casino; it could have difficulties.

**Senator CROSSIN**—Could I just take you to some of the aspects in your submission? On page 6 you talk about the fact that you believe you would have been able to obtain a better price if freehold title had been granted. When did you first express that view and whom did you express it to?

**Mr Woodmore**—I first drew it to the attention of the liquidator. If I can go back one step further: my intention in putting in a receiver was to have an independent third party gain control over the management of what was a rapidly deteriorating investment from our point of view. We owned 10 per cent of the company that was going down the tube and we had to take some action, and the only way was to apply to put in a receiver. As you saw from my submission, the receiver was not able to put anything together; the receiver’s role in that situation was more like a doctor, as distinct from a liquidator who is more of an undertaker. The last thing I wanted to see was an undertaker take over.

Once the liquidator had been appointed by the court and taken control, it was one and the same party. That was the court’s decision, not mine. I knew the assets were to be sold, so I immediately raised with the liquidator something I had been trying to get the board of CIR to negotiate for a long time. The benefit in getting a freehold title was that the advantages of getting finance against it are much more readily available. I thought that it would also be an opportunity. It should be a win-win situation. The Commonwealth could also win in this insofar as there were a number of areas, such as the water supply, which were on the title and under the control of the resort company. Over the years that had become a very difficult problem, because Sumampow’s people often failed to provide the money to maintain the service, and in fact the

water supply, on a few occasions when it was urgently needed, failed. That water supply is not for the resort solely; it was for part of the island's services. So I thought that if areas such as the water supply, a road called Linkwater Road and an area of forest were excised from the title, that would be an attractive deal for the Commonwealth to allow it to convert to freehold with a significantly reduced area of land but still with land to expand the resort in the future.

**Senator CROSSIN**—Do you believe there would have been significantly more people who would have put in a tender if the land had been converted to freehold?

**Mr Woodmore**—There would have been more; I do not know about significant being the qualifier. But certainly I think it would have been helpful had it been converted to freehold.

**Senator CROSSIN**—Why is that? Was it because there were companies who were interested in purchasing the land but not necessarily being restricted to operating a casino?

**Mr Woodmore**—I do not think that was the case. Everyone that I spoke to was interested in running a casino. The casino was the prize; it was the jewel in the crown. The advantage of having a freehold title would have been that it would have enabled any company buying it to have subdivided off the land subsequently and sold it off into different ownerships or syndicated it off. One company, for example, was looking at recouping the cost of the hotel, which was a major part of the investment. The money was in the casino, not in the hotel. They intended to sell off the hotel in the form of strata title units. That can only be done with a freehold title. Banks also prefer freehold titles in their various forms. In a remote location they are particularly leery of a leasehold title.

**Senator CROSSIN**—I understand you were responsible for introducing Winfair to Coms21. Is that correct?

**Mr Woodmore**—I was contacted by a company called Global in the United States. That came through an acquaintance of mine who emailed me and said he had heard what was happening and he had these people. I responded. I emailed the party concerned. Subsequently that unfolded to be a group called Global, which owned an air service based in Singapore and a group of hotels in Canada and the Bahamas or somewhere in that region, including two casinos. I had email correspondence with them. I put them in touch with the agents and stepped aside. I was careful not to get too close to any of the buyers because I knew that this was the sort of thing that Sumampow could use in a court to try and discredit me and my actions in putting in a receiver.

**Senator CROSSIN**—You also introduced Mr Kwon to the liquidators?

**Mr Woodmore**—No. I introduced Kwon to the Global group, and they presumably had some discussions. Bear in mind that I have got in my mind that Global are potential buyers for the resort at a price that we had bounced around of about \$30 million, and I thought, 'That's great: everybody is going to be paid and I will be paid in full and it is going to look good.' The motivation in introducing them to Kwon was to convince them that there were projects for Christmas Island other than just a resort that they had to start up from scratch again and rebirth. I contacted Kwon and said, 'Here's a chance for you to do a deal on hotels. You could even

become an investor.’ So I encouraged him to that view, but in the end apparently nothing transpired.

I also introduced Rodger Mortleman to the equation, too. Rodger Mortleman was a director of Casinos Austria International and that is how I first met him. In fact, he and I negotiated the original contract that brought Casinos Austria International into the management role of the casino. As I said, in the casino industry it is a bit like a circus: everybody knows all the other performers, even though they are all around the world—they move a lot; they are very mobile. The word gets around and there is a heck of a lot of cross-pollination in what goes on.

**Senator CROSSIN**—Why did you call Mr Kwon and suggest he make an offer of not less than \$10 million?

**Mr Woodmore**—That was after the tenders had closed and no tenders had been received so there was a situation where there were no buyers.

**Senator CROSSIN**—What months and years are we talking about there

**Mr Woodmore**—I do not know. It was immediately following the closure of the tenders. Whenever the date was that the tenders closed, the liquidator contacted me, as a member of the committee, and said, ‘There are no conforming tenders here.’ I then got on the telephone, the fax and the email and started going around everyone. Kwon was not the only one; there were dozens of people that I contacted, including the people that I had spoken to previously who had expressed interest and had not for some reason submitted any sort of a bid at all.

**Senator CROSSIN**—Do you know when that would have been because, according to the time line we have been given by the liquidator, in fact there was never a case when there were no tenders; that back in March of 1999 there were six formal and two informal expressions of interest, all invited to tender. And we know that, out of those, three in fact came forward. We heard the liquidator tell us this morning that right up until the day they signed the contract with Soft Star they were still talking to Coms21.

**Mr Woodmore**—Perhaps we are confusing the terms here. A tender is of course an offer that is made pursuant to a tender that is opened to the public. When the date for the tenders to close had passed and no tenders had been received, the tender process has come to an end, and at that point—I do not know but I am sure it is documented there by the liquidator—

**Senator CROSSIN**—That is what I was hoping you might have been able to—

**Mr Woodmore**—I really do not know.

**Senator CROSSIN**—They suggested to us this morning they only started to talk to Mr David Kwon as late as January 2000.

**Mr Woodmore**—I really do not remember.



**Senator CROSSIN**—So is it your understanding that the liquidator might have been speaking to Mr Kwon well before that?

**Mr Woodmore**—No. I do not know when Mr Herbert was talking to Mr Kwon but I know when I was speaking to Mr Kwon—and that was after the final date, whatever that final date was, because the tenders had been extended a couple of times due to the frustrations of the intervention of Sumampow's legal process. I know that tenders at one stage were put into limbo and then, ultimately, a date was set. Whatever that date was when finally the curtain was drawn, that is when I started to get motivated because I was worried that I was not going to get paid in full, and that has proven to be the case.

**Senator CROSSIN**—Mr Kwon admitted to us that he knew from the island what the tender had been from ComsWinfair.

**Mr Woodmore**—That was news to me. I heard that when I sat down just a moment ago.

**Mr SNOWDON**—Allow me to intervene and correct that. That was in fact my assertion. The minutes of the meeting do not establish that at all.

**Senator CROSSIN**—It is in *Hansard*.

**Mr SNOWDON**—We need to go to *Hansard* at page 46 for the record of that meeting, Mr Chairman, to clarify that Mr Kwon in fact said, in relation to the price, that he first heard it from me at that hearing.

**Senator CROSSIN**—Mr Woodmore, have you any idea how Mr Kwon might have been able to put in a bid that was only \$200,000 more than Coms21?

**Mr Woodmore**—As I understand the process—I have heard it here again and it is what I understood previously—Mr Kwon's original bid was about \$4½ million. We should not call that a bid. It is an offer because it was subsequent to the tenders. That was just off the planet. When I had been speaking with him, I had encouraged him to the view that the liquidator was motivated to sell the property and that, if he could come in with an offer in the vicinity of \$12 million or thereabouts, it might go. He then said, 'How would \$10 million go?' I said, 'Try it.' It was just a matter of encouraging him.

However, given Mr Kwon's negotiating disposition, there is a possibility if not a probability that, in his mind, he would have immediately halved that figure and come in expecting to pick it up at \$5 million. That is an attitude that he and many other people that I have dealt with in Asia display in their negotiating standards. It is normal. Fifty per cent off the asking price is a normal opening bid. So it may well be that he had in his mind that he could get it for \$5 million because I had suggested maybe \$10 million. For that I am kicking myself. I was shocked when I heard—and it has now been corrected—that he had somehow got the price, because that would have been in nobody's best interest, I would have thought.

**Senator CROSSIN**—Do you think it fairly unusual, though, that he ends up buying the property for only \$200,000 more than Coms21? Do you think it is by calculation or coincidence?

**Mr Woodmore**—No, not at all. If a person is selling a house and they know they have a buyer for their house at \$200,000 and they want \$230,000 for it, and they are able to talk someone else up from \$180,000 to \$210,000, you could put the same hypothesis there. It is the outcome of a negotiating process.

**Senator CROSSIN**—So who do you think might have informed Mr Kwon that the Coms21 bid was \$5.5 million?

**Mr Woodmore**—I do not think anyone would have informed him. We have just heard that they did not hear. I cannot imagine anyone telling him and I cannot see why anyone would want to tell him. Certainly, if there is a rumour that he acquired that information on Christmas Island, there is only one suspect on Christmas Island who would have known, to my knowledge. I am sure Coms21 would not have told him.

**Senator CROSSIN**—We heard from the liquidator this morning that all of the creditors, including the minister—

**Mr Woodmore**—Not the creditors, the creditors committee. The committee was sworn to secrecy. If any member of the creditors committee leaked that information, I would be in a position to sue them for damages and so would all the other creditors, because they would have broken a confidence which possibly resulted in a lower price for the resort.

**Senator CROSSIN**—So the Coms21 bid of \$5.5 million is not a bid you knew about prior to the sale of the casino?

**Mr Woodmore**—They did not make a bid. They negotiated subsequently. I am sorry; are you talking Coms21?

**Senator CROSSIN**—Coms21 put in an offer of \$5.5 million. When were you made aware that that was an offer they had made?

**Mr Woodmore**—Not until the tenders had closed and the liquidator was going through the results with the members of the committee. That was the first time I heard about it and that offer, to my mind, was way below what I wanted to achieve.

**Senator CROSSIN**—At that stage that offer did not become a confidential matter?

**Mr Woodmore**—Confidential to the committee?

**Senator CROSSIN**—Are you a member of that committee?

**Mr Woodmore**—Yes, I am. The members of the committee consist of me; Dave McLane, who was then on the committee; Derek Schapper—

**Senator CROSSIN**—We have a list of those.

**Mr Woodmore**—and a person representing National Jet Systems. That is it.

**CHAIRMAN**—That is the creditors committee?

**Mr Woodmore**—Yes.

**Senator CROSSIN**—What I am trying to explore is this: I find it more than a coincidence that we have Coms21 putting in a bid of \$5.5 million and then less than two months later we have an offer by Soft Star of \$5.7 million unconditionally and it is snapped up. Why not \$6 million, or \$5.6 million, or \$5.5 million? It seems quite clever—and I think not a coincidence—that it is just a little bit more than the Coms21 offer.

**Mr Woodmore**—No. With respect, I think that is not the process that is normally followed in negotiations. The liquidator had me on one side telling him that I would not want to see it sold for a price which failed to achieve the full payment that was due to Mercator. To achieve that he had to get \$8 million or thereabouts. So I am pushing very hard on one side. I am unaware of the day-to-day negotiations that are going on with Kwon. But in the end it is his call—he has the legal right. I checked with my own lawyers on this point. There was nothing we could do that would have prevented him from accepting that offer. But, as I have alluded to in the home sale example, people who have an offer of one amount of money here will eventually negotiate something that is a little better.

Kwon is a very difficult person to deal with. I sat in on one series of negotiations with the liquidator in Sydney—I accompanied him over there on our way to see the territories department in Canberra—and we talked to Kwon. We also talked to Rodger Mortleman. Rodger Mortleman made it absolutely crystal clear that he would not increase his offer. In fact, he was quite angry that anyone would suggest that he should increase his offer. He made it clear that if the price was not right they were out—they were not interested in proceeding any further. Their offer was fraught with a number of very complicated issues that had to be sorted out by the minister. Since at that point we had not even got a freehold title—and I figured it was going to be 100 years before that was sorted out—it was an open-ended negotiating time frame on the Coms21 offer.

Kwon, however, at that point had made an offer of \$4.5 million—not on paper, just verbally—which was totally unacceptable. We sat in his office and tried to get a better offer out of them, and it was impossible. He would go up in increments of \$50, but he might hint at \$100 and then drop back another \$50—extremely difficult to deal with in the negotiating sense. After that, I had no further dealings in those negotiations, other than to push the liquidator to try to get a better price. I asked him not to hasten his negotiations with Kwon because I felt I could find other buyers. I went around the place and spoke to the agents, of course, to motivate them again. The agents had dropped their bundle—they were getting a commission no matter what. Having been an agent for many years myself, I know the way they go. There is a commission sitting there, and they are on to the next job.

**Senator CROSSIN**—What amount of money is your company owed as a result of this?

**Mr Woodmore**—We will get back perhaps \$1.8 million out of a debt which, with interest accrued today, is closer to \$5 million. We are greatly disadvantaged by that outcome. It gives me no joy to see the place just festering away there. When Kwon bought the property I asked him if he would be interested in my bringing in some people to help kick-start the casino. These

were private discussions with him that I am happy to discuss here, but I would not want it on the record. Is it possible for me to advise you of some of those discussions that I had or introductions that I made? They are commercial in confidence. I would not want it known that certain casinos expressed—

**CHAIRMAN**—If they are commercial in confidence we could go in camera. You could give evidence to the committee on that basis.

**Mr Woodmore**—It is only a couple of names I wanted to drop.

**CHAIRMAN**—How long would that take?

**Mr Woodmore**—About one minute. I would not want those companies reading about this one day in the *Hansard*.

**CHAIRMAN**—Perhaps, just prior to concluding, you might care to go in camera and we will ensure that the correct privacy provisions relating to in-camera evidence are explained to you and others.

**Mr Woodmore**—It is only to show that Kwon appeared to be interested in starting up the casino early. In fact he was happy for me to introduce him to parties who would be interested in starting up the casino.

**CHAIRMAN**—And in camera you would give us the names of these parties?

**Mr Woodmore**—If you wish me to divulge the names I can do so in camera.

**CHAIRMAN**—We will do that just prior to concluding.

**Mr Woodmore**—They were reputable operators.

**Senator CROSSIN**—I might pursue further questions about that statement about Mr Kwon's intention and the casino in a minute. Do you think Sumampow would have taken the High Court action he has taken now if, in fact, Coms21 had been awarded the tender?

**Mr Woodmore**—That assumes there would be some sort of connection or arrangement between Coms21 and Sumampow. I do not know if that existed; I would be very surprised if it did. I do know that Mortleman had had some discussions with Sumampow, so it is possible that there was something there in the background, but I cannot interpret Mr Sumampow's actions or motives other than the fact that he is frustrated with what has happened because for once he has not got what he expected to get.

**Senator CROSSIN**—So let us just go back a bit. You say Mr Kwon expressed an interest early in the piece in operating a casino.

**Mr Woodmore**—After he bought the property.

**Senator CROSSIN**—One year on and we still have no application for a licence.

**Mr Woodmore**—Yes. Incidentally, I should say that I made no representations to him about the viability of the casino as it now stands. But when the transaction was published in the paper through the network of casino people various parties approached me. I contacted Kwon and asked him if he was interested in starting up the casino. He said, ‘Yes, I am always interested in getting something started and, if you can help me, I can put you on the board,’ and all sorts of things. There was a sort of encouragement there. But none of the parties that I introduced him to were able to get very far in their negotiations because his terms and their terms were considerably at odds, so the expectations on his part were not realised by their commercial mindsets. One which consistently came through was the fact that he had to fund approximately \$10 million to kick-start the casino. To get the property up and running to the requisite standard he would have had to spend approximately \$4 million. That is a price which a local builder on Christmas Island told me he had quoted on the job. On top of that, there was at least \$6 million in working capital that they needed to run the casino. I think that might have been a surprise to Mr Kwon.

**Mr SNOWDON**—I need to actually declare an interest before I ask a question of Mr Woodmore. Mr Woodmore has been a long-term associate of mine. I have known him since I think 1987. At one stage Mr Woodmore contributed to one of my election campaigns. I just want to correct one matter on the public record in terms of Mr Woodmore’s submission. Mr Woodmore says that I introduced former minister Gerry Hand to Mr Sumampow. That is not correct.

**Mr Woodmore**—I am sorry; I thought you had. It is by the bye, anyhow.

**Mr SNOWDON**—I wanted to formally put that on the record. But, having made that statement, I just want to ask a couple of questions. I am interested in this discussion because the concern that I have as the member for the Northern Territory—in which Christmas Island sits, as you know—is for the economic growth of the community. Over the years we have had discussions about these and other subjects. I am interested in the discussion you had with Mr Kwon after he purchased the property without opening the casino. When you had the discussions with Mr Kwon in Sydney about the purchase price, was there any discussion by Mr Kwon about the costs involved in getting a resort and casino operating?

**Mr Woodmore**—No.

**Mr SNOWDON**—The reason I ask that question is that, when Mr Kwon spoke to us in Canberra and was asked how he determined the price of the bid, he said:

We calculated, ourselves, the construction value, and then that is why we calculated and put a price to the liquidator.

You and I both know that the construction value of that resort is in excess of \$60 million.

**Mr Woodmore**—The main buildings cost \$38 million and the rest is in the infrastructure and equipment.

**CHAIRMAN**—The fitting out.

**Mr SNOWDON**—To pursue this, do you believe that Mr Kwon had any idea at all what it would cost to get the resort up and functioning and a casino operating, prior to your discussion with him after he—

**Mr Woodmore**—I really do not know. It is an area that I did not want to get into with him because, if he had asked me and I had told him, he may not have wanted to buy it at all.

**Mr SNOWDON**—I appreciate that. I would like to ask the committee secretariat about a press release from Soft Star. There is no date. That does not help me very much, does it? Presumably at the time that the purchase was made, there was a press release announcing Soft Star's intention to open the resort.

**CHAIRMAN**—That was in May 1999 or 2000.

**Mr SNOWDON**—It would have been in 2000—whether it was May or March, whenever the deal was concluded, who knows? But there is nothing on that press release to indicate a time. What is exercising my mind is that there was a valid expectation from the community, given preceding matters, that this was going to be sold—first, expressions of interests sought and then tendered for as a resort complex, which included a casino. No undertakings were given about a casino licence; only that a potential purchaser would have the ability to apply for a licence because it was an operating casino. So it is very clear to all and sundry that what was being hoped for here was that, as you pointed out, someone would come to run the resort and develop the casino. Indeed, in their proposals ComsWinfair said that they wanted to do it slightly differently. Effectively, they wanted to run a boutique casino around the resort—scale down the resort and get the place up and running, which I would have thought would be fairly sensible.

So you can see why people like me and, indeed, the community have expressed concern—and I understand the issue of the creditors; let me make that very clear—that we have now gone down the path of going outside of the tender process, despite all the machinations that occurred during that process, to do a deal with someone who, from experience, has no current intention of opening the resort or the casino as a resort or a casino. So you can understand why there is some concern by at least some of us about the process, why we are asking questions about the way in which Mr Kwon got involved and what he was led to believe would be the outcome of his discussions and any offer he might make.

You mentioned the issue of freehold title. Because I do not have a copy, can you inform me of the contents of the agreement between the Commonwealth, the Christmas Island Resort Pty Ltd, you—F.P. Woodmore Pty Ltd—and Selected Equities Ltd on 4 June 1987?

**Mr Woodmore**—Yes, I will try to stretch my mind back. Incidentally, F.P. Woodmore Pty Ltd is now called Mercator Property Consultants—that is one and the same company. That agreement allocated the first land title ever issued on Christmas Island with the entitlement to construct a hotel-resort and a casino, subject to a whole range of preconditions of development work and so forth.

**Mr SNOWDON**—So it was a development lease?

**Mr Woodmore**—It was a development lease which was satisfied upon completion of the development; therefore, in my view it became a standard lease.

**Mr SNOWDON**—But it had conditions. The condition of the lease was that you establish a casino and resort?

**Mr Woodmore**—Yes.

**Mr SNOWDON**—You are aware of the machinations of the debates that have taken place over the two years about land use planning on Christmas Island. You are certainly aware of the debates that took place about whether or not there should be commercial leases given as freehold.

**Mr Woodmore**—Yes.

**Mr SNOWDON**—What is your current knowledge of where land use planning is at on Christmas Island?

**Mr Woodmore**—I do not know. I have been out of Christmas Island for two years now. I am not up to date.

**Mr SNOWDON**—But are you aware of whether there is a land use plan?

**Mr Woodmore**—I am not aware of one.

**Mr SNOWDON**—How much land was involved in the original parcel?

**Mr Woodmore**—I think it was 42½ hectares.

**Mr SNOWDON**—For the benefit of the committee, that land is difficult to access—

**Mr Woodmore**—Yes, it has very steep terrain with a series of cliffs. Only about one-quarter of it is really useable.

**Mr SNOWDON**—And it has access to the main water point on the island?

**Mr Woodmore**—Yes.

**Mr SNOWDON**—So it is strategically a very important piece of land.

**Mr Woodmore**—Yes.

**Mr SNOWDON**—Could you see how people might want to ensure that the Commonwealth or the current lessor had a continuing interest in the way that land was used?

**Mr Woodmore**—Yes. It would be reasonable for the community to be concerned about that.

**Mr SNOWDON**—Can you see why the community might be concerned about freeholding the lease?

**Mr Woodmore**—Do you mean in a negative way?

**Mr SNOWDON**—Yes. I am not arguing the point here; I just want to—

**Mr Woodmore**—I do not know that all of the community would have that concern. I think some would see the benefits outweighing the disadvantages of that.

**Mr SNOWDON**—While conscious of your discussion earlier about leasehold and freehold—I think you probably missed the discussion we had with the liquidator about that very issue—

**Mr Woodmore**—Yes, I did.

**Mr SNOWDON**—He put a slightly different perspective on it. You would be aware that in Canberra all land is leasehold, wouldn't you?

**Mr Woodmore**—Yes.

**Mr SNOWDON**—It does not seem to be a bar to economic development. So is not necessarily true that freehold provides you with something more than leasehold.

**Mr Woodmore**—Yes, except that people think differently in Canberra. WA is very much freehold orientated and the banks here are very much freehold minded. Once you combine the doubts the banks have about leasehold land with a remote location such as Christmas Island, and throw into the equation in a casino which depends on Indonesia, you are not going to get much money out of them.

**Mr SNOWDON**—What was your top end hope? Was it to receive \$20 million if you could?

**Mr Woodmore**—Realistically, if we had achieved \$20 million or \$25 million it would have been a good outcome. Probably somebody putting that kind of money in would have done their homework and would have been very serious about getting the thing started.

**Mr SNOWDON**—Can I just confirm something for the record? Again I refer to the meeting we had in Canberra and the discussions we had with Mr Kwon. In that same discussion where we asked about the value that he placed on the property, I asked him:

What led you to time your proposal when you did? How did you become aware that the tender was—

Mr Kwon said:

We heard.

When I asked:



How did you hear?

He said:

Through the island.

Earlier I think you said you rang him up. Did you ring Mr Kwon?

**Mr Woodmore**—Yes, I did. I rang Mr Kwon directly, essentially to ask him why he did not bid, to let him know that offers might succeed and to encourage him to go for it.

**Mr SNOWDON**—Can you put an approximate time on that? Was it November or December?

**Mr Woodmore**—It was perhaps at the most a week from the day on which the tenders closed.

**Mr SNOWDON**—That was, I think from memory, early December.

**Mr Woodmore**—I really do not know. It is something that you could get from the liquidator. It would be published; it would be in the public record.

**Mr SNOWDON**—It is 15 December. So we can take it that, unless Mr Kwon heard from other sources prior to 15 December, you rang him some time subsequent to that in very short order—a day or two days later.

**Mr Woodmore**—Yes, within a week of that date. The point is, of course, that he could have easily heard about it from any one of a dozen other sources around the place.

**Mr SNOWDON**—I do not think we are going to find out exactly where he did hear it from—put it that way.

**Mr Woodmore**—No.

**Mr SNOWDON**—Have you a positive view about the outcome? I understand your position as a creditor.

**Mr Woodmore**—I am disappointed that the property has not fired up again, although I can understand that—because, as things currently stand, for anyone to start the casino is a very dubious financial proposition. I am certainly very disappointed about the price, but there is not much that can be done about that. I did a lot of soul-searching. If you are looking at the difference between \$1.8 million and \$4.8 million, there is a big incentive for an individual to try to make things happen. I certainly hung on to the liquidator as long as I could and forced him, I think, to delay acceptance of any offer with Kwon or anyone else at that sort of figure, because it just was not acceptable as far as I was concerned. So plenty of people were told by me—and it was all around the island—that you might get this place for \$10 million.

**CHAIRMAN**—Was the liquidator cooperative with respect to the view to prolong this?

**Mr Woodmore**—Yes. He was very worried that he might lose the offer from Soft Star. He was conscious of the fact that that was an unconditional cash offer and he made that point repeatedly.

**CHAIRMAN**—It was the only such offer.

**Mr Woodmore**—It was. Certainly the offer from Coms21 was not robust; it really did not stand up. If you were selling your house to someone on those sorts of terms and conditions and someone else came in at the same price with an unconditional cash offer, and you were motivated to sell, you would sell it at the cash price.

**Mr SNOWDON**—What values other than money did ComsWinfair bring to the table?

**Mr Woodmore**—ComsWinfair brought the possibility of an air service, but that was not a big deal because there are plenty of air services. With the fallout from the Indonesian crisis, there are dozens and dozens of suitable jets sitting around hangars in Singapore and Indonesia desperately seeking work. So it was by no means a unique factor that they brought to the table, and I think they recognised that.

**Mr SNOWDON**—Can I just concentrate on that point for a moment. Are you saying that, in the context of operating a casino, it should not be difficult to get airlines flying into the place?

**Mr Woodmore**—It is difficult to get airlines to fly in. What is required is that the casino must be prepared to underwrite the total cost of the operation and hope that it can recoup it from its customers.

**Mr SNOWDON**—Mr Kwon, when we asked him this question, said:

At the moment it is very difficult to operate a casino over there. There is a very limited number of aeroplanes to go to Christmas Island. We have already opened the resort. There is a very small number of people staying as guests. We are losing big money at the moment.

I asked him then:

Does Soft Star have a marketing arm?

He said:

We have a manager on the resort at the moment.

The reason I am repeating this is that as an interested party—that is, a constituent—living on Christmas Island, having a view of both the longstanding interest of the community and the prospect that everyone was desirous of—getting the resort and the casino operating—and understanding what you have just put to us, it seems quite weird that Mr Kwon finds it difficult to get aircraft.

**Mr Woodmore**—It comes back to money, I suppose. We can only speculate whether Mr Kwon has the financial wherewithal to sponsor an aircraft service but also, as things now stand, whether that would be a worthwhile exercise in the first place, because getting the players out of

other parts of Asia on a regular chartered aircraft is not going to succeed. It would be financially disastrous.

**CHAIRMAN**—Isn't that in effect what Mr Kwon means? He means that a stand-alone operation to fly an aircraft in and out of Christmas Island would be nigh on impossible.

**Mr Woodmore**—It would be totally uneconomic, that is correct, yes—if that is what he means.

**Mr SNOWDON**—Unless you have people sitting on the aircraft, it would not be worth while.

**Mr Woodmore**—You need people sitting on the aircraft.

**Mr SNOWDON**—Unless you have been out there marketing and getting customers. You are not going to manage a casino doing bugger-all—you are not going to have customers, are you?

**Mr Woodmore**—No. There are two issues to the casino: the hotel resort and the casino. In my view, it is not viable at the moment to market that casino in Asia if you have to also underwrite the cost of the air services, but if the air services were there by virtue of some other project or by a donation from the illustrious Commonwealth then it would be possible. The volume is sporadic. That is the big problem. It tends to be focused on the weekends and there is very little during the middle of the week. So, if you were bringing your flights in for gamblers only, they would be coming in one way full and going home empty. It is very much a vexed question at the moment.

**Mr SNOWDON**—ComsWinfair, in their submission to us, which you may not have had the benefit of reading—

**Mr Woodmore**—I do have something here, but I have not read it yet.

**Mr SNOWDON**—I will take you to the bottom of page 1 and the top of page 2 of the submission. As well as the \$5.5 million or the \$5.6 million that they were prepared to offer, they say here that their plans included expenditure of at least \$27 million to bring the resort to some sort of standard. They say that Winfair was to provide or arrange necessary air travel services for target markets. Did you see Winfair's business plan?

**Mr Woodmore**—No. I did not have a lot to do with Rodger Mortleman's proposals other than, as I said, to supply him with whatever information I could and to encourage him to make an offer.

**Mr SNOWDON**—But you would say, would you not, that it was a prudent business practice to minimise the purchase price if you were going to invest additional capital?

**Mr Woodmore**—Of course.

**CHAIRMAN**—Mr Snowden, in seeking to finish on time, I remind you that we need a couple of minutes to have some in camera evidence from Mr Woodmore.

**Mr SNOWDON**—I will only be a couple more minutes. You can see where I am coming from, I am sure. So we have a situation where ComsWinfair got conditions precedent upon their tender. That tender is being discussed until about the early part of February, and then there are further discussions. I think the process, as far as they are concerned, is terminated some time towards the end of March. They say to us in this correspondence that they could see no reason why they could not resolve outstanding matters. According to this submission, at least, had those outstanding matters been addressed and attended to, they would have been prepared to spend up to \$27 million to get the resort up and running.

In contrast, we now have a situation where someone external to the tender process makes an offer which is unconditional, does the deal and then puts conditions upon the transfer of the titles and, from your own assessments, has very little knowledge about the costs in upgrading or running a casino and resort. We are currently in a situation where there is neither a resort nor a casino operating on Christmas Island. Can you see how someone like me would see that as not a real smart deal? I understand it is from a creditor's point of view.

**Mr Woodmore**—I cannot comment on what was in Kwon's mind when he bought the property. The fact is that he paid more for the property than anybody else, so from the creditors' point of view it was probably as good a deal as they were ever going to get. It may not have been the best deal for the people on the island. Of course, one of the tragedies of this is that Kwon certainly gave indications—you have seen the press statement—that he intended to get the resort up and running. Perhaps he had not realised the full implications of what that required.

**Mr SNOWDON**—My submission is that he had not planned at all for it and there is no evidence, certainly from him, that he had done any planning for it, which is why in part there is a deal of concern being expressed by me—and I know other people are expressing the same concern—that there is a dodgy deal being done.

**Mr Woodmore**—I do not know about the dodgy part of it.

**Mr SNOWDON**—It is not dodgy in the sense of the liquidator getting a result for the creditors, but in terms of the long-term interests of the community of Christmas Island, I think by inference through the participation of at least the minister and some of his staff in discussions with Mr Kwon, one of two things has happened: either they have given him expectations to believe that he need not open the resort or casino or he has not told them the truth.

**Senator CROSSIN**—Mr Woodmore, do you or the company, Mercator, have any interest, financial or otherwise, in APSC?

**Mr Woodmore**—No.

**Senator CROSSIN**—Or in Soft Star?

**Mr Woodmore**—No. Absolutely, no. We have got no interest in very much at all these days.

**CHAIRMAN**—Because of the limitation of time, unless there is something absolutely urgent, I would like to proceed to the in camera evidence, and in doing so could I ask those not associated with Hansard, the secretariat, the senators or the witness to be kind enough to vacate the room.

Resolved (on motion by **Senator Crossin**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

*Evidence was then taken in camera—*

**Committee adjourned at 12.15 p.m.**