Holdrich Investment Ltd *v* Siemens AG
[2011] SGHC 265

Case Number : Suit No 679 of 2008

Decision Date : 16 December 2011

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : N Sreenivasan with Ramesh Bharani Nagaratnam (Straits Law Practice LLC) for the plaintiff; Gregory Vijayendran with Vimaljit Kaur (Rajah & Tann LLP) for the defendant.

Parties : Holdrich Investment Ltd — Siemens AG

Contract – Contractual terms

16 December 2011 Judgment reserved.

Lai Siu Chiu J:

1 In this action, Holdrich Investment Limited ("the plaintiff") sued Siemens Aktiengesellschaft ("the defendant") for consultancy fees and/or commission of US$2.33m payable under an agreement dated 21 August 2003 (which was amended on 19 April 2005 to include Indonesia where the services were actually provided – see below at [5]).

The facts

2 The plaintiff is a company incorporated in Hong Kong and specialises in telecommunications, semiconductor and technology-related industries. The plaintiff's managing director and chief consultant (since 2000) is one Wu KeBo ("Wu") while its chairman was Chow Siu Hong ("Chow"). The plaintiff also provides consultancy services and works closely with the Hutchison Group, a large Hong Kong based international telecommunications services provider which operates in various countries through subsidiaries. The defendant is part of the Siemens group, which is a large multinational company incorporated in Germany with subsidiaries carrying on numerous businesses in many countries including telecommunications projects. It supplies telecommunications equipment to telecommunications service providers throughout the world, including the Hutchison group.

3 The plaintiff and the Siemens group have had business dealings going back to 2002 on a project in Italy by Hutchison 3G Italy SpA ("the Italian project") to provide a Universal Mobile Telecommunications system ("UMTS"). The plaintiff was to secure the Italian project for the defendant through the defendant's subsidiary called Siemens Information and Communication Networks SpA ("Siemens Italy"). The plaintiff's consultancy services to the defendant for the Italian project were encapsulated in a service agreement dated 15 February 2002 ("the Italian service agreement"). The plaintiff successfully secured the Italian project for the defendant and pursuant to cl 3 of the Italian service agreement [note: 1], the plaintiff was paid its 2% commission by the defendant amounting to €14.3m.

4 The defendant continued to use the plaintiff's consultancy services for other projects. The parties executed another service agreement on 21 August 2003 ("the Agreement") whereby the plaintiff agreed to provide consultancy services to the defendant to secure UMTS projects being

provided by the Hutchison group in Sweden, Israel, Austria and India. The Agreement was twice amended to redefine the geographical scope of the plaintiff's obligations, once on 19 December 2003 ("the First Amended Agreement") and the second time on 19 April 2005 ("the Second Amended Agreement").

5 Under the First Amended Agreement, India and Sri Lanka were added while Israel was excluded, from the territories covered. The termination date of the Agreement was extended by two years to 31 December 2006. The Second Amended Agreement extended coverage to Indonesia and stipulated that the plaintiff would be paid a commission if it helped the defendant to secure an order for a GSM project from Hutchison. It was the plaintiff's case (with which the defendant disagreed) that the Agreement and its two amendments mirrored the terms of the Italian service agreement. The only difference (according to the plaintiff) was that while the Italian service agreement named the defendant's Italian subsidiary through which the defendant would secure the Italian project, the Agreement did not name any subsidiaries of the defendant because of the fact that multiple countries were covered under the Agreement. That omission, as will be seen later, was the cause of the problem and the reason for this suit.

6 The Agreement and the two amended agreements were negotiated between Wu and the defendant's Hans-Jurgen Bill ("Bill") the Senior Vice-President for Asia Pacific region. Bill was assisted by Martin Froemel ("Froemel") in the negotiations. Both Bill and Froemel (whose designation was Senior Vice President Hutchison) had given their name cards to Wu at the material time.

7 The plaintiff asserted it secured the UMTS project in India and the GSM project in Indonesia ("the Indonesian project") for the defendant. The contracts in India and Indonesia were awarded to the defendant's local subsidiaries and in the latter case, it was PT Siemens Indonesia ("PTSI") that signed the network procurement agreement with PT Hutchison CP Telecommunications ("PT Hutchison") dated 15 October 2005 ("the Indonesian Agreement").

8 The plaintiff was entitled to 2% commission of the value of the supply contracts for both countries pursuant to cl 3 of the Agreement. The plaintiff valued the UMTS contract for India at US$30,680,000 for 2003 and 2004. Consequently, the plaintiff's commission would be US$613,600 (2% x US$30,680,000). As for Indonesia, the plaintiff valued the GSM contract at US$246,400,000. Based on 2%, the plaintiff's commission would be US$4,928,000. The plaintiff accordingly issued and forwarded to the defendant two invoices on 18 September 2006; invoice no. S-06-9002 for US$613,000 and invoice no. S-06-9001 for US$2,464,000 (½ of US$4,928,000) as the first instalment of the commission due for Indonesia. The defendant did not pay either invoice.

9 On 19 September 2006, Wu wrote on the plaintiff's behalf to Bill to press for payment after previous similar attempts by his personal assistant and cousin Misaki Go were to no avail. [note: 2] (Misaki Go is also known as Patricia Wu and will henceforth be referred to as "Patricia".) Bill replied on the letterhead of Siemens Networks GmbH & Co KG ("Siemens Networks") to the plaintiff on 7 October 2006 [note: 3] stating, *inter alia*:

> India
>
> Agreement became effective Aug 21, 2003 until 31.12.2004 (meaning 6 quarters). Based on our reporting we recognized a sales volume on GSM equipment for these 6 quarters of $18'131 [*sic*] value for the supply contracts; this calculates into a commission of $362,620.
>
> Indonesia

> We agree that the first instalment according to contract is due and payable, however, pls. note that the amount invoiced by you is not in line with the contract.
>
> Commission is applicable on the CIF value of the equipment portion only and explicitly excludes local services. The value of USD 246,4 million [*sic*] reflects the total contract value including services.
>
> The CIF equipment value amounts to USD116,5 million [*sic*] only. The resulting commission entitlement totals to USD2.33 million, hence the first instalment value is USD1.17 million.
>
> We trust you will concur with our assessment and we kindly request you to reissue your invoices with the correct amount.

Bill was referring to the Recital in the Second Amended Agreement that states [note: 4] :

> For the avoidance of doubt, the compensation for services rendered by the CONSULTANT shall be based on the CIF value of supplies of equipment, ie hardware and software only.

10 The plaintiff (through Wu) replied to the above letter on 18 October 2006 accepting Bill's computation and enclosed a revised invoice no. S-06-09001 ("the revised invoice") for Indonesia in the sum of US$1.165m being half of 2% x US$116.5m. [note: 5] (Henceforth, the sum claimed of US$2.33m will be referred to as "the commission").

11 Siemens Networks paid the plaintiff commission amounting to US$362,620 for India on 18 November 2006. [note: 6] However, the plaintiff did not receive payment for the Indonesian project on the revised invoice. On 5 December 2006, the plaintiff (through Wu) sent a reminder to Bill. [note: 7] On 29 January 2007, one Frank Barsch ("Barsch") sent an email reply on behalf of Siemens Networks to say that he was responsible for Indonesia and had been assigned to look into the payment request. Barsch added: [note: 8]

> As you have correctly noted, we are currently audited/investigated [*sic*] with regard to certain doubtful transactions. As part of this investigation a corporate decision has been made not to release any payments prior to final results of said investigation being available.
>
> I therefore regret to inform you and ask for your kind understanding that at present we cannot make any transfer of money to you.

12 On 2 February 2007, Wu sent an email to Barsch reiterating that the plaintiff was entitled to the commission for securing the Indonesian project. [note: 9] On the same day, Patricia forwarded to Bill the plaintiff's invoice for the balance 50% of the commission due. [note: 10] The defendant did not make payment. On 4 June 2007, Wu emailed Barsch to chase for payment of the commission pointing out that the defendant had been paid US$81.1m by Hutchison as of end April 2007. [note: 11] Barsch's email reply of 6 June 2007 stated that before the board of Siemens could decide on payment of consulting fees, it was mandatory to undertake a due diligence process and complete a report. [note: 12] One Barbara Obermeier from Nokia Siemens Networks GmbH & Co KG ("Nokia Siemens") then followed up, on 22 June 2007, with an email request to Patricia to ask for information and documents to begin the due diligence process [note: 13] ; the plaintiff acceded to and complied with the request on 20 July 2007. [note: 14] However, it still did not receive payment of the commission in part or at all.

13 To the plaintiff's surprise, it received a letter from the defendant's head of legal services, Dr Sebastian Brachert ("Brachert"), dated 5 November 2007 requesting documents to verify that the plaintiff had provided the consultancy services for which it was claiming the commission. [note: 15] The letter was co-signed by Thomas Landrock ("Landrock") who heads the defendant's Com BCA review. (BCA is the abbreviation for Business Consultancy Agreement).

14 The plaintiff replied to Brachert on 12 and 15 November 2007 enclosing documents in two parts: part I, pertaining to work done by the plaintiff on marketing intelligence; and part II, pertaining to work done on the ongoing Indonesian project. [note: 16]

15 The defendant still did not pay the plaintiff. On 7 January 2008, the plaintiff sent a reminder to the defendant that the commission was still outstanding. [note: 17] The plaintiff then received the defendant's letter dated 28 January 2008 signed by Brachert and Landrock. [note: 18] The relevant paragraphs stated:

> 1. Please be informed that Siemens is using best efforts to finish the review of the claimed compensation. All the information which need to be checked to determine whether the preconditions set forth in Section 3 of the Agreement are met are in the hands of Nokia Siemens Networks GmbH & Co KG ("NSN") to which Siemens transferred its former COM division. NSN is not controlled by Siemens and as a consequence it is extremely difficult for us to access the information and former employees.
>
> 2. Siemens neither intends nor is interested in delaying any payment owed to Holdrich. Due to the above mentioned reasons it will, however, take some more time to finalize the review of the claim raised by Holdrich. Therefore, we kindly ask you to await the final decision by Siemens before taking any legal action. Any such legal action would necessarily slow down the verification process and result in additional costs but would not help Holdrich to get paid earlier because Siemens has in any event to follow the defined procedures. We understand that the situation is unsatisfying for you but please be ensured that Siemens is interested in solving the open issues in an amicable manner.

16 Not surprisingly, the above letter was the proverbial last straw that broke the camel's back as far as the plaintiff was concerned. When no further correspondence or payment was forthcoming from the defendant, the plaintiff instructed Hong Kong solicitors (Winnie Mak, Chan & Yeung ["WMCY"]) who sent a letter of demand to the defendant on 19 May 2008 [note: 19] for payment within 14 days of the commission plus legal costs of HK$10,000.

17 On 4 June 2008, the defendant replied to WMCY through its Munich solicitors Baker & McKenzie ("B&M") stating that the defendant, after reviewing the Agreement and the Second Amended Agreement, had decided not to pay the plaintiff's claim on the ground that the plaintiff had not fulfilled the requirements in cl 3 of the Agreement to earn the commission (as the Indonesian Agreement was signed by PTSI and not the defendant with Hutchison Indonesia).

18 Not surprisingly, WMCY on the plaintiff's behalf responded to B&M on 24 June 2008 disagreeing with the latter's semantic argument on the term "Siemens" in the Second Amended Agreement.

19 As the defendant's stand remained unchanged, the plaintiff instructed Straits Law Practice LLC ("the plaintiff's solicitors") who, inquired of B&M on 24 September 2008 whether the defendant would be appointing Singapore solicitors. There was no response from B&M despite a reminder dated 7 October 2008 from the plaintiff's solicitors. On 10 October 2008, the plaintiff's solicitors informed the

defendant that the writ in this suit had been issued on 23 September 2008. On 11 February 2009, the defendant's present solicitors filed a memorandum of appearance in this suit.

The pleadings

20 The plaintiff relied on the relevant clauses in the Agreement, as well as on the correspondence in [9] and [12] from Bill and Barsch respectively, for its entitlement to the commission. I would add that in its statement of claim (para 6), the plaintiff had pleaded that it was an implied term of the Agreement that the projects the defendant wished to procure in India and Indonesia may be awarded to the defendant or its subsidiaries.

21 In the defence that it filed, the defendant (at para 6) contended the plaintiff was not entitled to the commission because no contract was concluded between the defendant and Hutchison in Indonesia for GSM projects either as alleged or at all.

The evidence

22 The plaintiff called both Wu and Patricia as their witnesses. The defendant however failed to call Bill or Froemel or even Barsch to testify. Instead, its only witness was one Andrea Fornof ("Fornof") who is the head of compliance in its Merger & Acquisition Transactions department, whose testimony was neither useful nor relevant as she had no personal knowledge at all of any of the events that lead up to this suit, although she had been in the defendant's employment since March 1994. Consequently, the plaintiff submitted that an adverse inference should be drawn against the defendant for failing to call any of the three aforementioned material witnesses to testify.

23 It should be noted that the defendant had initially resisted this suit and applied to set aside service of the writ outside jurisdiction on the basis that Germany not Singapore, was the proper forum for this claim. When its application was disallowed by a judge in chambers in Registrar's Appeal No 176 of 2009, the defendant took the matter all the way to the Court of Appeal in Civil Appeal No 100 of 2009 ("the Appeal") where the Appeal was dismissed (see *Siemens AG v Holdrich Investments Ltd* [2010] 3 SLR 1007).

24 The defendant's then senior legal counsel Dr Ingo Gehring ('Gehring") had filed an affidavit to support the application to set aside the service outside jurisdiction on the basis that the plaintiff had failed to satisfy the requirements for such service under O 11 r 1 and/or r 2 of the Rules of Court (Cap 322 R 5 2006 Rev Ed) and also for the defendant's contention that the dispute had no connection with Singapore. Gehring had deposed at para 37 of his affidavit (filed on 10 March 2009) that the defendant intended to call Bill and Oliver Simon (who helped to negotiate the Second Amended Agreement) to testify. Although the two persons no longer worked for the defendant, he deposed they were located in Germany.

25 In para 26 of the [defendant's] case filed for the Appeal, the defendant had given as one of the reasons for its contention that Germany was a more appropriate forum for the trial of the plaintiff's claim, the fact that there may be documents in the possession of Nokia Siemens located in Germany that may be relevant to this dispute. However, the defendant did not produce any documents from Nokia Siemens before this court. I shall return to this issue later (at [40] below) in connection with my observation on the defendant's failure to call material witnesses who had personal knowledge of the dispute with the plaintiff or at least those who had a hand in the negotiations leading to the signing of the Agreement and the two amended agreements.

The plaintiff's case

26 The plaintiff's main witness was Wu. As his evidence-in-chief was essentially what has been set out earlier in [2] to [19], I turn my attention to the evidence adduced during cross-examination.

27 Counsel for the defendant made much of the fact that the plaintiff's entitlement to commission under the Italian service agreement was different from the plaintiff's entitlement to commission under the Agreement/the Second Amended Agreement due to the difference in wording. For easier reference, I now set out hereunder the relevant extracts from the three agreements.

28 In the Italian service agreement as well as in the other three agreements, the plaintiff was described as the CONSULTANT. The pertinent clauses in the Italian service agreement are the following: [note: 20]

> WHEREAS, SIEMENS desires to secure the network contract for UMTS project (hereinafter referred to "PROJECT") for Hutchison 3G Italy S.p.A (hereinafter referred to "CUSTOMER")
>
> 1. Scope of Services
>
> Services to be rendered by CONSULTANT relating to PROJECT until SIEMENS has secured the contract through SIEMENS ITALY shall be the scope of performance by CONSULTANT subject to terms and conditions set forth herein.
>
> 3 Commission
>
> If order for the PROJECT is successfully received by SIEMENS ITALY on behalf of SIEMENS, SIEMENS agrees to pay commission to CONSULTANT for their services rendered to SIEMENS.
>
> 3.1 Subject to the signing of the supply and financing contract(s) for PROJECT the CONSULTANT shall be entitled to a commission fee equivalent to 2% of the value of the supply contract for PROJECT.
>
> 3.2 The payment of the commission fee shall be the same currency as the transaction in the contract.
>
> 3.3 The fee in Clause 3.1 above shall be payable by SIEMENS to the CONSULTANT in two instalments of 65% (1st instalment) and 35% (2nd instalment). The first instalment shall be payable on March 30, 2002 and the second instalment shall be payable on October 30, 2002.

29 In contrast to the Recital in the Italian service agreement set out at [28], the Recitals in the Agreement read: [note: 21]

> Whereas SIEMENS desires to secure contracts or purchase orders for UMTS projects (hereinafter referred to "PROJECT") for Hutchison 3G Sweden and Partner Orange Israel (hereinafter referred to "CUSTOMER") signed after effectiveness of this AGREEMENT.
>
> Whereas SIEMENS desires to secure contracts or purchase orders for UMTS projects (hereinafter referred to "PROJECT") for Hutchison 3G Austria (hereinafter referred to "CUSTOMER") signed after effectiveness of this AGREEMENT.
>
> Whereas SIEMENS desires to secure contracts or purchase orders for UMTS projects (hereinafter referred to as PROJECT) for Hutchison India (hereinafter referred to "CUSTOMER") signed after effectiveness of this AGREEMENT

30 Under Scope of Services, cl 1 of the Agreement reads: [note: 22]

> Services to be rendered by CONSULTANT relating to PROJECT until SIEMENS has secured the contract shall be the scope of performance by CONSULTANT subject to terms and conditions set forth herein.

while cl 3 reads: [note: 23]

> 3. Commission
>
> If order for the PROJECT is successfully received by SIEMENS, SIEMENS agrees to pay the commission to CONSULTANT for their services rendered to SIEMENS.
>
> 3.1 Subject to the signing of the contract(s) or purchase orders for PROJECT in India and/or Austria, signed after effectiveness of this AGREEMENT, the CONSULTANT shall be entitled to a commission fee equivalent to 2% of the value of the supply contract for PROJECT.
>
> 3.2 Subject to the signing of the contract(s) or purchase orders for PROJECT in Sweden and/or Israel, signed after effectiveness of this AGREEMENT, the CONSULTANT shall be entitled to a commission fee equivalent to 2% of the value of the supply contract for PROJECT.
>
> 3.3 The payment of the commission fee shall be the same currency as the transaction in the contract, or other currency to be written confirmed by the CONSULTANT.
>
> The fee in Clause 3.1 and 3.2 above shall be payable by SIEMENS to the CONSULTANT in two instalments of each 50%. The first instalment shall be payable at effectiveness of the contract or technically and commercially confirmed purchase order of the PROJECT within 45 days. The second instalment shall be payable after payment of at least 50% of contract value or purchase order value within 45 days.

31 I should point out that under cl 2 of the Agreement, the plaintiff *inter alia* was to render assistance to the defendant by providing the latter with any information and service relating to the project in question as well as provide the defendant with any advice, suggestion or consultation which may be useful to the defendant for securing the project.

32 Wu revealed that the genesis of the relationship between the parties was not the Italian service agreement but an earlier project in the UK involving Nippon Electric Company, the party that introduced Wu to the defendant which was then the partner of Nippon Electric Company.

33 Notwithstanding the difference in wording between the Italian service agreement and the Agreement and the fact that it was not the defendant but PTSI that secured the contract from Hutchison Indonesia for Indonesia, Wu maintained that the liability to pay the plaintiff's commission remained with the defendant. Wu believed that PTSI was a subsidiary of the defendant and he communicated with the same people in the defendant for the Italian and Austrian service agreements. Wu revealed that it was the staff from the defendant and not PTSI that sought his assistance to procure the Indonesian project and informed him that PTSI was/is a subsidiary of the defendant.

34 Counsel for the defendant had suggested to Wu that the award of the Indonesian project to PTSI did not benefit the defendant. It was further suggested to Wu that the plaintiff in fact played no part in the award of the Indonesian project to PTSI by Hutchison Indonesia. Wu disagreed,

pointing out that it was the defendant who supplied the hardware to PTSI for the Indonesian project (which the defendants' witness Fornof confirmed). When it was pointed out to Wu that in his AEIC, the plaintiff had not detailed what services it provided that led to the award of the project to PTSI, Wu testified that the plaintiff had arranged for the staff from the defendant's headquarter to meet with people from Hutchison Indonesia before the contract was awarded. This could be verified by people from the Hutchison Group. It was at the request of the defendant's staff that he reported to the defendant by telephone rather than email because the plaintiff's information was very important and communication by email may be too late at times. Decisions were made by the defendant at its headquarters and not by PTSI.

35 Until it was disclosed in Fornof's AEIC, Wu was unaware that the defendant's network business had been transferred to its subsidiary Siemens Networks in October 2006 (subsequent to Siemens Networks' registration on 24 August 2006). No one from the defendant informed him but it made no difference to Wu in any case as he treated the defendant and its subsidiaries as one entity. Wu testified that he was unaware of the relationship between the defendant and Siemens Networks or of the re-organisation within the Siemens group. In any event, it was the defendant that continued with the Indonesian project. Wu pointed out that the three agreements in [4] signed by the plaintiff were all drafted by the defendant.

36 Despite the stand taken by the defendant in its pleadings that it was PTSI and not the defendant that secured the Indonesian project, Wu revealed that the defendant had given a guarantee to PT Hutchison for the same. This was not denied by the defendant. Counsel for the defendant sought to explain that it was normal practice for the defendant to furnish such guarantees in respect of agreements relating to its subsidiaries and argued that the issue of the guarantee was not relevant to the question of whether the defendant was liable to pay the commission. Wu countered this argument by pointing out that PT Hutchison initially wanted to sign the Indonesian Agreement with the defendant but eventually agreed to sign with its subsidiary PTSI on condition that the defendant provided a guarantee for the same.

37 Nothing much turns on the testimony of Patricia whose duties as his personal assistant was to organise meetings for Wu (including those held with the defendant's representatives Bill and Froemel) and liaise with the plaintiff's customers on his behalf. Patricia however did not attend the meetings she arranged for Wu. Although she was aware of when and where they took place, she was not privy to the discussions. She was cross-examined *in extenso* on the meetings she arranged for Wu with the defendant's aforesaid representatives.

The defendant's case

38 I turn my attention now to the evidence of Fornof. As stated earlier (at [22]) she was the defendant's only witness and her testimony was singularly unhelpful. Indeed, Fornof's AEIC contained more legal arguments and/or submissions than facts and the facts she set out were either given by the plaintiff or were not material. In her AEIC, Fornof took the position that the plaintiff had not furnished sufficient evidence to show it had assisted the defendant to secure the Indonesian project as alleged.

39 Counsel for the plaintiff questioned Fornof on the defendant's (unsuccessful) attempts to procure the attendance of Bill, Froemal and Barsch as its witnesses. Fornof produced letters that she had written on the defendant's behalf to them. In her letters all dated 31 March 2011, she had informed the three persons that the defendant was facing this action in Singapore on a claim for US$2.33m. She inquired if they had knowledge of the Agreement, the Indonesian Agreement and of the plaintiff's claim. Fornof testified that Bill contacted her to say that while he remembered the

project and the plaintiff, he could not remember any details. Barsch similarly contacted her by telephone to say he remembered the project but his only involvement was in payment and not in negotiations. The letter to Froemel was returned. Fornof was unable to say whether attempts had been made to contact Bill, Froemel or Barsch prior to 31 March 2011. (Counsel drew the court's attention to the fact that the attempts to contact these employees or former employees were made only after the plaintiff had succeeded in obtaining discovery of the defendant's organisation chart).

40 I should point out at this juncture that by identical letters dated 12 and 15 November 2007 (at [14]), the plaintiff had furnished documentation to the defendant to support its claim for the commission and had named the defendant's representatives that it dealt with. Counsel for the plaintiff pointed out to Fornof [note: 24] that the defendant therefore had 3½ years since that date to trace Bill, Froemel and Barsch. He further drew her attention to the fact that Bill's name was mentioned in WMCY's letter dated 19 May 2008 (at [16]) to the defendant while Barsch was named in the statement of claim at para 11. Why did the defendant wait until 31 March 2011 to contact these persons if it was indeed sincere about verifying the plaintiff's claim?

41 In re-examination, Fornof clarified that Bill and Barsch had completed a questionnaire of the defendant on or about 28 March 2007 followed by a personal interview on 16 April 2007. Froemel was not contacted and when questioned by the court, Fornof could not give a reason for the omission. However she was able to confirm that no charges had been brought by the German public prosecutor's office against Froemel, unlike Bill against whom there appeared to be pending proceedings.

42 In cross-examination, Fornof also disclosed that the German public prosecutor's office carried out a dawn raid on the defendant's office on 15 November 2006 and seized documents on a suspicion that the defendant was using business consultancy agreements to withdraw funds from the company for improper payments. The defendant also conducted its own internal investigations into the matter but its preliminary conclusion was that there were no corrupt practices. Fornof added that there were also separate investigations conducted by the United States Department of Justice on which she offered little details, citing confidentiality reasons. She claimed that one implication arising from the German authorities' investigation was the possible delisting of the defendant from the New York Stock Exchange.

43 Cross-examined further, Fornof revealed that the defendant's networks business was transferred to Siemens Networks and with it Bill's employment as required under German law. As a result, the defendant's documents relating to the consultancy arrangements were all transferred to Siemens Networks save for the Agreement and the Second Amended Agreement. On or about 1 April 2007, Siemens Networks merged with the German networks business of Nokia Corporation to form Nokia Siemens. Nokia Siemens is a joint venture with the Nokia group and not a subsidiary of the defendant. Barsch (see [11]) and Froemel were transferred to Nokia Siemens. Froemel has since left Nokia Siemens.

44 The court's attention was drawn by counsel for the plaintiff to an agreement between the defendant and PTSI dated 24 January 2006 ("the supply contract") wherein the defendant agreed to provide PTSI with US$83m worth of hardware/software to enable PTSI to perform the Indonesian Agreement. In the supply contract, the defendant was referred to as "SAG", PT Hutchison as "the end customer", and PTSI as "RE". The preamble to the supply contract states: [note: 25]

> The RE has signed a contract (referred to below as the "end customer contract") on 15 October 2005 with PT Hutchison CP Telecommunications (referred to below as the "end customer") covering the planning, delivery, installation and commissioning of a system for a GSM and 3G

mobile network (referred to below as the "project"). The project has a strategic importance for Siemens to keep its market share in Indonesia and prevent competitors from breaking in and expanding their footprint. Furthermore it is the first time that Siemens sells switching technology to one of the subsidiaries of Hutchison Telecommunications Limited worldwide and this is an important step to keep Hutchison Telecommunication [*sic*] Limited as a customer.

The end customer contract has been made available to SAG.

In order to fulfil the "off shore" part of the end customer contract, the RE requires the deliveries and services described below, which SAG is prepared to provide.

Although she agreed that the defendant provided the hardware for the Indonesian project (which she described as the offshore part of the project), Fornof disagreed with counsel for the plaintiff that the commission was payable on that offshore portion.

45 Quite apart from the supply contract which directly benefited the defendant, Fornof had agreed with the court and counsel for the plaintiff that the profits made by PTSI (which prior to 11 December 1973 was known as PT Simido) being a wholly owned subsidiary of the defendant, would flow upstream to its parent company. I should add that even if the profits of PTSI were not paid to the defendant, the latter as the parent company would incorporate its subsidiary's profits into its yearly consolidated accounts in accordance with internationally accepted accounting practice.

46 Fornof was also cross-examined on the guarantee dated 21 October 2005 ("the parent guarantee") furnished by the defendant to PT Hutchison on PTSI's behalf for the Indonesian project. She repeated the defendant's counsel argument that it was normal for the defendant to issue such corporate guarantees. It is noteworthy that the defendant was released from the parent guarantee by PT Hutchison's letter dated 23 April 2008 [note: 26] notwithstanding the transfer of the defendant's telecommunications business first to Siemens Networks and then to Nokia Siemens on 1 October 2006 and 1 April 2007 respectively. In the course of her re-examination [note: 27] Fornof revealed that in a side letter dated 14 March 2007, Nokia Siemens and the defendant had agreed that BCA related liability would be retained by the defendant even though the same had previously been transferred to the former with effect from October 2006.

47 Another telling document which existence the plaintiff fortuitously discovered was a facility agreement dated 22 December 2005 ("the facility agreement") made between the defendant and PT Hutchison whereby the defendant agreed to lend US$450m to the latter by way of vendor financing for the Indonesian project. The court below had disallowed the plaintiff's request for discovery of the document on the ground that it was irrelevant. I disagreed and directed Fornof to produce a copy for the court's inspection which she did. [note: 28] It is significant that PTSI, although a contracting party, was not a party to the facility agreement.

48 I should point out that in the organisation chart that the defendant furnished to the plaintiff in its Answers to Interrogatories (filed on 7 March 2011 by the defendant's legal counsel Dr Frank Vormstein), Froemel was stated to be in charge of the Asia Pacific account for dealings with Hutchison. Bill was shown in the document as the head of networks in the Asia Pacific region. Questioned on the letter dated 19 September 2006 in [9] from Siemens Networks written by Bill which acknowledged the liability to pay the plaintiff the commission but not the amount calculated by the plaintiff, Fornof distanced the defendant from the letter on the basis that Bill's letter did not bind the defendant because another signature was required, according to information available on the defendant's website.

49 Another name in the organisations chart was Oliver Simon ('Simon') who was the sender of an email dated 13 September 2005 to *inter alia* Barsch and Froemel which will be dealt with below at [50]. Simon was described as the head of mobile network Asia Pacific Business Administration, while Barsch was stated to be the head of mobile networks Asia Pacific Indonesia. According to Fornof, Barsch was not involved in projects but only for payments in the Asia Pacific region. She confirmed that all four persons (Bill, Froemel, Barsch and Simon) were still with the defendant and in charge of the Indonesian project before the telecommunications business was hived off by the defendant, first to Siemens Networks and later to Nokia Siemens.

50 I turn now to Simon's email dated 13 September 2005 alluded to above (at [49]). It appeared therefrom that Simon was advising Barsch and Froemel that the defendant was likely to secure the Indonesian project as he had adjusted and lowered the defendant's bid in consultation with the chairman of Siemens Communications, one Thomas Ganswindt ("Ganswindt"). Counsel for the plaintiff also drew Fornof's attention to an article that appeared in the German press on or about 18 January 2006 [note: 29] where Ganswindt announced that Siemens Communications had secured the Indonesian project from PT Hutchison. Ganswindt was also described in the article as a member of the defendant's board of directors. He was quoted as saying that the Indonesian order was "a great success" for the defendant. Fornof said she interpreted his remark as a great success for the entire Siemens group.

51 It should be noted that other than China, Fornof had no knowledge of countries where the defendant had entered into contracts directly to provide 3G or GSM equipment instead of doing so through local subsidiaries.

The submissions

The plaintiff's submissions

52 In its closing submissions, the plaintiff argued that its case did not rest on an implied term. It had expressly pleaded that it assisted the defendant to secure the Indonesian project. If, as the plaintiff contended, the defendant obtained the benefit of that project, then there was no need to rely on the implied term. In the alternative, if the defendant's subsidiary PTSI secured the project, then reliance would be placed by the plaintiff on the implied term.

53 The plaintiff roundly criticised the defendant for its constant shifting of position over the past five years:

(a) At the outset the defendant admitted liability but took the position that payment could not be made due to ongoing investigations;

(b) It then said the services of the plaintiff had to be verified;

(c) After the plaintiff's Hong Kong solicitors made a demand for payment, the defendant raised the "smart legal argument" (in the words of counsel for the plaintiff) that the commission was not due because the plaintiff had rendered services to the subsidiary and not the defendant;

(d) The defendant then applied to stay these proceedings on the basis that Germany was the more appropriate forum because internal investigations by the defendant were conducted there and key witnesses were in Germany; and

(e) Finally, after its application for a stay was dismissed by the Court of Appeal (see [23]), the defendant changed tack, resisted discovery and none of its key persons were called as witnesses for the trial.

54 The plaintiff went further to contend that the defendant had deliberately chosen Fornof as its witness in order not to divulge any evidence. The defendant could have but did not produce the statements that Bill and Barsch gave in their April 2007 interviews by the defendant. Further, contrary to the impression conveyed in court by Fornof that the German prosecutor's investigations precluded the defendant from disclosing the two persons' statements, the defendant's German solicitor (from Prof Dr Muller & Kollegen's office) in its letter dated 24 August 2011 stated:

> In as much as employees of the Siemens AG have obtained information as a result of the company's privileged right to request and inspect the investigation file as aggrieved party (Section 406e stop), the information however may be stated in front of a court by way of a hearing of a witness within a pending law suit.
>
> Should the court beyond hearing of a witness need the investigation file for the litigation, it will have to be requested officially by the way of judicial assistance.

55 It appeared from the above extracts that the defendant could have inspected the files relating to the German prosecutor's investigations and testified on its contents. This information would not have come to light had this court not directed the defendant to produce the relevant sections of the German code.

56 The plaintiff *inter alia* submitted that as it had kept its side of the bargain in the Agreement and the Second Amended Agreement by providing consultancy services that secured the GSM project in Indonesia from the Hutchison group for the defendant, the latter must pay the plaintiff the commission based on the CIF value of the equipment the defendant supplied to PTSI under the supply contract.

57 In reply to the defendant's pleaded case that the commission was only payable to the defendant if the Indonesian project was awarded to the defendant and the defendant alone, the plaintiff argued that it was not privy to the internal workings and structure of the Siemens group. The premise (as set out in its Further and Better Particulars filed on 9 June 2010 and amended on 10 August 2011) for the plaintiff's case that it was an implied term of the Agreement that the plaintiff would be paid the commission whether the defendant itself was awarded the project or it was awarded to one of the defendant's subsidiaries was as follows:

(a) The defendant was a multinational operating in different countries and in different fields;

(i) The defendant had full discretion to decide whether itself or an appropriate subsidiary would enter into the contract for the project;

(ii) The defendant would obtain the economic benefit of the project whether it took on the

project directly or through one of its subsidiaries;

(iii) The choice of whether a local subsidiary would be used would depend on the applicable local laws and regulations;

(iv) The defendant and its subsidiaries were all part of the Siemens group and traded as one commercial entity;

(v) Parties awarding the projects were doing so to the Siemens group;

(vi) It was of no consequence to the plaintiff whether the project was awarded to the defendant or to its subsidiary.

(b) The implied term was to give business efficacy to the Agreement (citing *Hiap Hong & Co Pte Ltd v Huat Hong Development Co (Pte) Ltd* [2001] 1 SLR(R) 458 ("*Hiap Hong")*; *Romar Positioning Equipment Pte Ltd v Merriwa Nominees Pty Ltd* [2004] 4 SLR(R) 574 ("*Romar Positioning*") and *Forefront Medical Technology (Pte) Ltd v Modern Pak Pte Ltd* [2006] 1 SLR(R) 927 ("*Forefront Medical Technology*").

58 The plaintiff then submitted that the court should allow into evidence under ss 17(1), 18(1) and 20 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") the admissions made by the defendant's representatives – in particular the letter written by Bill dated 7 October 2006 and the email of Barsch dated 8 February 2007. It was contended that the correspondence raised the inference that the sum claimed was due and payable under the Agreement. For ease of reference, the three sections of the EA are set out below:

17 – (1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

18 – (1) Statements made by a party to the proceeding or by an agent to any such party whom the court regards under the circumstances of the case as expressly or impliedly authorised by him to make them are admissions

20 – Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions

59 As stated earlier (at [22]), the plaintiff had also submitted that an adverse inference should be drawn against the defendant for failing to call any of the three key persons involved in the project to testify. The plaintiff's submission was based on s 116(g) of the EA which states:

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations

The court may presume —

…

…

(*g*) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it…

The defendant's submissions

60 The defendant urged the court [note: 30] not to draw an adverse inference against its failure to call Bill, Froemel or Barsch to testify, arguing that the defendant had done its best to procure the attendance of the three gentlemen without avail. (In the light of the court's observation in [40], this was an untenable submission). Instead, the defendant contended [note: 31] that the plaintiff's president Chow did not testify even though Chow was the key negotiator in the nascent stages of the relationship between the parties. This was a surprising submission given that counsel for the defendant did not put this point to Wu. In cross-examination of Wu, counsel had only pointed to the fact that the negotiations for the Italian service agreement appeared, from some correspondence (starting with a letter dated 30 January 2002 from Chow to one Guenter Breuninger ("Breuninger")), to be conducted by Chow. As Breuninger did not testify, the plaintiff quite rightly submitted there was no basis/evidence for this submission. In any case, how was it relevant to the Agreement or to the Second Amended Agreement?

61 For added measure, the defendant's submissions criticised Wu as an evasive witness who had the propensity to change his testimony, mislead the court and who had selective recall of events. Not surprisingly, the plaintiff took exception to this criticism in its submissions.

62 Despite having informed the court that the defendant was not proceeding on the issue of illegality, the defendant's closing submissions dealt at length with what it described as "the slush fund scandal". The submissions also dwelt into the contents of correspondence exchanged between the parties without regard to the fact that none of the makers from the defendant's side testified – not even the persons (like Landrock) who were still with the defendant. Hence, the contents of the correspondence were not subjected to cross-examination.

63 The defendant argued further (relying on *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029) that the court should not imply a term into the contract between the parties. Instead, the court should adopt a contextual approach to interpretation of the parties' contract. In this regard, heavy reliance was placed by the defendant on the Italian service agreement. In any event, the defendant submitted that the proposed implied term failed both the "business efficacy" and "officious bystander" test. Moreover, no evidence was produced by the plaintiff for the implied term argument.

64 The defendant added that the plaintiff had misplaced reliance on the parent guarantee and facility agreement for its argument that the defendant had benefited economically from the Indonesian agreement.

The issues

65 The issues that require the court's determination are:

(a) Did the plaintiff secure the Indonesian project from the Hutchison group for the defendant?

(b) Should a term be implied into the Agreement that the Indonesian project can be performed by the defendant's local subsidiary but the defendant remains liable to pay the commission to the plaintiff?

The findings

66 Notwithstanding the defendant's submission at [62], the defendant's case [note: 32] did not rely on any defence alleging corrupt practices or illegality. Counsel for the defendant when questioned by the court had also confirmed at the close of trial [note: 33] that the plaintiff's consultancy agreements with the defendant to secure telecommunication projects were only in relation to the Hutchison group of companies. Having dealt with the preliminaries, I would like to first comment on the witnesses who testified before addressing the issues.

67 It could be seen from Fronof's testimony set out earlier that she was neither a suitable nor reliable nor credible witness. In the words of counsel for the plaintiff (with whose comment I agreed), Fornof was "stonewalling" the court (and counsel) in her repeatedly evasive answers. This observation coupled with the defendant's refusal and/or reluctance to give discovery prompted this court to draw an adverse inference against the defendant under s 116(g) of the EA that:-

(a) if any of the persons involved *viz* Bill, Froemel, Barsch or even Simon had testified, their testimony would have been unfavourable to the defendant;

(b) documentation which the court below ordered the defendant to produce would, if it had been produced (which it was not), would have been equally unfavourable to the defendant's case.

68 As for Wu, he was initially reprimanded by the court for his cavalier attitude. Being a mainland Chinese whose working language (besides Japanese) appeared to be Mandarin, Wu did not seem to appreciate the gravity of being the only proper witness for the plaintiff's case. It was apparent that he had not refreshed himself with his AEIC, having given the excuse that he was only familiar with the Mandarin version. However, unlike Fornof, Wu did not deliberately evade answering questions put to him and after the court had given him a suitable warning, his behaviour along with his memory improved. I found his testimony to be more credible than that of Fornof. I turn now to the issues.

The decision

Did the plaintiff secure the Indonesian project for the defendant?

69 In a nutshell, the defendant's defence to this claim was first, the Indonesian project was awarded to PTSI (its subsidiary) and not to the defendant; and second, the plaintiff had not substantiated its claim. The plaintiff on the other hand contended that so long as the defendant obtained a benefit from the contract, it did not matter whether the defendant or any of its subsidiaries secured the Indonesian project; the plaintiff would still be entitled to the commission under cl 3 of the Agreement at [30] read with the Recital in the Second Amended Agreement at [9].

70 For expediency, I shall deal with the plaintiff's argument of benefit first. On the evidence, it is obvious that the defendant would most certainly benefit from the award of the Indonesian project to

its subsidiary PTSI. This can be seen from the supply contract at [44], the defendant's issuance of the parent guarantee at [45], Fornof's admission at [46] (that the profits from the Indonesian project were channelled back to the defendant) and the facility agreement at [47], not to mention the announcement by Siemens Communications to the German press in January 2006 at [50].

71 I turn next to address the defendant's other defence – that the plaintiff did not assist the defendant to secure the Indonesian project whether as alleged or at all; and that whatever alleged assistance rendered by the plaintiff was not pursuant to the Agreement or the Second Amended Agreement.

72 At this juncture, there is one observation I would make. The plaintiff's consultancy services were not the usual kind that consultants provide to their customers based on their expertise in a particular field. The court had asked and counsel for the defendant had confirmed at [65] that the plaintiff provided services only in relation to the Hutchison group. The plaintiff's service as can be seen from the correspondence exchanged between the plaintiff and the defendant's representatives [note: 34] was mainly to act as a liaison/go-between Hutchison and the defendant. When Hutchison had issues with the defendant's performance of the Italian service agreement, it channelled its complaint of delays through Wu [note: 35] and the defendant would similarly go through Wu to inquire on the outcome of its bids for Hutchison's projects.

73 Volume 1 of the Agreed Bundle contains examples that document Wu's role. On one occasion, Bill was so anxious to see Wu that they met at the conference centre of Frankfurt airport on 12 September 2005 [note: 36] where Wu transited in between flights. At that meeting [note: 37] Wu suggested to Bill that the defendant reduced its price to US$5.8m for a certain item that was part of the Indonesian project. That meeting was followed by two more meetings in Hong Kong, one between Bill and Wu on 21 September 2005 [note: 38] and the other on 6 October 2005 [note: 39] between Wu and Froemel where the Indonesian project appeared to have been discussed. At the 21 September 2005 meeting, it was minuted that Wu had held discussions with the top management of Hutchison group.

74 For reasons which the court need not go into, Wu appeared to have a special relationship with the Hutchison group so much so he was privy to confidential information from the latter as to the pricing of the defendant's competitors' bids. Wu duly passed this information to the defendant, enabling the defendant either to match competitors' bids or (in the case of Indonesia) lower its bid to secure the project. For that kind of service which Bill and Froemel were fully aware of, the defendant was willing to and did pay the plaintiff €14.3m under the Italian service agreement.

75 It bears repeating that as the defendant failed to call any of the key witnesses to testify, it was in no position to challenge the plaintiff's contention that it did provide the service to earn the commission. As stated earlier, Fornof would not know what transpired between Bill, Froemel and Wu. The fact that Fornof disavowed the letter dated 7 October 2006 written by Bill at [9] does not detract from the fact that Bill was an agent of the defendant at that time and his admission in my view bound the defendant under s 18(1) read with s 17(1) of the EA at [58]. It bears remembering that at the material time Bill was the head of networks of the defendant in the Asia Pacific region (at [48]).

Should a term be implied into the Agreement that the Indonesian project can be performed by the defendant's local subsidiary but the defendant remains liable to pay the commission to the plaintiff?

76 Next, I turn to the more important issue of whether the defendant remains liable to the plaintiff for the commission notwithstanding the fact that PTSI and not the defendant was party to the Indonesian agreement with PT Hutchison. In that regard, it is necessary to consider the tests of "business efficacy" and "the officious bystander" and their applicability to this case.

The law

77 The "business efficacy" test was laid down by Bowen LJ in *The Moorcock* (1889) 14 PD 64 at 68 while the "officious bystander" test was first propounded by Mackinnon LJ in *Shirlaw v Southern Foundries (1926) Limited* [1939] 2 KB 206.

78 As both parties cited *Hiap Hong* and *Forefront Medical Technology* (see above at [57(b)]), it would be apposite to look at the two cases at this juncture.

79 In *Hiap Hong*, the Court of Appeal had to decide a point of law in a dispute concerning a building contract of the Singapore Institute of Architects ("SIA"). The question posed to the appellate court was "what was the nature of the term to be implied as regards the duties of the developer as employer in relation to the certifying functions of the architect under the SIA conditions?" The Court declined to import the wide-ranging implied term proposed by the main contractor. Chao Hick Tin JA held *inter alia* that:

> (a) a term to be implied must be equitable and reasonable. The court would imply a term if from the language of the contract and the surrounding circumstances an inference should be made that the parties must have intended the stipulation in question;
>
> (b) clause 34 of the SIA conditions contained a provision for arbitration and cl 34(2) expressly allowed reference to arbitration during the progress of the work where the dispute related to whether or not a certificate had been improperly withheld, or whether a certificate was withheld not in accordance with those conditions. There was thus no need for any implied term on the ground of business efficacy as the parties had already provided for the resolution of such a problem in the contract.

Undoubtedly on its facts, there was no necessity in *Hiap Hong* to import an implied term into the SIA conditions for "business efficacy".

80 I turn next to *Forefront Medical Technology*. As in *Hiap Hong*, Andrew Phang J held that there was an express condition of the contract that the defendant would be considered to have discharged its contractual obligations with regard to suitability of the material used for manufacture of the clamshells (used to pack the plaintiff's medical devices) by the provision of certificates of analysis. The learned judge added that in any event, there was an implied term to the like effect as it was necessary in order to give "business efficacy" to the contract.

81 Andrew Phang J in *Forefront Medical Technology* was of the view (which I share) that the "officious bystander" and the "business efficacy" tests are complementary – the "officious bystander" test is the practical mode by which the "business efficacy" test is implemented.

82 The plaintiff had also cited *Romar Positioning*,(see above at [57(b)]) where the Court of Appeal followed *Hiap Hong* and held that it was both reasonable and necessary to imply a term (be it under the "business efficacy" test or the "officious bystander" test) in the case that the deed of settlement between the parties signed by the respondent/plaintiff would be forwarded to the appellant/defendant before the latter was required to make any payment under the deed of settlement.

83 Here, in the present case, the defendant had relied on an extract from *Chitty on Contracts* (H. G. Beale gen ed) (Sweet & Maxwell, 30th Ed, 2008) vol 1 in its submissions for its contention that a term will not be implied if it would be inconsistent with the express wording of the contract. It would be instructive to look at the passage where that comment was made by the learned authors. *Chitty on Contracts* at para 13-009 states:

> A term ought not to be implied unless it is in all the circumstances equitable and reasonable. But this does not mean that a term will be implied merely because in all the circumstances it would be reasonable to do so or because it would improve the contract or make its carrying out more convenient. [t]he touchstone is always *necessity* and not merely *reasonableness* …
>
> ...
>
> A term will not be implied if it would be inconsistent with the express wording of the contract.

84 The touchstone therefore for application of the "business efficacy" or "officious bystander" test to imply a term into the contract is that of necessity and it must not contradict the express wording of the contract.

Application of the law to the facts

85 I turn now to consider the Agreement and the Second Amended Agreement. Applying the test of necessity and the guidelines set out in the authorities referred to earlier, I am of the view that a term must be implied into the two agreements that if it was a subsidiary of the defendant (or if not a subsidiary, but a company within the Siemens group) that secured the Indonesian project from the Hutchison group, the defendant is liable to pay the commission to the plaintiff. Such an implied term is not inconsistent with the express wording of the Agreement or the Second Amended Agreement. In the case of the Indonesian project, it merely imports the defendant into the Indonesian Agreement by way of its subsidiary PTSI. If one were to ask an officious bystander the question "Do you think Siemens AG is still bound to pay the commission under the Indonesian Agreement which was awarded to its subsidiary?" I cannot imagine the answer would be anything other than "But of course. It's the same company whether the project is given to the parent or to the subsidiary". If the same question was put to the officious bystander in relation to the Hutchison group and its subsidiaries, the answer would undoubtedly be the same.

86 It bears noting the differences between the Italian service agreement and the Agreement set out in [28] and [29]. The Italian service agreement was only for Italy. Hence, the defendant was able to and did designate its Italian subsidiary as the party through which it wanted to secure the UMTS project from the Hutchison group. The Agreement at [4] however covered Sweden, Israel, Austria and India. The First Amended Agreement then extended the plaintiff's services to the Nordic countries and Sri Lanka but took out Israel while the Second Amended Agreement covered only Indonesia. All the agreements were drafted by the defendant without input from the plaintiff. Why should the plaintiff be prejudiced or lose its entitlement to commission because the defendant did not identify the subsidiary that would be the contracting party in the various countries under the three agreements? It would be grossly unfair and highly inequitable for the plaintiff to be deprived of the commission because of the "smart legal argument" that B&M came up with in June 2008, when all previous correspondence from the defendant to the plaintiff only talked of the delay in payment but there was no denial of liability. It is noteworthy that Siemens Networks, not the defendant who was the contracting party, made payment to the plaintiff of its commission for the India project.

87 Consequently, I find that the defendant's defence has no merit. I hold that the plaintiff is

entitled to the commission. There will therefore be judgment for the plaintiff in the sum of US$2.33m together with interest (at the statutory rate from the date of the writ) and costs on a standard basis.

[note: 1] AB26

[note: 2] AB140-142

[note: 3] AB143

[note: 4] AB80

[note: 5] AB144

[note: 6] AB148

[note: 7] AB149

[note: 8] AB150

[note: 9] AB153

[note: 10] AB154

[note: 11] AB157

[note: 12] ibid

[note: 13] AB158

[note: 14] AB162

[note: 15] AB166

[note: 16] AB167-208

[note: 17] AB209-210

[note: 18] AB211

[note: 19] AB216-218

[note: 20] AB25-26

[note: 21] AB60

[note: 22] AB60

[note: 23] AB61-62

[note: 24] N/E 219

[note: 25] AB889

[note: 26] AB659

[note: 27] N/E 399

[note: 28] Exh D1

[note: 29] AB569-570

[note: 30] At para 45 of its Submissions

[note: 31] At para 9 of its Submissions

[note: 32] Confirmed in Court at NE 428 by its counsel.

[note: 33] N/E 436

[note: 34] Fornof's AEIC Exhs "AF5" and "AF6".

[note: 35] AB10

[note: 36] AB108

[note: 37] AB241-242

[note: 38] AB172

[note: 39] AB129