[2011] UKFTT 742 (TC)

TC01579

Appeal number LON/2008/2293

VAT: MTIC Fraud. Did the Appellant know of a connection to fraud or should it have known?

FIRST-TIER TRIBUNAL

TAX

ANNOVA LIMITED **Appellant**

- and -

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

TRIBUNAL: CHARLES HELLIER
SHEILA WONG CHONG FRICS

Sitting in public at 45 Bedford Square, London WC1 on 5-8, 11-15 April and 20 May 2006

Craig Ferguson and Vivienne Tanchel, counsel instructed by Aegis tax for the Appellant

Christopher Kerr and James Onaiaja, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. Introduction

1. Annova appeals against a decision of the Respondents to deny its claim to deduct input tax in the VAT periods 04/06, 05/06, and 06/06. The total VAT input so denied was £2,069,843.

2. The Respondents' grounds for denying the Appellant's claim are that the input tax was incurred by the Appellant in transactions connected with the fraudulent evasion of VAT and that the appellant knew or should have known of that connection.

3. The input VAT which the Respondents claim is not deductible arises from four Deals undertaken by the Appellant in those periods. Between April and June 2006 Annova conducted the following four transactions in which it bought and sold mobile phones:

Deal	Annova bought from:	Annova sold to:	Date	Value
1	Xchange	Tagleemer	14 April	£2,999,775
2	Morganrise	Tagleemer	26 April	£6,225,150
3	Xchange	Nova	31 May	£1,595,943
4	Xchange	Tagleemer	30 June	£3,077,325

4. Each deal was for thousands of mobile phones of several sorts. Some of the Deals were invoiced on several invoices. In Deals 1, 3 and 4 Xchange acquired the phones from an importer who defaulted on the payment of VAT. In Deal 2 Morganrise imported the goods in transactions connected to the fraudulent evasion of VAT by others. These facts were not disputed.

5. HMRC say that in each case Annova knew, or should have known that its purchase was connected to fraudulent evasion of VAT.

6. During this period the Appellant was involved in only two other transactions: a large transaction involving Euro Counsel and Eurotronics described later, and a deal under which £53,000 worth of televisions were imported from Tagleemer and sold to a UK trader.

7. In this decision we have used abbreviations for the names of Annova's associates and counterparties. Precise names would only lengthen the decision unnecessarily.

2. The Relevant Law

8. There was little disagreement about the relevant law. We applied the following principles:

(1) a taxpayer's right to deduct input tax does not arise if the input tax rises under a transaction which was connected with the fraudulent evasion of the VAT and the taxpayer knew or should have known of that connection (*Axel Kittel v Belgium* C-439/04 and C440.04 [2006] ECR 1-6161 paragraph 61);

(2) the test of whether a person knew or should have known is to be determined by reference to objective factors (*Kittel* paragraph 61);

(3) these principles are part of domestic UK law: "in relation to the right to deduct input tax, community and domestic law are one and the same" (*Mobilx Ltd (in Administration) v HMRC* [2010] EWCA Civ 517 paragraph 49);

(4) "should have known" is synonymous with having the means of knowledge (*Mobilx* paragraph 51);

(5) the relevant knowledge is that the transaction was connected to fraud, not that it might be, or that it was merely more likely than not that it was so connected (*Mobilx* paragraphs 56 and 60);

(6) if from the circumstances which surround his transaction a trader should have known that the only reasonable explanation of those circumstances is that the transaction was connected to fraud, then it may properly be said that he should have known that the transaction was connected to fraud (*Mobilx* paragraph 9);

(7) the relevant knowledge is of a connection to VAT fraud, not simply to fraudulent evasion which precedes the trader's purchase. Knowledge that his transaction was or will be connected to fraud is sufficient (*Mobilx* paragraph 62);

(8) the test as to whether a person has the requisite knowledge is to be made at the time the person enters into the particular transaction, but this does not require a transaction to be regarded in isolation without regard to its attendant circumstances; nor does it prohibit the tribunal from looking at the totality of deals affected by the taxpayer;

(9) the burden of proving VAT fraud, connection to fraud and knowledge or means of knowledge lies on the Respondents.

3. The Evidence

9. We heard oral evidence from John Fletcher of KPMG and Nigel Attenborough of Nera Economic Consulting, who provided expert evidence on the mobile phone market in 2006; from Warren Wald, the officer of HMRC who was responsible for the denial of Annova's input tax claims; from Stewart McCaskell, an officer of HMRC who gave evidence in relation to bank accounts at First Curacao International bank ("FCIB"); from Shandip Popat who was the sole director of the

Appellant at the time of the Deals; and, by video link from Armenia, from Armine Manukyan and Hermine Hakobyan who were employed by the Appellant in Armenia. We also had a couple of hundredweight of lever arch files of copy documentation.

4. Our Findings of Fact

10. We start by setting out our findings in relation to the formation, ownership, business and financing of Annova. We then turn to the evidence in relation to the nature of the market in mobile phones. Against that background we then consider HMRC's contention that these Deals were part of an overall scheme to defraud the revenue and the conduct of Annova's trade.

Annova and Mr Popat

11. During 2006 Mr Popat was Annova's sole director. It was clear to us that he was the public face of Annova and involved in all its transactions. We address later the extent to which others may have influenced Annova's decision making. During this period Annova had an administrator who worked from an office in Armenia. That was Armine Manukyan or Hermine Hakobyan at relevant times. There were no employees in the UK.

12. We found Mr Popat intelligent, likeable (we thought he could be charming in a business context), experienced, and probably tough and shrewd. We should deal here with some inconsistencies in his evidence.

13. When Mr. Popat was asked by Mr. Ferguson of whether a faxed letter from Xchange in the documents for Deal 1 was Annova's first contact with Xchange, he replied "well we had met before and it was the first official exchange of company details", and then, when asked if he had done any business in the intervening period with Xchange he replied, "I don't recollect, no". Mr. Ferguson then asked "so we may take it that this was your first contact with Xchange?". Mr Popat replied "yes it was". Later in the same day that he replied to Mr. Ferguson that Deal 1 was not Annova's first transaction with Xchange and that he had done some business with them in the previous financial year. Later he told Mr Kerr that he had done one or two deals with Xchange in August or September 2005 but was unsure of the details. He later told us that 3 deals had been done with Xchange in February or March 2006 and that they had been done in similar goods and on similar terms as the Deals under appeal and for comparable if slightly smaller amounts.

14. It may be that in his earlier answer to Mr. Ferguson Mr. Popat was concerned that no due diligence material had been obtained from Xchange in relation to the earlier deals and was keen to avoid saying so. It might also have been that he meant that the due diligence documents were the first he had received rather than that Deal 1 was the first transaction; or it may have been that in his concentration on the Deals under appeal he overlooked earlier trading. But it seems likely to us that Mr Popat was trying to avoid discussing the three deals which had been done

in 2006, and then trying to suggest that they had been done before the takeover of Annova in 2006; and that his answers on this topic were initially not frank.

15. Another inconsistency occurred in relation to an e-mail in relation to Deal 1 when Tagleemer had asked for an offer for Nokia 8800s. Mr. Popat told Mr. Kerr that they would probably have been a telephone conversation which preceded the e-mail request, but later he did not set dissent from a question from the tribunal which suggested that the request had come almost out of the blue. He said that after the e-mail had come he had phoned around and on the same day had found that Xchange had the phone s required in the quantities wanted.

16. Mr. Popat was 57 at the time the deals in question took place. Since leaving college in 1970 his business life had been connected with consumer electronics. For a number of years he worked in the repair of televisions, initially for Radio Rentals and then on his own account. In 1980 he expanded into wholesaling consumer electronics. He was fairly successful and his first joint venture in this field achieved £1 million of sales in its first year which grew to £5 million by 1985. Part of this business included the sourcing of consumer electronics in the UK and selling in parts of Africa where post colonial links provided a commercial opening.

17. In 1995 Mr. Popat started trading in the same way through his own companies. He expanded into supplying large UK retailers, but by 1990 the cost of holding stock, and the credit taken by those customers led to the liquidation of these companies. From 1994 he worked for another enterprise again selling consumer electronics with an emphasis on African and CIS markets. He developed contacts in Russia, Ukraine, Georgia, Armenia, and Kazakhstan.

18. We concluded that by the time of the deals under appeal Mr Popat was a knowledgeable and experienced dealer in consumer electronics, who would have been aware of the problems which could arise in dealing with warehousing and the giving and taking of credit.

19. In 1999 Mr. Popat started Annova to trade in consumer electronics.

20. Annova had an early setback: it lost £80,000 at an early stage when a warehouse in Dubai released mobile phones to a purchaser without payment or authorisation.

21. In the period from 2000 to 2004 Mr. Popat became involved with a former electronic components manufacturing company in Armenia called Sirius. In about 2000/2001 he had discussions with Sirius about the possibility of their assembling mobile phones in Armenia. This failed. Then in about 2004 Annova started shipping mobile phones to Sirius to repair. In the course of the project some 20,000 to 30,000 phones were shipped, repaired and shipped back to Annova. This did not continue for long. Through this work with Sirius: Mr. Popat came to know Armine Manukyan, whom he engaged to run some of the administration of Annova after 2002; and office space was made available for Annova in Sirius' premises.

22. In early 2005 Annova purchased computers from Dell for some £144,000, and sent them to Nigeria expecting, and having agreed, to sell them there. But the purchaser defaulted and Annova was left with 472 computers in a warehouse in Nigeria. Over the following year they were all sold, but not profitably. Mr. Popat said that the £144,000 was borrowed from other traders (since the computer supplier, having done a company search on Annova, would not extend credit to it), and that that borrowing had been since repaid in part only.

23. After the Nigerian deal Annova did some transactions in secondhand mobile phones, but until 2006 it did no other major transaction

24. Mr. Popat described some of Annova's trade in the period up to 2005 as that of an export agent effectively earning commission from deals it introduced to and which were conducted by, Atlantic Electronics Limited.

25. We gained the overall impression that in the period from 1999 to the end of 2005 Annova had a disparate business centred around consumer electronics with a turnover which before 2005 was some £1 million per annum, but fell to less than £500,000 in 2005 (Annova's accounts for the year to 31 March 2006 show turnover of £2.5m, but that is after taking account of the mobile phone deals which took place in February and March 2006 described below). The business was not particularly successful. We note that the accounts show profits for the years to 31 March 2004 and 2005 of £9,000 and £10,000 respectively with the payment of only modest wages and salaries. That culminated with the Nigerian computers catastrophe in late 2005. Mr. Popat described the business as "going down" in 2005.

26. We thought it likely that Mr Popat was at this stage fairly desperate to find a way to make money because of the previous failures, and that this might understandably make him less cautious and prepared to cut corners.

(ii) Takover and financing: Ribariton and Hornington

27. At the end of 2005 Annova was a company with no substantial assets and with substantial debts due to those who had financed the Nigerian computer deal. Mr. Popat told us that at this time he made it known to his contacts that he was looking for an outside investor. One of his contacts was Avram Ttroshvilla whom he had known several years. Mr. Ttroshvilla was a Georgian who lived in Israel. Mr. Popat had a conversation with him, and in January 2006 his son, Mr. Simon Ttroshvilla, came to the UK to negotiate the taking of a stake in Annova. By the end of January 2006 Mr. Popat had sold 90% of his shares in Annova to Ribariton, a BVI Company probably owned by Mr. Ttroshvilla for £25,000, on terms that Mr. Popat would continue to work for Annova for a further three years.

28. Mr Popat remained a director of Annova. He told us that the Ttroshvillas left the decision making to him but that he "used to be in touch with [the Ttroshvillas] by email to inform them of [his] concerns after a certain level of business" and that he used to inform them over the phone what the sales were. He said that he "was

doing one sale a month. There was a potential of doing a lot more sales, but didn't want to overextend the business". We took it from this that although the day to day decision making was that of Mr Popat, strategic direction was shared with the Ttroshvillas.

29. Mr Popat made a couple of comments which indicated that after Ribariton's acquisition there were differences in Annova's business. When asked about the possibility of approaching large suppliers of mobile phones in late 2005 or 2006, he said " If I had been in the business of one or two years, yes, I would have approached them…I was in business from 2006, as I say, after selling the shares of the company." Mr Ferguson warns us against taking this remark out of context, but the context was the expansion of Annova's business, and it seemed to us to be a chance remark which gave some hint of his thinking. Later he said that once the funding was in place then he had to start developing the business.

30. In February and March 2006 Mr Popat told us that Annova did three deals with XChange in which it purchased mobile phones and sold them to Tagleemer or Nova. These were for between £500,000 and £1.4 million. Then it did the deals which are the subject of this appeal. (We have dealt with an inconsistencey in Mr Popat's evidence in relation to these deals above.) We find it noteworthy that Annova's large mobile phone deals started at about the time of the Ttroshvilla investment.

New Finance

31. By a document dated 14 February 2006, but apparently signed on 15 March 2007, a copy of which appears to have been faxed to Annova on 24 March 2006, Hornington Enterprises Ltd, a Hong Kong company agreed with Annova to make a loan of £125,000 to it. Clause 2 of that agreement provided that "considering the long-standing business relationship between the borrower and lender, it has been mutually decided that there will be no interest.". Mr. Popat told us that this referred to the relationship between Hornington and Ribariton. The loan was repayable on 15 May 2006 or on demand. By a similar document also dated 14 February 2006, Hornington agreed: to lend £150,000 to Annova, that no interest was payable and that the loan was repayable on 15 April 2006 or on demand. In a letter of guarantee dated 27 February 2006, Ribariton agreed with Hornington to guarantee a loan to Annova of £250,000, and agreed to pay interest at LIBOR plus 4%.

32. Annova drew down £99,994 from Hornington on 23 February 2006, and £124,180.78 on 22 March 2006: a total of £224,176.78. The first of these drawings was thus made before the date on the guarantee letter. Annova repaid Hornington £225,000 on 15 September 2006 (£826 more than had been lent.).

Commentary

33. We do not find these arrangements surprising or generally suspicious. Annova had to all intents and purposes a new owner. If it needed capital to enable it to make money, then one would expect the new owner to make (or try to make)

arrangements for additional finance. If the Ttroshvillas (or their company Ribariton) had a relationship with Hornington, then finance on advantageous terms from Hornington with some recompense provided or procured by the Ttroshvillas to Hornington seems perfectly ordinary; after all the alternative would be for new monies to be borrowed or found and invested as share capital. Nor do we find the slight lack of legal niceties a cause for concern in what looked very much like an arrangement between associated companies.

34. To us the relevant question is why Annova needed extra finance. One answer may be to repay its debts on the African computer deal. Another may be that it needed the funds to engage in the export of mobile phones in circumstances where the exporter would be out of pocket until it received the repayment of input tax credits: it suggests that the business plan adopted for Annova after the takeover was that it would engage in mobile phones deals which principally involved the export of phones from the UK.

Euro- Counsel

35. In May 2006 Annova had dealings with Euro Counsel as a result of which €700,000 was paid to Annova on 23 May 2006, was not repaid to Euro Counsel, and remains due to Euro Counsel. HMRC say that the circumstances of this payment point towards its having been intended as soft finance for Annova's dealings rather than its being part of a genuine commercial arrangement. They suggest that the documentation or the transactions were engineered to clothe a device for the injection of funds into Annova.

36. The evidence of Mr. Popat and the documents Annova produced is the following:

(1) In February or March 2006 Mr. Popat received a phone call from Euro Counsel saying that Annova had been recommended by Mr. Grougis from Special Trading, a Dutch company;

(2) On 1 March 2006 Euro Counsel sent Annova various company documents, and on 2 March a certificate of its French VAT number;

(3) On 20 April 2006 a Spanish company offered Annova specific quantities of two sorts of digital camera and one sort of iPod at specified prices. The total price sought was €1,304,754;

(4) On 26 April 2006 the Spanish company sent a pro forma invoice to Annova for the iPods at €199.28 each;

(5) On 28 April 2006 Annova placed a purchase order for these quantities of all those goods at the prices quoted (save in relation to the iPod is where the order was at a slightly lower price). Delivery was to be to Prologis in France. The total price was €1,260,380. Mr. Popat said that a purchase order was sent at that time because they had received an oral enquiry from Euro Counsel asking for these goods.

(6) On the same day, 28 April, the Spanish company invoiced Annova for these items.

(7) On 1 May 2006 Euro Counsel sent a purchase order to Annova for the same quantities of the same items for a total price of €1,285,597 (a profit for Annova of €25,000).

(8) On 8 May 2006 Annova wrote to Prologis asking for a certificate that the goods have been received.

(9) CMR's (shipping documents) indicate the receipt of the goods by Prologis on 9 May 2006;

(10) On 15 May 2006 Annova made partial payment to the Spanish company of €350,000 and sought proof of shipment to Prologis.

(11) On 17 May 2006 Annova made payment of the balance (financed, Mr. Popat said, by withholding payments to suppliers in other deals which were eventually repaid out of the payment referred to below from Euro Counsel).

(12) On 22 May Annova invoiced Euro Counsel for €1,285,597;

(13) On 23 May 2006 Euro Counsel paid €700,000 to Annova's bank account.

(14) On 23 May 2006 Mr. Popat e-mailed Euro Counsel saying that Annova was unable to supply the goods because HMRC could not confirm Euro Counsel's VAT number.

(15) On 25 May 2006 Annova received a letter from Redhill indicating that HMRC could not confirm that Euro Counsel had a valid VAT registration (Mr. Popat explained that such verification had been sought notwithstanding that neither the goods nor the purchaser nor the supplier were in the UK).

(16) An EquiFax report of 29 May 2006 indicates that Euro Counsel were a high credit risk with an estimated turnover of €483,000.

(17) On 31 May 2006 Annova resubmitted a Redhill request for Euro Counsel. A same day reply indicated no confirmation.

(18) Mr. Popat said that he then contacted Euro Counsel who said they were going to sort out the difficulties with their French VAT office. Later on Mr Popat decided that as the VAT number had not been confirmed he did not want to go ahead with the transaction. He decided to offer the goods to other customers. But he also went back to Mr. Grougis of Special Trading who had introduced Euro Counsel in the first place, and asked his help. The goods were offered to Eurotronics in an e-mail of 1 June 2006. Mr. Popat's answers suggested to us that Eurotronics had been found or procured by Mr. Grougis.

(19) On 6 June Eurotronics sent Annova a purchase order for all the cameras and iPods. It specified the same prices for the cameras as Euro Counsel had been willing to pay, and a €1higher price for each of the iPods.

(20) Eurotronics were given a clean bill of VAT number health by Redhill, the goods were invoiced to them on 7 June 2006, and Prologis were directed to release them to Eurotronics on the same day. Mr. Popat said that payment was

received from Eurotronics after this, on 30 June, but that the money had been assured to Annova by Mr Grougis since he had found the buyer for Annova.

37. At the end of this saga Annova was left holding €700,000 which it had received from Euro Counsel on 23 May. Mr. Popat said that when he had found another buyer Euro Counsel had said that Annova should sell to that buyer because they were still sorting out their French VAT number. He said that he later approached Euro Counsel to ask about the €700,000. He was told towards the end of June that Euro Counsel had problems with their FCIB bank account and asked him to hold on to the €700,000 until they sorted it out. They did not provide details of the problems they were having with the banking system. Mr. Popat said that their problems with the bank account continued in June and July of the same year. By August Annova's VAT repayment was denied and it no longer had funds to repay Euro Counsel. Since then he says that Euro Counsel have from time to time contacted him to seek repayment (and they still ring every 3 to 4 months). No legal proceedings had been taken against Annova.

38. Mr. Kerr pointed to a number of anomalies in this account. We find the following detailed aspects of the history disturbing: --

(1) Euro Counsel were told the deal was cancelled on the day they made payment;

(2) the goods were released against Mr. Grougis' assurance before payment was made; and

(3) the Spanish company sent Annova a pro forma invoice before Annova placed a purchase order.

39. But more than those points of detail, and our surprise that Euro Counsel had only one bank acount, we find the following major aspects almost incredible:

(1) that another buyer was so easily found within a few days for the same quantities of the same goods and was willing to pay the same price (bar €1 in the case of the iPods);

(2) that Euro Counsel was content to leave €700,000 with Annova, a company it had not dealt with before and which had little financial standing, for over two months (particularly as Mr. Popat told us that Annova's supplier of the cameras and iPods wanted payment before releasing the goods because Annova was a new customer).

Commentary

40. In our judgement any reasonable person would have realised that all this was just too good to be true. Such a person in Annova's position would have concluded that this was some form of arrangement to provide additional finance to Annova.

41. We deal with the FCIB evidence below, but in the context of Annova's dealings with Euro Counsel, we noted that the charts of FCIB cash movements referred to below record payments and receipts of "Euro Coun***c***el ***ET*** Developpment" in transactions on 11 and 20 July 2006. We related above Mr

Popat's evidence about his transactions with the company whose letterhead gave its name as "Eurocounsel & Developpment" This entity shared the same address in Paris as the entity with the FCIB bank account. These transactions took place in the period in which Mr Popat told us that Euro Counsel were having problems with their FCIB account. This comforted us in our conclusion in the preceding paragraph.

Awareness of VAT Fraud

42. From July 2003 Mr. Popat was aware that MTIC fraud was a serious concern and that it was being conducted on a very large scale. In each case the terms and conditions attached to Annova's Purchase Orders make plain that the company was aware of the danger of VAT fraud in these deals because they seek confirmations in relation to VAT.

43. Mr. Popat used HMRC's Redhill facility to verify his counterparties' VAT numbers. In his verification requests he gave details of the proposed transactions hoping thereby to gain comfort that the transactions would be, or could be taken as having been, blessed or checked by HMRC. He said that by giving details it enabled HMRC to make enquiries. HMRC's replies to the VAT number checks were generally received within a few days, and bore the legend that the reply was "not authorisation to enter into any commercial transaction with any trader". We do not think that a reasonable person could have drawn any substantial comfort that the proposed transactions were not connected with the VAT fraud from these replies.

44. Mr. Popat was aware that it was possible that some of Annova's transactions might be connected with VAT fraud, and accepted that one of the reasons for the checks he conducted was to guard against "accidentally ending up in a problem or a VAT fraud".

The mobile phones market: The evidence of Mr Fletcher and Mr Attenborough

45. The purchase and sale of mobile phones otherwise than by manufacturers, their authorised distributors and mobile phone operators was termed grey market trading. We heard expert evidence from Mr Fletcher and Mr Attenborough in relation to the mobile phone industry, authorised mobile phone distribution, the nature of grey market mobile phone trading activity (box breaking, dumping, volume shortages and arbitrage; and indicators thereof), the volumes of phones which were available in the UK for such trading, and the proportion of worldwide sales which the Appellant's sales represented.

46. Much of this evidence we found of little relevance because it was concerned with taking an objective view of trading in mobile phones on the basis of an informed analysis of the market. We were concerned: (a) with whether Annova actually knew that there was something wrong with its activities, and (b) whether it had the means to discover whether that was the case.

47. In addressing the first of those questions, statistics and an informed view of the market are relevant only if Annova actually had that information and knowledge. So far as statistical information goes, there was no evidence that Annova had the statistical information adduced by Mr Fletcher, and we find it did not. So far as concerned knowledge of the market, Mr Popat was knowledgeable about buying and selling consumer electronics but, even though he was not asked specifically whether he had considered or knew about the economics of the grey market in mobile phones, it was pretty clear to us that he would not have had the kind of appreciation of the features of box breaking, dumping and arbitrage on which Mr Fletcher relied for some of the analysis which he applied to the Appellant's transactions. We concluded that Mr Popat did not apply such analysis to his deals and therefore that the statistics and economic analysis were irrelevant to the question of Annova's actual knowledge save to any extent referred to below.

48. In addressing the second question, that of means of knowledge, we cannot attribute to Annova the knowledge and expertise of the experts unless either it actually had that expertise and knowledge, or it was reasonable in the circumstances to expect it to obtain it. We have concluded in the preceding paragraph that it did not have that knowledge and information; we discuss later the extent to which it would have been reasonable for it to obtain it.

How many mobile phones were being traded in the UK in 2006 on the secondary market?

49. Mr. Fletcher and Mr. Attenborough considered the volume of handsets which, in 2006, were available to be traded by persons other than authorised distributors, multiple network operators, and original equipment manufacturers. There were some differences between their estimates but we concluded between 10 and 20 million handsets were so available in that year.

50. By contrast we note that the total number of mobile phones which were bought in the UK in 2006 was between 30 and 35 million.

51. Mr. Attenborough also sought to estimate the grey market exports in that year. He concluded that some 10 million phones were exported. This calculation was based on reducing the 2010 UK exports by worldwide growth since 2006 and ignoring the actual pattern of growth between 2007 and 2010 (on the basis, had attacked by Mr. Fletcher, that the reverse charge provisions had upset the market in that period). If the trend line of actual exports is used the figure for exports would be 5 million. We concluded that it was likely that between five and 10 million phones were exported on the grey market in that year) although it was not shown that those exports were not connected with VAT fraud elsewhere).

52. The number of phones sold by Annova in all four deals was 37,500, but Mr. Popat told us that there had been three other deals in addition to those challenged in this appeal. He did not give us much detail of these deals, but assuming that they were of equivalent size, that means that Annova sold no more than 70,000 phones in the year. That is less than 1% of the available market and less than 1.5% of

exports. It seems to us that even if Annova could reasonably have found that the size of the market in the export volumes, these percentages would not have caused significant concern that its trade was linked to VAT fraud or require further investigation.

Sales of particular phones

53. Mr. Fletcher produced figures published by Gfk for the monthly sales in 22 European countries all makes of mobile phones. Gfk indicate that their data covers 92% of the sales in the territories in which they collect data. The figures are grossed up to allow for sales in outlets such as petrol stations and toy shops which they do not capture, but not the sales to corporates. Not all European countries were included in the 22: Turkey for example was excluded.

54. Mr. Attenborough said that Europe accounted for 28% of total worldwide shipments of phones but could not recall the definition of Europe for this purpose.

55. The Gfk data showed that some 250m to 300m phones had been sold in the 22 countries in 2006. Mr. Fletcher's estimate for worldwide phone sales was 1.2 billion. 28% of 1.2 billion is about 300 million. We concluded that the Gfk data represented roughly one third of global sales.

56. Treating the Gfk data as representing for each type of phone one third of the global sales of the phone -- another rough estimate based on the assumption that global sales of each phone were in the same proportion as sales in the 22 countries -- and comparing the Appellant's sales with the estimated global sales of each type of phone in the month of, and in the month following, the Appellant's transaction the Respondents calculated the proportion of a month’s worldwide sales of each type of phone represented by the Appellant's sales. The results are set out below with commentary from Mr. Attenborough.

Phone	Percentage of worldwide sales in month of sale	Percentage of worldwide sales in month after sale	Comments (Mr Attenborough)
April			
N 8800	4%	5%	Sales of this model were fairly uniform across the year. Unlikely to be a special surplus of available phones on the market. No dumping.
N90	4%	4%	Reduction in sales across the eight

			months after April. Possibility of dumping.
N 9500	10%	14%	(1) significant fall in demand in following eight months. Dumping likely; (2) a business phone for which GFK data is not grossed up.
N 9300 i	9%	8%	(1) sales increased in eight following months. Dumping unlikely; (2) a business phone.
SE W 900 i	1%	1%	Serious decline in sales after June 2006. Possible early dumping.
May			
N 8800	3%	4%	
N 9300 I	8%	9%	
N 91	3%	3%	
N 80	1%	1%	
N 90	5%	7%	
June			
N 80	0.5%	0.3%	
SE W900 i	5%	7%	
N 91	1%	1%	

57. In our view some of these are surprisingly high percentages of overall worldwide sales for the business of the Appellant's size. They represent thrice these percentages of European sales. If a reasonable person in the Appellant's

position knew, for example, that in May it had sold the equivalent of 4% of the global sales (and 12% of European sales) of Nokia 8800, we suspect that it would have been surprised. It might then have conducted the review which would lead to the comments above; those might have lessened its surprise in some cases, but would have left some questions.

58. The argument before us on these issues was complex: there were attacks on the accuracy of the Gfk figures, questions about the effects of stockpiling on the sales figures, issues about the emergence of retail sales following the release of the phones, and the effects of the decline in sales as phones were superceded, and questions about the sales of phones to corporates. To get to the bottom of all those issues and to come to reliable detailed conclusions would be the work of many weeks for a small operation. The most that could reasonably be expected would be a broad brush feeling for whether or not the percentages were so large as to be suspicious.

Commentary

59. We find that Annova did not know the proportion which its sales of particular phones represented of worldwide sales or European sales. The issue we shall address later is whether it would have been reasonable for the Appellant to seek out the data from Gfk (or any other provider) which would have revealed these results.

Connection with Fraud: An Overall Scheme to defraud?

60. The Appellant did not dispute that each of the four Deals was connected with the fraudulent evasion of VAT: the evidence led by the Respondents in this respect was not challenged.

61. But the Appellant says that there is no evidence that it knew of the frauds or of the connection to them. There is at least a suggestion that the facts of the connection are therefore irrelevant.

62. The Respondents say that the evidence shows that these Deals formed part of an overall scheme to defraud HMRC and that the Appellant's actions must be assessed in the light of that scheme. They say that the fact that there was an overall scheme indicates that the Appellant must have been a knowing party because it would not have made sense to chose an innocent party to perform its role in the scheme since an innocent party may not have played the game the right way.

63. Thus we must address the question of whether there was such a scheme. It also seems to us that some appreciation of the nature of the fraud and the connection to may be necessary to address the question of what the Appellant might have found out if it had been given answers to pertinent questions.

64. There are two parts to the relevant evidence: (i) the undisputed evidence in relation to the deal chains and the frauds, and (ii) the FCIB evidence – evidence of movements of monies between accounts at First Curacao International Bank.

(i) The chains and the frauds

65. In Deals 1,3 and 4, the Appellant purchased from Xchange which in turn purchased from an importer which fraudulently evaded VAT. In each case Xchange made a profit of between 25p and £2 on each phone and the appellant made a profit of between £15 and £25 per phone.

66. In Deal 2 the Appellant purchased from Morganrise which imported the phones. Morganise made a profit of 25p to £2 per phone; the Appellant made a profit of £15-£25 per phone.

67. Morganrise was what HMRC called a contra trader. It purchased goods which derived from a chain of back-to-back transactions in which there was an importer which fraudulently evaded the VAT due. Morganrise then exported the goods. All 34 of its export transactions in April 2006 traced back to one of two defaulters. It operated on a grand scale: it claimed input tax credit for April/May was £24 million, and for 03/06 £36 million. That equates to sales of some £180 million in that period. Morganrise set against this credit the VAT output liability which arose from importing goods and selling them to persons such as the Appellant. Its output tax exceeded its input tax leaving it with no exposed repayment claim. These actions passed the connection to fraud on to its customers. This practice spanned a number of periods.

68. The consistency between the size of the profits made by the Appellant on its sales and the size of the profits made by its suppliers in all the deals, the organisation of Morganrise' operation and the defaults of Xchange's suppliers indicated to us that it was more than likely that each of the chains of supply in which the Appellant fell were in some way set up by someone or by some set of conspirators.

(ii)The FCIB Evidence

69. Mr. McCaskell presented flowcharts which he told us showed what had happened to monies which Annova had paid to its suppliers. They showed for many payments the subsequent, often same day, transfer of these monies to other entities with accounts at the Dutch Antilles bank, FCIB, and the onward transfer of monies through similar accounts and so on. .

70. The information for these charts had been obtained by interrogating the computer records of FCIB held on two servers: in Paris and in Holland. The detail of the account information obtained from the servers differed in minor respects: (1) the accounts obtained from the Paris server showed running balances; not all the Dutch accounts did, (2) some transactions appeared to have been shown in a different order (920,338 and 920,330 on Spabel's account for 15 May 2006), (3) the Paris server gave EB (electronic banking) numbers for some transactions which did not have numbers on the Dutch server, and (4) the layout and order of each line on the accounts were different. Nevertheless it appeared that there was a one-one correspondence between the dates, amounts, and descriptions in each server's

record with those in the other, and that the EB numbers on the Dutch record were all reflected in the Paris record. We concluded that the existence of the two servers' records did not cast doubt on the accuracy of either set of records.

71. There was some discussion before us as to the import of the EB numbers given to each transaction. Where a payment was made from one FCIB account to another, the same EB number appeared both in the account of receipt and in the account of payment, but otherwise the numbers appeared not to be repeated (save in relation to charges for a transaction). There were accounts in which a number of transactions appeared as sequential entries with rising EB numbers, but also accounts where consecutive entries in time had EB numbers which jumped forwards and backwards and there was no sequential correspondence between the entries and the EB numbers.

72. Mr. McCaskell suggested that an EB number would be allocated by the system when a transaction was "booked" or authorised, so that if one person at a particular time arranged a number of payments, they would be likely to have close and rising EB numbers even if their payment dates and times were different. However Mr McCaskell said he was no expert on the programming of the FCIB computers. We think that Mr McCaskell's account is a possible explanation, but were not convinced that it was the only explanation or a complete explanation of the system. We decline to treat the EB numbers as conclusive of the order in which transactions were booked; nevertheless an increasing series of EB numbers associated with a series of same-day payments suggests some link between the payments even if not necessarily that of a single directing mind.

73. From the account information Mr. McCaskell provided a number of flowcharts showing the receipt of money paid by Annova in the FCIB account of its supplier (Annova did not have an FCIB account), and thence down chains by a series of receipts and payments by other entities' accounts. In these flowcharts the sums received and paid by an entity at a stage in the series were not the same: sometimes they were different only by a small amount, and at other times greatly different. Where the differences were small the link between the payment and the receipt was evidenced to our satisfaction by the proximity of the receipt and payment in the relevant entities' accounts and the state of the running balance. Where a payment by an entity exceeded the identified receipt Mr. McCaskell had identified another receipt which, together with the first receipt, approximated the identified payment; sometimes he had used the proximity of EB numbers to assist with this analysis. Where a receipt exceeded an identified payment he would seek to identify other payments made by the same entity which, together with the first payment, made up the receipt. In most cases however there was very little difference between the payment and the receipt.

74. We accept the relationships between receipts and payments which Mr McCaskell drew from the accounts when preparing these charts.

75. Some extraordinary money movements are shown by these flowcharts:

(1) Annova's payment on 10 May 2006 to Xchange was absorbed into a flow of payments on 15 May 2006 in which some £2,108,000 was passed through the accounts of:

(a) Bulat 29 times

(b) Morganrise 32 times

(c) Hexamon 27 times

(d) Zemtex 27 times

(e) Modular 31 times,

on the same day! In this case these transactions had increasing sequential EB numbers.

(2) Annova's payment on 16 May 2006 to Xchange finds its way through six further companies (including Bulat) back to Xchange on the same day.

(3) Annova's payment on 24 May 2006 to Morganrise forms part of a chain of 66 further payments on the next day in which the companies noted in (1) above figure frequently.

(4) There are similar movements in relation to other.

76. We note in particular: (1) the multiple presence of Morganrise and Bulat in most of these cash movements, (2) the presence of Euro Counsel in many of them; and (3) the presence of Atlantic Electronics (an entity with which Mr Popat had previously dealt) in relation to Annova's first payment in Deal 3.

77. We also note in relation to the companies listed in subparagraphs (a) to (e) above above that:

(1) In Deal 1 Xchange made a payment to Bulat rather than its supplier (a "third party payment") depriving its supplier of the funds with which to pay its VAT; Bulat was paid by Morganrise in Deal 2, and Bulat was a missing trader in October 2006;

(2) Hexamon sold to Morganrise in March and April;

(3) Zemtex received monies from Morganrise in relation to Deal 2

(4) Modular sold to Morganrise on 18 occasions in April and 16 in May.

These companies were therefore connected with other fraudulent activities associated with the Appellant's suppliers.

78. We concluded that at least some of the cash movements must have been planned by a single (but seemingly almost deranged) hand. These were Deal 1 payment 4, Deal 2 Payments 3, 4 and 5, Deal 3 payments 2,8 and 9.

79. The charts do not, save in relation to two cases where a payment by Nova to Annova is shown, show the flow of cash to Annova from its customers. Save for those cases there is no direct indication that the monies paid to Annova were financed as part of the flows in Mr McCaskell's charts. Nor were we able to

discern from the cash movements that any particular entity retained the VAT lost in relation to any Deal Chain.

80. The charts indicate that when Annova's supplier was paid by Annova, generally it did not immediately use the funds to pay its supplier.

81. *(iii) A fraudulent Scheme - conclusions*

82. The FCIB evidence provides additional support to the conclusion that these deals were part of a fraudulent scheme planned and put into action by one or more persons. The presence in the FCIB money chains of Euro Counsel and other companies with which Annova dealt suggest that they were either participants in that scheme or manipulated as part of it, and that their dealings with Annova should be regarded in that light.

83. The FCIB evidence on its own provides little support for the conclusion that Annova knew of its participation in this fraud. The conclusion that there was a scheme permits us to consider at the appropriate point HMRC's argument that Annova was unlikely to have been an innocent party. (See Should Have Known below).

Payments and credit taken from suppliers

84. In his witness statement Mr. Popat said that although "we purchased on credit I was reluctant to offer the same terms to customers until a trading relationship had been built up". Later, in response to one of Mr. Wald's points about Annova's contract material, he replied: "I was back to back selling and failure to pay meant no release of goods."

Deal 1.

85. Annova was invoiced by XChange on 11 April 2006. Annova invoiced the phones three days later, on 14 April 2006 to Tagleemer. Tagleemer made four payments: on 12 April (prior to the invoice), 25 April, 10 May and 15 May whose total approximates to Annova's invoice to it. Annova made four payments to Xchange: on 18 April, 26 April, 4 May and 10 May, whose total equalled Xchange's invoice. There is little correlation between the amounts paid and those received. The final payment was made on 10 May some four weeks after the initial invoices.

86. The goods were shipped to Welox in Hungary on 13 April with instructions "Goods are on hold. We are awaiting payment". A reminder to that effect was sent on 24 April. On 16 May 2000, the day after Tagleemer's last payment, Annova wrote to Welox releasing the goods.

87. Xchange's invoice makes no assertion that it retained title to the goods until paid. Xchange wrote to Secure Freight Management on 11 April instructing it to release the stock to Annova. This indicates to us that Xchange not retaining title

until paid. As a result Xchange granted credit and was exposed to Annova over the period. The amounts are shown as part of the graph which appears below.

Deal 2

88. Annova was invoiced by Morganrise for some £3 million on 26 April 2005. Annova invoiced the phones to Tagleemer on 27 April 2005. Tagleemer made six payments between 15 May and 24 May in total approximating to Annova's invoice. Annova made six payments of different amounts on different days to Morganrise equal in total to it's invoice. The last payment was made on to June 2006, one week after Tagleemer's last payment.

89. None of the correspondence with Morganise indicates that Morganise retained title to the goods until paid, its invoice merely recording "Full payment after inspection of the goods". Faxes sent by Morganise on 26 April 2006 require Twin Logistics to release the goods to Annova. We conclude that it parted with possession of, and title to, the phones on 26 April 2006. Thereafter it extended credit to the Appellant. The graph below shows that period and extent of that credit.

90. Mr. Popat told us that he had no dealings with Morganise prior to 6 March 2006. But he says that no interest on the outstanding monies was sought by Morganise.

91. Instructions sent by Annova to Twin Logistics indicate that the goods are on hold awaiting payment. There is no indication that there was any partial release of the goods to Tagleemer following its partial payments. Annova took over £2 million from Tagleemer before title to and possession of the goods was transferred to Tagleemer. Tagleemer were exposed to Annova for that period: this additional exposure is not reflected in the graph below.

Deal 3.

92. Annova was invoiced by Xchange for £6.2 million on 30 May 2006, and invoiced Nova for £5.57 million on 31 May 2006 (the purchase price was inclusive of VAT and the sale zero rated). Nova made eight payments between 1 June and 20 July 2006 whose total equalled the amount of the Annova invoice. Some £3 million was outstanding for over half this period. Annova did not pay Xchange's invoice in full. It made five payments between 14 June and 17 July of amounts which totalled £4.5 million, leaving £1.7 million outstanding and due to Xchange at 31 July 2006.

93. Annova's purchase order to Xchange contains a term that once the goods are released title passes to Annova. None of Xchange's correspondence on this deal suggests any retention of title. (By contrast Annova's instructions to the warehouse EU Logistics indicated that the goods were on hold awaiting payment). The credit taken from Xchange on this deal is reflected in the graph below.

94. On 3 August 2006 (14 days after Nova's final payment) Annova released to the phones to Nova. Annova thus took a large credit risk on Nova for a considerable period.

Deal 4.

95. Xchange invoiced Annova for about £1.6 million for Deal 4 on 29 June 2006. At that time Annova still owed Xchange some £.1.7 million for Deal 3. Between 20 July 2006 and 2 January 2007 Annova made a further six payments to Xchange totalling some £2.3 million. Thus there remained (and remained at the date of the hearing) some £1 million due to Xchange. Again the documentation indicated no retention of title by Xchange.

96. Tagleemer made five payments over the period 26 May 2006 to 10 November 2006. By 20 July 2006 it had paid some £1.3 million. The warehouse in Germany was instructed to hold the goods pending payment, but on 20 July 2006 a number of phones were released and there was a similar release on 5 August 2006, in each case after receipt of funds from Tagleemer. We have assumed that the remainder were released in November 2006 when full payment was made.

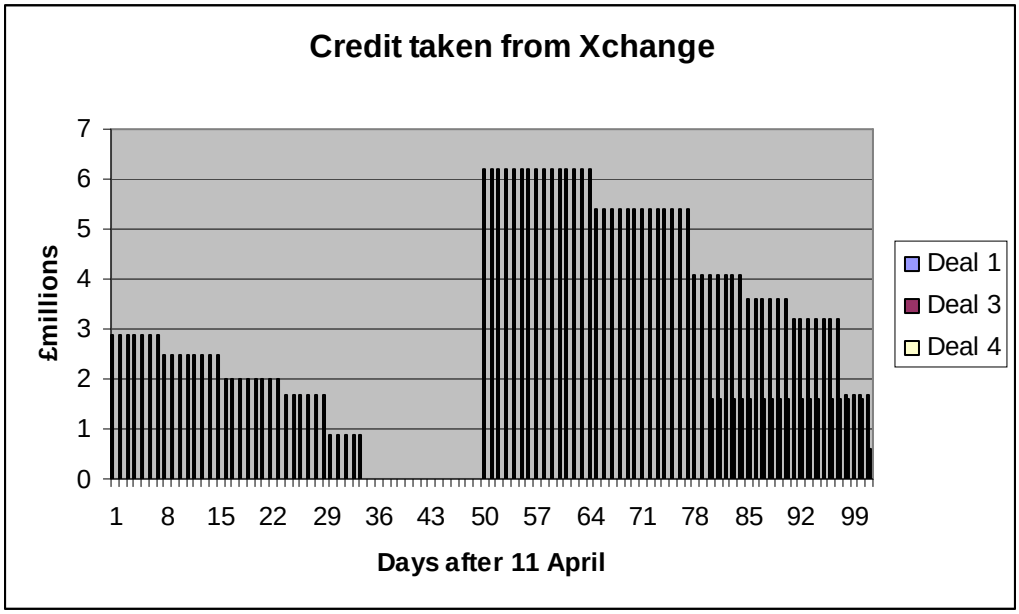
Commentary

97. HMRC say that the fact that Annova was not obliged to pay its suppliers until it received payment was not recorded in the deal documentation and that this casts doubt on Mr.Popat's evidence. However for Deals 1, 2, and 3, and its terms and conditions attached to its purchase orders said "Subject to Buyer send us payment". And, for Deal 4, and its purchase order terms and conditions said that: "The Buyer is selling the goods "on hold". The Buyer need not pay the Seller until the Buyer gets paid by its buyer".

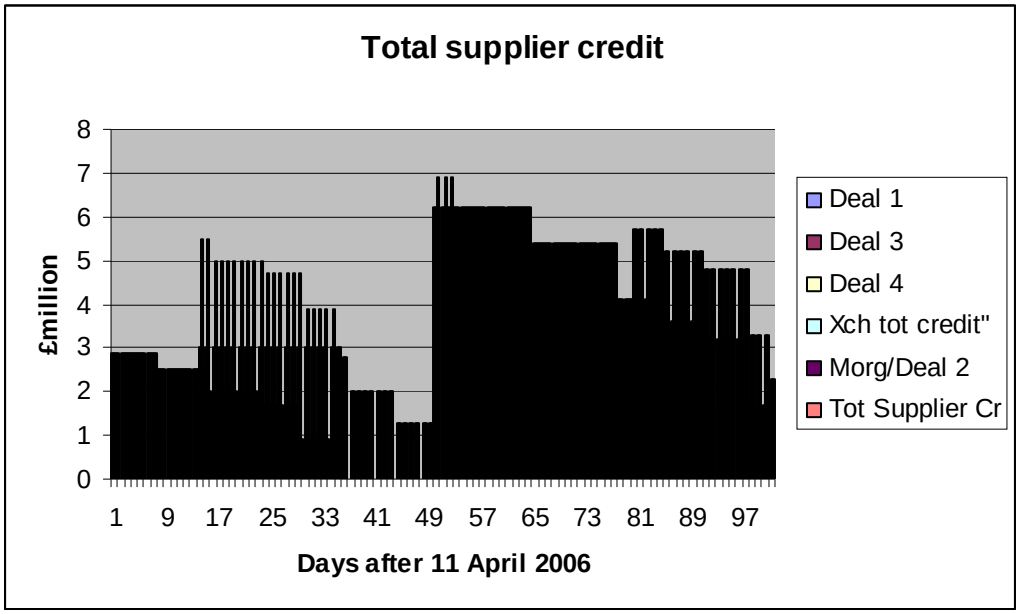
98. This all supports Mr. Popat's assertion that Annova purchased on credit. What is surprising is the period and the amount of that credit.

99. We were particularly surprised by the credit given by Morganise when (a) Annova's first dealings with that company appear to have been a meeting at a social function in late 2005 (see below), and (b) Morganrise' invoice specifies payment on inspection of the phones (although Mr Popat did say that this had been supplemented by oral agreement).

100. The graph below shows the credit taken from Xchange over the period from 11 April 2006 to the end of July 2006. It can be seen that very substantial amounts were owed over significant periods. We note in this context that the accounts of Xchange accounts for the year to 31 March 2004 obtained by Annova in early 2006 show that it had not traded since incorporation in May 2003 and had no assets other than £1 and only £1 of share capital. In the two and a bit years after 31 March 2004 it had grown to a size which enabled it to extend £6million of unsecured interest free credit to Annova.



101. The graph below shows the total credit (*y*-axis in £millions) which Annova took from Xchange and Morganrise over the period from 11 April 2006 to the end of July 2006. It can be seen that it benefited from between £1million and £7 million of credit given by its suppliers over that period; Credit which appears to have been given on an unsecured basis, to a company which Mr Popat told us had not a very good credit standing because of its problems with the Nigerian deal (and which, he said, would not have been able to sell to Tagleemer's customers because of that fact).



In addition we note the exposure of Nova and Tagleemer to Annova noted above.

102. Mr. Popat acknowledged that Xchange were owed some £1 million. He said that at the moment, because of the denial of input VAT credits by HMRC, Annova did not have the money to make payment.

103. But he also expressed an unwillingness to pay Xchange because it was "their fault" that he had had his VAT denied. We regard his comments on this issue as significant. He said, with some emotion, in relation to the director of Xchange:

> "he has put me into a lot of trouble and according to our understanding and terms that I didn't want to be part of this so claimed fraud. I made it clear from the beginning before I started business ... that he understood I did not want to be part of it ..."

104. Later, on cross-examination by Mr. Kerr about the credit taken from Xchange, Mr. Popat said that he had agreed with Xchange that it would take about a month or month and a half before Annova made payment in full. He told us that he had asked how Xchange could offer such credit and had been told that it had suppliers in Europe who could give it credit and that was why they could give credit to Annova. He said he did not find it odd that Xchange extended further credit for Deal 4: that was normal business. He had been chased by Mr. Ghaffar from Xchange but the last call was in the spring of 2007. On the other hand Mr. Popat said he had chased Tagleemer in relation to payments on Deal 4, and had asked for interest, although none had been paid.

105. The Appellant used the credit it obtained from Xchange and Morganrise to finance the goods sold to Tagleemer and Nova. Mr. Popat said that he had already agreed with these customers that they could pay over an ill-defined period. Because the Appellant did not release the phones to these companies until payment was made it did not expose itself fully to their creditworthiness; had they defaulted, however, it would have had to resell the goods. That eventuality and the difficulties it gave rise to was something which Annova had experienced in the Nigerian computer deal. That Mr. Popat was willing to expose the Appellant to the same danger in these deals suggests to us that he was less concerned because the Appellant was no longer his company, and also that its owners concurred with or promoted these deals.

Trade Partners: History and Due Diligence

Redhill Checks

106. As we have noted elsewhere Annova obtained comfort from HMRC's Redhill office before each deal of the VAT numbers of its counterparties.

Xchange

107. We have discussed above the inconsistencies in Mr Popat's evidence in relation to Xchange.

108. Mr. Popat told us that his first contact with the directors of Xchange had been at the CEBIT trade fair in Hanover about six months before their first deal (although his later recollection was that it was in March 2005).

109. On 27 February 2006 it appears that Xchange sent Anova documents including a letter of introduction, and a copy of its VAT certificate. Mr. Popat obtained its annual return and accounts.

110. Xchange's accounts for the year ended 31 March 2004 indicated that the company had been incorporated in May 2003 and was dormant.

111. Mr. Popat told us that he had been told that Xchange started trading late in 2004/5 and that he was shown a VAT return and some bank statements as confirmation of this. Mr. Popat visited Xchange's premises: a warehouse and office upstairs. There the director told him that he had previously traded in the garments business. Mr. Popat concluded that he had now a good knowledge of mobile phones.

112. Annova obtained a (sample) report from Equifax dated 22 March 2006. The report indicated that a striking off notice had been given to Xchange on 25 October 2005. Mr. Popat said that this did not concern him overly because at his meetings with Xchange in November, December and January he had been told that Xchange was trading and had not been struck off. The report also noted that officers of the company had been involved in other companies which had been struck off.

113. Mr. Popat said that he took up one or two trade references by phone before dealing with Xchange and was told by the referees that Exchange could supply him with goods.

Commentary

114. Unless a newly operational company was part of a large group, or had extraordinarily wealthy individual investors it would be quite extraordinary for it to have the financial ability to offer £m of credit; and in any event very ofdd for such credit to be extended to a company such as Annova. Xchange’s ability and willingness to extend credit calls for an explanation.

Morganrise

115. Mr. Popat told us that he met a director of Morganrise at an Indian Christmas time social function in Edgware in November or December 2005. Mr. Popat's evidence was a little inconsistent as regards the circumstances of the meeting. At first he said he was introduced as a very big businessman and “I just informed him what I was doing because he asked me”. Later he said that he was standing around the edges of the function (because he didn't really like such functions) and that director was standing next to him and started a general conversation: they chatted a little about business and exchanged details. Mr. Popat says he was then phoned by this director in January 2006. He went to visit his offices where he was told that they were dealing in mobile phones and were importing goods. (He said he was

later told they imported the goods sold to him in Deal 2) He asked to see their VAT return and was shown it. It showed very substantial sales. Mr. Popat says that he made it plain at the meeting that he wanted nothing to do with VAT fraud.

116. By 6 March 2006 Annova had obtained a letter of introduction, a copy of the VAT certificate and the certificate of incorporation (indicating that Morganrise was incorporated on 1 December 2004) and bank details.

117. Mr. Popat says that he took up a trade reference from Headcom limited who confirmed to him on the telephone that Morganrise were buying and selling goods.

118. An Equifax credit report provided to Annova on 26 April 2006 indicated that Morganrise had filed no accounts and suggested a credit limit of £1,000. Any concerns Mr. Popat might have had as a result of this were far outweighed by the size of Morganrise' turnover as shown on its VAT return: "they were doing very good business".

119. The report also indicated that Equifax had been told that the company had acquired an unincorporated business carried on for seven years previously.

Tagleemer

120. Mr. Popat said he met a Mr Gardia at the same CEBIT trade fair in March 2005 at which he had met one of the directors of Xchange. Mr. Gardia was a Georgian based in Cyprus.

121. Mr. Popat says that he started doing some business with Tagleemer in August or September 2005. He said that he could have done a couple of deals with Tagleemer before those which are the subject of this appeal.

122. On 20 January 2006 it appears that the Appellant was faxed a package of documents relating to Tagleemer including its VAT number, a certificate of incorporation, and bank details.

123. It was odd that these were faxed in January if the Appellant had been trading with Tagleemer in September 2005. We conclude that it is likely that the trading activity with Tagleemer took place in 2006 only and that Mr. Popat was mistaken as regards 2005.

124. The bank account details indicated that Tagleemer's bank was Parex in Vilnius in Lithuania, the same bankers that as those with which the Appellant opened an account later in the same year.

125. An Equifax report of 2 May 2006 indicates that little information is available on the company save that it had a capital of CYP 1200 (about £100) and operated outside Cyprus in the offices of its lawyers.

126. Mr. Popat said that he visited Tagleemer in Nicosia in 2005 at serviced offices. He said he took up no trade references but Mr. Gardia told him the names of a number of entities in the CIS to which it was making supplies.

Nova.

127. Mr. Popat told us that at some time in 2005 (he thought it was 2005 but was not sure) he had had a meeting in London at which a Spanish trading partner had introduced him to Mr. Lopaz of Nova.

128. A credit reference report on Novo of an uncertain date gives a nonsensical credit rating for that company and indicates that it was incorporated on 11 January 2005. Mr. Popat frankly said that he thought the report was a waste of money. He did not regard the Appellant as taking a credit risk on Nova because it was going to sell goods to it and they would not be released until Nova had made payment, which would be received as and when Nova's customers made payment

129. It appears that a notarial document in Spanish dated 23 November 2005 relating to Nova was also received by Annova, possibly before the date on which it did its first deal with Nova. There was no other due diligence information.

130. Mr. Popat was not certain about whether he had had any dealings with Nova before the £5.5 million deal on 31 May 2006. We concluded that he had not.

Due diligence on Rebariton and Hornington.

131. No due diligence was done on either of these companies.

Warehouses and Freight Forwarders

132. In each deal the phones bought by the Appellant were at the time of sale held by a freight handler in the UK. The seller gave instructions to the freight handler to release the goods to the appellant, and then the appellant gave instructions for the export to a warehouse overseas to be held at their pending payment by the customer.

133. HMRC asked what checks had been done on the entities which held £ms of goods belonging to the Appellant in the course of each deal.

134. The freight handlers in the UK were Secure Freight, Peat, and Star press. The warehouses abroad were EU Logistics, Welox, and Prologis.

Secure Freight

135. This was the freight handler used in Deals 1 and 3. Mr Popat said that Xchange had chosen to hold the phones at Secure Freight. The Appellant accepted the release of the goods to it there, and the use of Secure Freight for their shipment. Mr. Popat went to Secure Freight's premises. He said it was a fairly brand-new company. He asked for a VAT certificate and obtained one a few days after the

deal was invoiced. The certificate was dated the same day as the deal. Secure Freight was indeed a new trader.

136. No bank or trade references were taken, and no credit checks or company house searches were made before the Deals.

Peat UK (trading as Twin Logistics)

137. This was the freight handler used in Deal 2. Morganrise had chosen to hold the phones there. The Appellant accepted the release there and used Peat for their shipment. Mr. Popat visited their premises, which he described as a large warehouse. The VAT registration certificate, which was issued on 17 January 2006, was faxed to the Appellant on 26 April a few days after the goods had left Peat.

138. No trade or banking references or accounting information was sought. No credit check was done before the warehouse was used; although one which was done in August showed it to be a company of low credit standing.

Starpress

139. This was the Freight Forwarder used in Deal 4. It was chosen by Xchange.

140. At the time of the deal Mr. Popat said he was busy: he did not visit. But he drove by to check it was there.

141. No bank or trade references were taken, and no credit checks or company house searches were made before the Deal. Mr. Popat did not ask for accounting information

142. A credit check report which was received on 5 July (after the Deal) showed a low credit limit.

EU -- Logistics

143. This was the warehouse used in Deals 3 and 4. Mr. Popat said that he suggested this warehouse to Nova for Deal 3 and that it was nominated by Tagleemer for Deal4. Mr. Popat has not been there but had spoken to a director who gave assurances. Although Mr. Popat said that a VAT certificate had been obtained before the deal the documents which the Appellant presented showed only a VAT certificate having been received after the deal.

144. No trading or banking references were obtained and a credit report was obtained only after the deal.

Welox

145. This was a warehouse in Hungary used in Deal 1. It was nominated by the Appellant's customer, Tagleemer. Mr. Popat told us that he was told that Welox

were part of EU Logistics. The Appellant had received documents in Hungarian including possibly a registration document which were explained to him by the German director of EU Logistics.

146. A credit report obtained after the deal indicated that the company was of low credit standing.

Prologis

147. This was the warehouse used in Deal 2. It was nominated by Tagleemer. Mr. Popat told us that he did not know anything about this company at the time of the deal but had heard of it. He took no banking or trading references, although he may have spoken to another Freight Forwarder about this company. No trade or banking references were taken.

148. A later credit reference report indicates that its business was "business or management consultancy" and it was a recent business of low creditworthiness.

Discussion

149. Annova obtained documents before entering into many of its deals which confirmed the existence and current VAT registration of its counterparties. Mr Popat met or spoke to persons involved and conducted physical inspections.

150. By and large the documents showed that Annova's counterparties in the Deals were recently formed and of poor credit standing. This would have given rise to some concern if one was entering into very high value transactions with those companies. Mr Popat's evidence was that such concerns were dispelled by the meetings he had with those involved.

151. Whilst the incorporation or VAT certification of Warehouses and Freight Forwarders was confirmed and generally some check was made of their physical premises, no decent check was made on their credit worthiness or commercial practice. That was surprising given Mr Popat's previous experience with the Dubai warhouse.

152. The Respondents say that given the size of the deals and the risk of a VAT fraud, the lack of due diligence, and the ignoring of negative indicators, this is at variance with prudent commercial behaviour, and that the only reasonable explanation for this is that Mr. Popat knew that the deals were for the purposes of VAT fraud.

153. We do not understand his reasoning. If there were risks that Freight Forwarders might steal the goods or release them without authority, these were risks which would burden both a deal connected with a VAT fraud and one which was not. In both cases the appellant could lose out. What was shown was a cavalier attitude towards certain economic risks. But why should that attitude indicate only a connection to VAT fraud? One reasonable explanation might be that Annova was doing as it was told; another may well be that the Appellant was going with the

flow in a profitable transaction, doing what was suggested and taking a risk on warehouses and freight forwarders because it believed that the goods belonged to it and because, despite previous experience, it did not expect difficulties with warehouses or freight forwarders.

154. In relation to the due diligence conducted on suppliers and customers we find nothing in what was actually done - the comfort sought by the Appellant -- which pointed to a connection to fraud. But we find that the information which was received, coupled with the size and nature of the transactions conducted far more suspicious.

155. In each case the Appellant's supplier was fairly recently formed and had little share capital. Yet it was able to deal goods worth millions of pounds and to provide unsecured credit to the Appellant of similar amounts. How could that be the case? It was in our view very unlikely that a bank had lent to a new supplier on such a scale. It might be that the supplier had received credit from its own supplier on the same scale, but it was unlikely that another supplier would do that for the same reasons that it was unlikely that the bank would lend. It might be that a wealthy individual or company had provided financial backing, but why lend so much to a new venture which seemed profligate in its own provision of credits to others?

156. But is a connection to fraud more likely than any other of these explanations? It seems to us that a simple connection to a fraud conducted earlier in a chain is not a more likely explanation. We cannot see how just because someone earlier in a chain of supply was fraudulent, that would mean that person further down the chain of supply would be more profligate with their granting of credit.

157. But we can see that if each of the parties in the chain was in some way part of an organised fraud in which each played its part according to plan or was party to the organisation of the circulation of phones and money, that could be a reasonable explanation of the granting of excessive credit. That is because in such a scheme that the other parties would be persuaded to grant credit to uncreditworthy counterparties because they were assured by the organisers of the fraud of the necessary credit themselves and of its return, or were parties to that organisation.

Insurance

158. Evidence relating to the insurance of the phones which were the subject of these deals was explored before us. The Appellant had not insured the goods and had sought in its terms and conditions to rely on a requirement that its purchaser or another party ensure the goods.

159. We could not see the relevance of insurance. If the goods were not insured at all it did not seem to us to be a pointer to connection with fraud or otherwise.

160. If the goods were damaged, lost, stolen or set on fire, the Appellant would lose in a genuine commercial deal just as much as it would lose in a fraudulent deal; in each case it would not have the goods to deliver.

161. If it could be shown that the customer paid, or would have paid, even if it was provided with empty crates or burnt offerings, then one might be able to conclude that the deals were part of a fraudulent scheme. But there was no evidence before us which enabled that conclusion.

162. We find that whether the goods were insured or not is irrelevant.

The deal Documentation -- the specification of the phones.

163. Invoices, pro forma invoices, purchase orders and written correspondence from the Appellant's suppliers and customers described the phones by reference to their serial number and maker -- e.g. "Nokia N 90". Occasionally the words "Sim free" were appended, and one purchase order specified "European spec". The Appellant's invoices and offers to its customers had a similar scarcity of detail, but its purchase orders contain more detailed requirements:

(1) brand-new

(2) sim free

(3) original box

(4) two pin charger

(5) EU language

(6) factory warranty

(7) original box

(8) Central European specification. (although this did not appear in relation to Deal 4)

164. Where models came in a variety of colours no reference was made to the colours in any of the documentation (we accepted Mr. Fletcher's evidence that colour was important to consumers of phones). Nor was any explicit reference made to the type of keypad.

165. Mr Popat said that these deals were negotiated over the phone and all these details would have been agreed orally.

166. We accepted Mr. Fletcher's evidence that Nokia's warranties were reaching specific so that any two pin phone with say an African warranty did not give warranty cover to a European purchaser. This was consistent with Mr. Wald's evidence that the warranty that came with the Nokia phone he had seen indicated that it was valid only in the country which the product had been purchased, but that if Nokia had intended the product for sale in one of a number of EU states it was valid in all such states. Thus a phone destined for France would carry a warranty valid in Germany but not in the UK because two pin phone could not be used in the

UK. Mr. Fletcher also told us that Motorola and Sony Ericsson offered worldwide warranties.

167. Mr. Fletcher told us, and we accept, that phone manufacturers produce variations on particular models for particular networks.

168. Mr. Fletcher also said that "European spec" was not in his view an adequately specific description of the phone designed for a particular European market: variations for Arabic, Greek or Cyrillic keypad languages would be different even though the phones might be described as being of European specifications. Mr. Popat was clear that "European spec" as used with his trading counterparties described phones destined for central Europe, thus excluding Russia, the Baltic States, CIS, probably Poland, but including Greece.

Commentary

169. We do not consider it improbable that the details were agreed orally, but we find it odd that the Appellant's customers did not reduce the oral agreement to writing particularly because millions of pounds were at issue. One explanation is that they were content to take the risk of relying upon an oral agreement without further evidence; another is that they were not concerned with the precise details because they knew that their role was to pass the phones on in a game of pass the parcel in which all that mattered was that phones were purchased and sold.

The origin of the phones and their destination.

170. All the phones involved in the deals had two pin chargers. Indeed the Appellant's purchase orders required them to be so. Phones with two pin chargers are not immediately usable in the UK where three pin plugs are used. Although we accept that it is possible to change the charger relatively inexpensively we would thus expect phones with two pin chargers to be destined to markets outside the UK. It is odd therefore to find them in the UK.

171. Mr. Popat told us that his understanding was that in all the deals he did with Xchange the phones had been imported from Europe. His understanding was that the stock being traded arose from stock offered by distributors in Europe. He also said that Morganrise told him that they had imported the phones sold to Annova in Deal 2.

172. We conclude that in relation to all the deals the Appellant knew that the phones had been imported from Europe into the UK and were to be exported from the UK for eventual consumption.

Commentary.

173. In the transaction with Euro Counsel, phones which were outside remained outside the UK when they were bought by the Appellant from a supplier and sold to a customer. The Appellant therefore knew that it was not necessary to bring

goods into the UK in order for a UK entity to trade them. Indeed Mr. Popat was aware also of the EU VAT rules concerning triangulation.

174. Mr. Attenborough suggested that it was not illogical for goods to be transported to the UK prior to their sale to another country. He described the UK as a transport hub. Whilst we can understand that goods might be flown to the UK before being flown on to an eventual destination, it does seem to us that for goods to be brought into the UK to be traded between UK suppliers before being exported when, because they were fit and intended for non-UK consumers, they could have been kept more cheaply outside the UK, is something which requires an explanation.

175. Mr Popat indicated that he knew that his suppliers were importing and that his customers were selling on the goods. He knew that Annova was part of a chain.

Inspection

176. Annova received inspection reports for Deals 1, 3 and 4. These were reports prepared by a third party describing the phones which were held at the vendor's freight forwarder awaiting sale to Annova. There was no evidence of a third party inspection having been conducted in relation to Deal 2. The reports for Deal 4 were commissioned by Xchange, Annova's supplier, and sent to Annova.

177. Mr Popat told us that he inspected the goods at the Freight Forwarder himself in Deals 1, 2, and 3, but that he was unable to do so for Deal 4.

178. There were omissions from the reports and minor discrepancies between Annova's purchase orders to its suppliers and the description of the phones on the inspection reports.: (i) the report for Deal 3 provided no details of warranties and did not indicate whether the phones were 2 pin and sim free (as specified in the purchase order) ; (ii) the reports for Deal 1 gave the condition of one of the types of phone as New, and the other as Good, when Mr Popat was clear that what he was selling was new phones; (iii)the purchase orders referred to instruction books in either "English and all European languages", or "All European Languages"; the reports, where they dealt with the instruction manual, said "English" or "English and French"; (iv) the purchase orders generally said "central European Spec"; the reports listed phone languages which were more limited.

Commentary

179. If Mr Popat's inspection of the phones in Deal 1, 2 and 3 gave him comfort that the phones were as ordered despite the discrepancies raised by the inspection report (where there was one), it seems to us that, in relation to Deal 4, it was clear that what Mr Popat was concerned about was that the goods at the freight forwarders comprised the right number of the model of handset discussed and that the detailed specifications of the handset were no longer important to him. That suggests that in relation to Deal 4 his concern was to effect a trade which involved an export of phones rather than to sell a particular phone to a counterparty.

180. The discrepancies between the purchase orders and the inspection reports adds weight to the conclusion that the specifics of the phones were not particularly important to Annova's customers.

5. Discussion

181. "To lose one parent, Mr Worthing , may be regarded as a misfortune, to lose both looks like carelessness". One very good deal may reasonably be put down to good luck; two in a row is unusual good luck; three in a row cannot reasonably be just good luck.

182. The following features stand out: (1) the finance which became available to Annova after it was acquired by the Ttroshvillas: by way of direct loans, unpaid debts and credit from suppliers ; (2) the fact that so many of the Appellant's counterparties were recently formed companies which were able to offer and obtain large amounts of credit; (3) the lack of concern that the deal documentation fully specified the phones being traded; and (4) knowledge that in each deal (not just one) the phones were imported into the UK although they were not fit or intended for the UK market.

183. Each of these matters was known to the Appellant at some time after 11 April 2006; not all may have been known at that time.

184. Do these matters indicate at any particular time that, on balance, Annova knew of the connection to fraud; and, if not, is the *only* reasonable explanation of these and all other circumstances pertaining at a particular time that there was a connection to fraud?

185. Standing back it seems to us to be clear that the Appellant was acquired as a vehicle to participate in a fraudulent VAT evasion scheme. It was part of the set of contrived or planned chains. It was an existing electronics trader which did some exporting. It would thus be less likely to raise suspicions with HMRC when it put in its input tax claims. It was arranged for it to trade on suppliers' credit so that the wait for the VAT export refund did not prevent it from undertaking transactions of a substantial nature. The participation of Mr. Popat was necessary to maintain its appearances. By taking of 90% of its shares, any profit was retained by those involved in the scheme. All this is clear because:

(1) the chains were contrived

(2) credit was provided in extraordinary way

(3) the deals suddenly flowed after the takeover, and

(4) the FCIB evidence showed that the monies circulated indirectly among so many of the parties with whom the Appellant had dealt directly.

Knew

186. We think that it is possible that when Mr. Popat started these large mobile phone trades he did not know that they were connected to fraud, but we believe that at least by the time of Deal 3 (31 May) he must have known that they were.

187. We think it is not unlikely that Mr. Popat thought, in January, at the time of the Ribariton takeover, that this was a stroke of good luck. Perhaps at that time he should have asked more questions, but he was in difficulties and this was a way out of them. With the takeover came finance from Hornington in February: nothing suspicious about shareholders procuring finance for their investment.

188. Then came the transactions in mobile phones acquired from Xchange. We described Mr. Popat's views about the director of Xchange. That comment because of its context, length and vehemence conveyed to us the clear impression that is at least at first in his dealings with Xchange Mr. Popat had received an assurance "before [he] started business" on which he had relied, that Xchange would not supply him with tainted phones. It seems to us that at the time of his first transaction with Xchange the circumstances were such that he had no compelling reason to doubt this assurance even if a less desperate man may have begun to get suspicious.

189. But by 31 May when Deal 3 took place, things had changed. Mr. Popat knew more. By then he had conducted five large and profitable mobile phone deals. In each Annova had been lucky enough to find a supplier and customer who matched. In each Annova had been more successful than Mr Popat had been in deals in the past. By then he had magically received €700,000 from Euro Counsel. By then he had been given millions of pounds of credit by Morganrise and Xchange; credit on a scale which greatly exceeded that he had been refused by his supplier in the Nigerian computers deal. By then he must have known that these deals did not come by luck, that they were too good to be true and that the Appellant had been acquired to play a part in a fraudulent enterprise.

190. Mr. Popat's desire to hide the early transactions with Xchange in February and March in his evidence before us testifies to this conclusion. He knew that the more magic transactions the Appellant was seen to have undertaken, the less likely the later ones would be seen as just good luck. That is our view because that was the way he came to his own view. But in April he was caught. He was angry that he had been misled by Xchange. His actions thereafter showed that he knew he was involved in the game - he did not personally inspect the phones for Deal 4, and he got advice from lawyers about the due diligence he should conduct and his terms and conditions of trade.

191. We find it less easy to be sufficiently sure that Mr. Popat knew that Deals 1 and 2 were connected with fraud. These deals were undertaken before the soft credit arrived from Euro Counsel and, although Mr. Popat said that credit was given by the Appellant's supplier in earlier deals we had no evidence of the period and the amount of the credit. At a stage of these deals we think it remains possible that Mr. Popat believed that he was not part of the fraud.

192. HMRC say, and we agree, that these transactions were each part of a scheme; they ask why the architect of the scheme would risk an innocent party within it. They say that Annova cannot have been innocent. We understand this logic, but we can also see that an innocent front man for the collection of the VAT input tax recovery could be a great advantage, and that so long as some control could be exercised over him it would not be too much of a risk not to tell him what was going on. Ribariton could have provided that control through its rescue of Annova. At some stage Mr Popat might realise that he was being used, but it was not clear to us that it was more likely than not that realisation had dawned on him at the time of Deal 1.

193. In addressing the question of Knowledge we have imputed Mr Popat's knowledge to Annova. There may have been other persons whose knowledge could also properly have been attributed to Annova, for example the Ttroshvillas, but we had very little evidence which indicated with any weight that they acted in a way which their knowledge or actions could be attributed to Annova.

Should have known

Deals 2, 3 and 4

194. It seems to us that at and after 26 April 2006 (the time of Deal 2) the Appellant should have known that Deals 2, 3 and 4 were connected to VAT fraud. That is because that was the only reasonable explanation of the following features:

(1) the credit previously given by Xchange, and the credit Morganrise had agreed to give in relation to Deal 2. Why would someone give unsecured interest-free credit for a seemingly indeterminate period to an uncreditworthy party? They might do so if they were stupid, but there was nothing to indicate that these parties were stupid; they might do it so to a family member or an old friend, but Mr. Popat was neither of these. The only reason they might do so would be if some collateral advantage would accrue to them from the transaction.

(2) the coincidence of these transactions and Ribaraton takeover of the Appellant. The only reasonable explanation is that there was some connection between the events.

(3) the facts, known to Annova by 22 March that Xchange was a recently formed company, and by 26 April that Morganrise had filed no accounts (and therefore was recently formed), and yet that both were able to provide millions of pounds of credit. The only reasonable explanation of this was that someone was providing credit so that they could do these deals;

(4) the lack of concern of the Appellant's customers over the precise nature of the phones traded. One explanation is carelessness, another is that all they wanted was goods to buy and sell but they did not mind what the goods were. The first explanation in a deal of this size is unreasonable;

(5) the fact, known to the Appellant, that these were phones which had been imported into the UK and which were not for the UK market and were being

exported. For one transaction a previous accidental import might be a reasonable explanation for finding such phones in the UK, but for Deals 2, 3, and 4 the number of and the number of different sorts of phones which were involved, the only answer is that these phones were being imported *in order to be exported;*

195. From (4) and (5) the only explanation is that there was a scheme for the import of something and its export. From that and (3) the only explanation is that the credit was provided for that scheme to take place. From that and (1) and (2) the only reasonable explanation is a collateral advantage would derive from a scheme for the import and export of the phones. What collateral advantage could so accrue? The only one was VAT fraud: something which the Appellant knew was a real concern.

Deal 1.

196. But we feel less secure in a conclusion that the only reasonable explanation of the circumstances at 12 April, the time of Deal 1, was that this was part of the VAT fraud. That is because the evidence of the credit given at this stage is weaker. At that stage: (i) the Appellant knew only of the credit given by Xchange in the previous three deals in February and March 2006, (ii) the Appellant knew that Xchange was a new company but did not have the same surprisingly similar evidence about Morganrise; and (iii) it had not received the benefit of the odd supply of credit from Euro Counsel.

197. On the other hand: (i) Annova knew that it was dealing in 2 pin phones when it made little sense for such phones to be in the UK; although this could have been the first deal in such phones (since we were not told what type of phones were dealt in the February and March Deals) and a plausible explanation might be that this particular consignment of phones had been imported into the UK accidentally or for some special reason, or had been brought here with the failed intention of converting them into 3 pin phones for sale in the UK (an explanation which becomes implausible when repeated); (ii) Annova knew that Xchange had imported them, and was getting credit from its supplier: that made the possible explanations for their presence in the UK less likely; and (iii) it knew that its customer on this occasion was not concerned to be specific in its documentation of a high value sale (we also believe that it is likely that it knew that its customer in the previous deals was similarly unconcerned, given Mr Popat's description of them as being in similar circumstances).

198. We asked ourselves whether at the time of Deal 1 these features should have caused Annova to make further enquiries, and whether if it had pursued those enquiries, and any enquiries which reasonably led from them, it would have discovered facts which would have led it ineluctably to the conclusion that there was a connection to fraud.

199. In Deal 1 Annova dealt in 6000 Nokia 8800's and 1000 Sony Ericsson W900i's. Mr Fletcher's table shows that the Appellant's sale of 7000 N8800s (bring 6000 from Deal 1 and 1000 from Deal 2) represented 4% or 5% of global retail sales of such phones for that month and its sale of the W900i's represented

1% of such global sales. Only in the latter case did Mr Attenborough suggest that the market might be inflated by dumping. Had Annova known this it would have indicated that it was very unlikely that the N8800 phones were in the UK by accident or for the purpose of being converted into 3 pin phones. If it knew that, the only reasonable conclusion, particularly when taken with the lack of specification, would have been that the phones were in the UK in order that they could be exported; ie as part of a scheme. Taken with the granting of credit and Ribariton's takeover of Annova and the only reasonable explanation of that would have been that the phones were being traded as part of a VAT fraud.

200. Mr Popat told us that the three previous transactions with Xchange had been for amounts which totalled over £2m. That suggested that a large volume of phones was being traded. On balance it seemed to us that the volumes traded and the suspicious facts that the phones in this deal were 2 pin phones and that substantial credit was being extended by Xchange would have caused a reasonable businessman to attempt some investigation of global sales volumes. We do not believe that the kind of investigation undertaken by Mr Fletcher would reasonably have been warranted, but we think that it is likely that a modest and reasonable investigation of manufacturers' accounts and trade magazines together with internet searches would have revealed that this deal represented a surprising percentage of the market. That would have pointed to the conclusion in the preceding paragraph: it would have given rise to reasonable suspicion, and that would have warranted further enquiry

201. Some further investigation of Xchange's willingness to grant credit would also have been a reasonable response. Mr Popat had been told that Xchange was given credit by its supplier. It would have been reasonable to have pressed for an answer to the question why its supplier was willing to do so.

202. It is clear to us, because this deal was part of a fraudulent scheme, and because of the small margin which Xchange made for taking such a large credit risk, that if the question had been pressed Mr Popat either would not have received a believable commercial answer or would have been given an answer which showed his involvement in a scheme for importing and exporting phones whose only explanation could have been a VAT fraud. The lack of a believable commercial answer in the context of a market in which VAT fraud was a serious concern, we believe could in the circumstances outlined in the preceding paragraphs only be explained by a connection to such fraud.

203. Overall we conclude, albeit with some hesitation, that at the time of Deal 1 Annova was in a position where it should have concluded that the only reasonable explanation of its circumstances and the deal was a connection to VAT fraud.

6. Conclusions

204. We find that Annova knew or should have known that its transactions were connected to VAT fraud in relation to all the Deals.

205. We dismiss the appeal.

7. Rights of Appeal.

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

CHARLES HELLIER

TRIBUNAL JUDGE
RELEASE DATE: 15 November 2011