

The tender process

Appointment of Liquidator

- 3.1 By late July 1998, the casino and resort had ceased operating, the electricity and computer networks had been shut down, the casino licence had been cancelled and Christmas Island Resort Pty Ltd (CIR) was profoundly insolvent, being unable to pay debts exceeding \$104 million.
- 3.2 Under the terms of his appointment as Receiver and Manager, Mr Jeffrey Herbert¹ was ordered to investigate 'the solvency of CIR and the position CIR should take in these proceedings'.²
- 3.3 In September 1998 Mr Herbert presented CIR with two viable options: voluntary administration through the formulation of a Deed of Company Arrangement (DOCA)³ or, failing that, liquidation.⁴
- 3.4 At this stage, CIR's estimated financial position was as follows:

1 Mr Jeffrey Herbert was appointed Receiver and Manager of CIR on 29 July 1998, Provisional Liquidator on 20 October 1998 and Liquidator of CIR on 8 December 1998.

2 A copy of the Order of the Federal Court of Australia dated 29 July 1998 is attached at Annexure 1, PPB Ashton Read, Submission No. 7, p. 92.

3 A Deed of Company Arrangement (DOCA) is when an agreement is made between a company and its creditors regulating the payment of creditors' debts.

4 *Report to the Members Pursuant to an Order of the Federal Court of Australia made on 29 July 1998*, Annexure 4, PPB Ashton Read, Submission No. 7, pp. 104-140.

**Table 4 CIR's Estimated Financial Position
(as at 29 July 1998)⁵**

	Best Case* \$,000	Worst Case** \$,000
Assets		
Land & buildings – at valuation	6,460	5,240
Plant & equipment – at valuation	1,456	793
Aeroplanes – at valuation	1,716	695
Claim against Commonwealth	3,000	NIL
Debtors	100	60
Cash at bank	32	32
Stock	75	18
Investments	NIL	NIL
Total investments subject to cost of realisation	12,839	6,838
Liabilities		
	\$,000	\$,000
Employees' Claims	2, 551	3,317
Unsecured Creditors	101,670	103,762
Total Liabilities	104,221	107,079
Net Asset Deficiency subject to costs of realisation & contingent amounts	91,382	100,241

* Best Case scenario primarily assumes realisation of the assets on an 'in situ' basis

** Worst Case scenario is primarily predicated on the realisation of the assets by way of auction

3.5 Based on CIR's financial situation, Mr Herbert initially sought to pursue a DOCA with the former directors of CIR.⁶ From late August and through September 1998 Mr Herbert undertook negotiations with the former directors of CIR in pursuit of a DOCA to facilitate voluntary administration of the company.

3.6 On 28 August 1998 Mr Herbert and Mr Cliff Rocke, then a manager of PPB Ashton Read, travelled to Indonesia to meet with Mr Sumampow and other former directors of CIR to discuss 'options for the financial reconstruction of CIR and the possibility of a DOCA'.⁷ At this meeting,

5 PPB Ashton Read, Submission No. 7, p. 41. The full report, *Report to the Members pursuant to an Order of the Federal Court of Australia made on 29 July 1998*, 29 September 1998, is attached at Annexure 4, Submission No. 7, pp. 104-140.

6 The directors of CIR at the time of Mr Herbert's appointment as Receiver and Manager were: Mr Sumampow, Mr Herman Gani, Mr Kwik Soen Hok and Mr Jokky Hidayat. Annexure 4, PPB Ashton Read, Submission No. 7, p. 109.

7 PPB Ashton Read, Submission No. 7, p. 42.

Mr Sumampow stated his intent to pay all creditors in full within three months. Mr Herbert informed the Committee that he subsequently attempted to 'formulate a proposal providing for the payment of 100 cents in the dollar to creditors within a period of three months of the date of acceptance of a DOCA by creditors'.⁸

3.7 On 1 October 1998, the day on which an application for CIR to go into voluntary administration was to be heard in the Federal Court, former directors of CIR withdrew support for the DOCA with Mr Herbert and terminated all negotiations.

3.8 In his submission, Mr Herbert stated that:

In the circumstances, I had no option but to apply for CIR to go into Provisional Liquidation and, finally, liquidation; given that CIR was insolvent, that its creditors were pressing for the company to be wound up, and that the former directors were not prepared to support my proposal for a DOCA or to discuss the possibility of an alternative arrangement.

3.9 Mr Herbert was subsequently appointed Provisional Liquidator by the Federal Court on 20 October 1998. A hearing date for the winding up of CIR was set for 8 December 1998, whereupon Mr Herbert was appointed Liquidator.⁹

Development of sale strategy

3.10 Following his appointment as Receiver and Manager of the casino and resort, Mr Herbert commissioned a valuation of the property assets of CIR by the firm Jones Lang Wootton (JLW). Subsequent to Mr Herbert's appointment as Provisional Liquidator, JLW were further commissioned to formulate a marketing strategy for the sale of the resort complex.

3.11 Property assets to be included in the sale were:

- Christmas Island Casino and Resort;
- Christmas Island Lodge;
- Christmas Island staff accommodation at Poon Saan and San Chye Loh; and

8 PPB Ashton Read, Submission No. 7, p. 43.

9 Former directors of CIR opposed the liquidation on the grounds that they wished to formulate a DOCA to pay creditors 100 cents in the dollar within a period of three months. Furthermore, former directors disputed a number of debts and believed that CIR's debts were substantially lower than the amounts disclosed in the financial records of the company. PPB Ashton Read, Submission No. 7, p. 46.

- associated furniture, fittings and equipment.¹⁰
- 3.12 The casino licence and the liquor licence were not included in the saleable items because the casino licence had been cancelled and the liquor licence had been suspended. Consequently, they could not be included as part of the assets of CIR.
- 3.13 In August 1998 JLW valued the casino and resort,¹¹ including relevant licences and furniture, fittings and equipment, as follows:

Table 5 Valuation of Christmas Island Casino and Resort¹²

	Market Value \$'000	Forced Sale Value \$'000
Casino & Resort	4,500	3,500
Staff Accommodation	1,160	1,020
Christmas Island Lodge	400	350
	\$6,060	\$4,870

- 3.14 In JLW's marketing submission, dated 10 November 1998, a public tender process was identified as the preferred marketing process for the casino and resort.¹³
- 3.15 In his submission Mr Herbert states that:

In essence, the principal reason that a tender was selected as the method of sale was that it allowed the establishment of a timetable for the sale which allowed sufficient time to market the casino and resort to potential purchasers, within Australia and internationally.

In particular, the tender process could also be structured so as to facilitate the inclusion of a time period for the granting of a Casino Licence to the successful tenderer (Probity Review).¹⁴

10 PPB Ashton Read, Submission No. 7, pp. 48-49.

11 For the purposes of this chapter, the term 'Christmas Island Casino and Resort' encompasses the casino and resort, the Lodge, the staff accommodation and the furniture, fittings and equipment, unless specified otherwise.

12 PPB Ashton Read, Submission No. 7, p. 51.

13 JLW's report is attached at Annexure 7, PPB Ashton Read, Submission, No. 7, p. 159.

14 PPB Ashton Read, Submission No. 7, p. 51.

Crown leases and the casino licence

3.16 In August 1998 Mr Herbert initiated lengthy discussions with the Commonwealth regarding the Commonwealth's position on the Crown leases, the casino licence and a gaming tax regime, for the purposes of promoting and selling the casino and resort.

Crown leases

3.17 During the initial stages of the process, the Liquidator held preliminary discussions with the Commonwealth concerning the transfer of Crown leases for the properties of the Christmas Island Casino and Resort. Inquiries from Mr Herbert focussed on arrangements for the assignment of the lease and any potential changes to the lease.

Assignment of the leases

3.18 In correspondence dated 1 September 1998, Mr Herbert received advice from the Department of Transport and Regional Services (DoTRS) stating that assignment of the leases held by CIR was a matter of routine administration and unlikely to be withheld.¹⁵

Changes to the leases

3.19 DoTRS also noted that the original lease held by CIR was, in effect, a 'development lease which was tied to the Original Agreement between the Commonwealth, CIR and others'. As a consequence, many of the provisions had become redundant or inappropriate for transfer to the new owner.¹⁶

3.20 The Department advised that a prospective purchaser might wish to have a new lease drawn up, which could also incorporate some modifications which the Commonwealth was proposing, regarding changes in the boundaries of the lease. These included proposals for:

- excising and protecting an area of native rainforest on the northern side of the Linkwater Road boundary;
- ceding Freshwater Spring, the CIR sewerage plant and Linkwater Road itself to the Island community;
- excising the Waterfall Bay pump station, plant and equipment, water supply pipeline, reservoir tanks and chemical treatment plant to the Commonwealth; and

15 PPB Ashton Read, Submission No. 7, pp. 51 and 348.

16 Annexure 13, PPB Ashton Read, Submission No. 7, p. 360.

- in exchange for the land excised from the lease, a smaller area of land at the southern end of the site, previously mined and now ‘pinnacles’, would be added to the lease.¹⁷

3.21 Following the exchange of correspondence between the Liquidator and both the Department and the Minister regarding finalisation of the lease, the Minister wrote to the Liquidator on 30 August 1999, and stated that negotiations over ‘boundary changes and easements over the land to transfer services infrastructure responsibility to the Commonwealth’ would continue with any purchaser of the resort.¹⁸

Conversion from leasehold to freehold

3.22 On 28 October 1998 Mr Herbert wrote to the Commonwealth and requested consent to convert all titles, except the casino site, from leasehold to freehold. In correspondence to DoTRS dated 28 October 1998, Mr Herbert stated that ‘buyers and lenders are cautious of leasehold titles and the freeholding of these titles is expected to yield a better result when the properties are put to sale’.¹⁹

3.23 On 30 August 1999 the Minister wrote to Mr Herbert stating that ‘a conversion of the leases held by CIR to freehold at an appropriate time in the tender process is acceptable’.²⁰

3.24 In the Information Memorandum distributed by the Liquidator to interested parties during promotion of the casino and resort, the description of the land tenure stated that ‘earlier 99-year leases may be converted to freehold upon application, provided development conditions have been fulfilled’.²¹

The casino licence

3.25 Through this same period, Mr Herbert held extensive discussions with the Commonwealth regarding the granting of a casino licence. Specific inquiries from the Liquidator focused on two issues:

- wording for promotional material setting out the Commonwealth’s position in relation to the casino licence; and
- what information the Casino Surveillance Authority (CSA) would require for the assessment of potential applicants, in order to expedite the probity review component of the tender process.

17 Annexures 8-19, PPB Ashton Read, Submission No. 7, pp. 344-396.

18 Annexure 17, PPB Ashton Read, Submission No. 7, p. 389.

19 Annexure 10, PPB Ashton Read, Submission No. 7, pp. 351-352.

20 Annexure 17, PPB Ashton Read, Submission No. 7, p. 389.

21 Annexure 22, PPB Ashton Read, Submission No. 7, p. 430.

Wording of promotional material

- 3.26 From August 1998 the Liquidator, initially as Receiver and Manager, was in communication with DoTRS, in order to ensure that promotional material advertising the sale of the casino and resort was factually correct regarding the statutory process required for a casino licence. Representatives of the Department told the Committee:

We wanted it clarified in the tender documents that the casino licence was a separate issue, that it had been cancelled and that if any purchaser wished to run a casino they would have to apply to the Commonwealth separately. It was something outside of the tender process. There was not a licence for sale.²²

- 3.27 On 1 September 1998 DoTRS advised Mr Herbert that:

Whilst it would not be correct to advertise the assets of CIR with a casino licence, the resort is clearly designed as, and has the potential for future operation as, a hotel casino. Any advertisement should refer only to a potential licence and clearly indicate the issue of a licence is subject to an applicant meeting the suitability requirements in the Ordinance and obtaining the Minister's approval.²³

- 3.28 On 3 November 1998 DoTRS further advised that any promotional or marketing material use the following wording to clarify the availability of the casino licence:

The Commonwealth Government is prepared to consider an application for a casino licence in accordance with the relevant legislation. The applicant and its associates must satisfy strict financial, ethical and business reputation conditions.²⁴

- 3.29 This wording was adopted in subsequent promotional material for the marketing of the casino and resort.²⁵

Probity review

- 3.30 In early January 1999 the Liquidator sought advice on the length of time required to conduct the probity review and what information would be required from potential purchasers to expedite the process. He was

22 DoTRS, *Hansard*, p. 7.

23 PPB Ashton Read, Submission No. 7, p. 52 & Annexure 9, p. 349.

24 Annexure 11, PPB Ashton Read, Submission No. 7, p. 355.

25 As can be evidenced by promotional material prepared for prospective buyers, attached at Annexures 20 and 22, PPB Ashton Read, Submission No. 7, p. 397 and p. 423 respectively.

advised by DoTRS to seek information from the CSA in matters pertaining to the probity review.²⁶

3.31 The Liquidator stated:

I needed to ascertain how long the Probity Review period would take and what information potential purchasers of the casino and resort would need to provide to facilitate the Probity Review.²⁷

3.32 The CSA provided Mr Herbert with a list of information it would require to screen out any obviously unsuitable parties from the initial phase of the tender process. He was further informed that the probity review would take between three and six months to complete.

Gaming tax regime

3.33 On 9 February 1999 a meeting was held between the Liquidator and representatives of the Commonwealth to discuss gaming tax rates, as well as issues pertaining to the Crown leases and the casino licence.

3.34 For the first two years of operation, CIR paid a combined gaming tax and Community Benefit Fee of 9 per cent of the casino gross gaming revenue. This was comprised of an 8 per cent tax rate on gaming and a further 1 per cent Community Benefit Fee. During that period average Commonwealth revenues from the casino and resort exceeded \$1 million per month.

3.35 A proposal prepared by the Liquidator, and supported by a tax study of the Christmas Island Casino and Resort formulated by Ernst & Young, argued that the subsequent gaming tax increase by 2 per cent from the third year onwards resulted in a marked fall in trade and a fall in Commonwealth revenue.

3.36 The Liquidator's proposal stated that 'in the fifth year of operation Commonwealth revenue fell to \$105,000 per month' and that it was 'evident that a major contributing factor was the level of gaming tax'.²⁸

3.37 Furthermore, because the gaming tax increased by 2 per cent from the third year onwards, the casino was unable profitably to offer competitive commissions to 'junket' operators, resulting in a fall in trade.²⁹

26 PPB Ashton Read, Submission No. 7, p. 54.

27 PPB Ashton Read, Submission No. 7, p. 54.

28 See Table 6. Annexure 14, PPB Ashton Read, Submission No. 7, p. 366.

29 Annexure 14, PPB Ashton Read, Submission No. 7, p. 366.

**Table 6 Commonwealth Receipts 1993-1998³⁰
(Paid by Christmas Island Casino)**

	1993-94 (7 months)	1994-95	1995-96	1996-97	1997-98
Gaming tax rates at 8%	\$6,453,000	\$12,300,000	\$2,322,000		
Gaming tax rates at 10%			\$4,824,000	\$1,293,000	\$957,000
Community Benefit Levy at 1%	\$807,000	\$1,537,000	\$789,000	\$129,000	\$96,000
Total Commonwealth receipts	\$7,260,000	\$13,837,000	\$7,935,000	\$1,422,000	\$1,053,000
Averaged monthly receipts	\$1,037,143	\$1,153,083	\$661,250	\$118,500	\$105,300

3.38 The Liquidator subsequently proposed to the Commonwealth that the gaming tax rate revert to 8 per cent, while the Community Benefit Fee remain at 1 per cent.³¹ In summary, the Liquidator stated :

I believe that this is reasonable from the Commonwealth's point of view and equitable from the point of view of the successful purchaser, having regard to the nature of the revenue that would be derived from casino operations on Christmas Island, and to rates payable by comparable casinos.³²

3.39 A tabular comparison between the taxing regime of the Christmas Island Casino and comparable casinos elsewhere in Australia is attached at Appendix D.

3.40 In response to the Liquidator's submission, the Minister wrote to Mr Herbert on 30 August 1999, proposing an annual fee of \$2 million or 8 per cent of gross profit, whichever was the higher, for the first two years. Thereafter the rate would be 8 per cent on revenue up to \$100 million, 9 per cent on revenue from \$100 million to \$120 million and a maximum of 10 per cent for revenue in excess of \$120 million. The Community Benefit

30 *Ernst & Young Gaming Tax Study for Christmas Island Resort - February 1998*, ComsWinfair, Exhibit No. 7. Annexure 14, PPB Ashton Read, Submission No. 7, p. 370.

31 Annexure 14, PPB Ashton Read, Submission No. 7, p. 371.

32 Annexure 16, PPB Ashton Read, Submission No. 7, p. 385.

Fee would remain at 1 per cent at all levels.³³ Along with changes to the lease, the gaming tax rates would be subject to final negotiation with the resultant purchaser.

Initial timetable

- 3.41 Following discussion with the Commonwealth and the CSA, and based on advice provided by JLW on a marketing strategy for the sale of the casino and resort, an initial timetable was formulated for the conduct of the tender process.
- 3.42 The initial timetable for the realisation of the Christmas Island Casino and Resort was as follows:

Table 7 Initial Timetable for Realisation of Christmas Island Casino & Resort³⁴

January 1999	Commence advertising the casino and resort
26 March 1999	Closing date for expressions of interest
15 April 1999	Information on interested parties sent to CSA
15 April 1999	Short-listed parties expressing an interest notified and advised to submit a formal tender
15 April 1999 – 15 June 1999	Due diligence period for prospective purchasers
15 June 1999	Tenders to be submitted
15 June 1999 – 15 December 1999	Probity review period for successful tender
31 January 2000	Settlement

33 Annexure 17, PPB Ashton Read, Submission No. 7, p. 390.

34 PPB Ashton Read, Submission No. 7, p. 55.

Expressions of Interest

Marketing and promotion

- 3.43 The first phase of the tender process involved advertising for expressions of interest (EOIs) for the purchase of the casino and resort. As noted earlier, JLW was contracted by the Liquidator to formulate and execute a marketing strategy.
- 3.44 The Committee was informed that advertising and promotion of the casino and resort was undertaken through the following methods:
- advertisements were placed in *The Australian Financial Review*, *The West Australian*, *South China Morning Post*, *The Business Times* Singapore and Malaysia and in *Bisnis* Indonesia;
 - a promotional brochure was produced and mailed directly to over ninety targeted potential purchasers or interested parties;³⁵ and
 - representatives from JLW travelled to South East Asia to meet interested parties, and Mr Herbert and Mr Cliff Rocke from PPB Ashton Read travelled to Singapore, Melbourne and Sydney to promote the casino and resort.³⁶
- 3.45 Those interested parties requiring additional, more detailed information were required to sign a confidentiality agreement and were then provided with an Information Memorandum. The Information Memorandum contained comprehensive details on the casino and resort's assets, previous operations, leases and licences.³⁷

Receipt of EOIs

- 3.46 All EOIs were to be submitted by 26 March 1999 within a standard form supplied by PPB Ashton Read.³⁸
- 3.47 At the closure of EOIs, five formal and two informal EOIs had been lodged for the purchase of the casino and resort. EOIs lodged were as follows:

35 The list of potential purchasers was compiled from a JLW database of tourism investors, the British Casino Association and other potentially interested parties known to Frank Woodmore and Mr Herbert. The mail out list is attached at Annexure 21, PPB Ashton Read, Submission No. 7, p. 404.

36 A list of the parties visited is attached at Annexure 23, PPB Ashton Read, Submission No. 7, p. 463.

37 PPB Ashton Read, Submission No. 7, pp. 56-57.

38 The EOI standardised form is attached at Annexure 24, PPB Ashton Read, Submission No. 7, p. 467.

Table 8 Expressions of Interest Lodged on 26 March 1999 ³⁹

Company	Price \$
Burswood Casino	-
Crown Casino	-
Winfair Group	12,000,000
Hospitality & Gaming Investments	20-25,000,000
John Schurmann	5-20,000,000
Casino Austria International	10,000,000
JDW Management	30-45,000,000

3.48 On 15 April 1999 all seven parties were invited to tender formally for the casino and resort.

Legal challenges

3.49 Throughout the tendering process a number of legal challenges, initiated by the former directors of CIR, jeopardised the appointment of the Liquidator and significantly delayed the sale of the casino and resort.

Mortgage claim

3.50 On 5 February 1999 the Liquidator received correspondence from the former directors claiming that Mr Sumampow had a mortgage over the leases of the casino and resort. Attached to the fax was a copy of a purported minute from a meeting of directors, authorising Mr Sumampow's security.⁴⁰

3.51 In his submission to the Committee, Mr Herbert stated that:

It was evident to me that a number of anomalies existed in relation to this claim and its timing. The security had not been registered and the relevant Minister had not given approval for any mortgage to be taken over the Crown Leases on which the casino and resort is situated, contrary to the requirements of the leases.⁴¹

3.52 On 30 March 1999 solicitors for the former directors advised that Mr Sumampow was claiming security over the Crown leases and would

39 PPB Ashton Read, Submission No. 7, p. 58.

40 A copy of the fax and the Minute are attached at Annexure 25, PPB Ashton Read, Submission No. 7, p. 481.

41 PPB Ashton Read, Submission No. 7, p 58.

be applying for ministerial approval. Mr Herbert was further advised to 'cease negotiations for the sale of the Crown leases'.⁴²

3.53 On 15 April 1999, in correspondence inviting parties who lodged EOIs to tender formally, Mr Herbert additionally advised all seven interested parties that the tender process would be delayed pending an outcome to the matter.⁴³

Recommencement of the tender process

3.54 Following investigation of the matter by solicitors acting on behalf of the Liquidator, Mr Herbert received legal advice that 'Mr Sumampow's claim was unenforceable as it was not registered and ministerial approval for the mortgage had not been obtained'.⁴⁴

3.55 Interested parties were advised on 18 May 1999 that the tender process would recommence with the following timetable:

Table 9 Revised Timetable
(as at 18 May 1999)⁴⁵

1 June 1999	Commencement of due diligence process
6 August 1999	Submission of tenders
5 February 2000	Completion of probity reviews by CSA
6 February 2000	Acceptance of successful tender

High Court decision

3.56 On 17 June 1999 a decision was handed down in the High Court which effectively rendered certain decisions of the Federal Court, including the appointment of Mr Jeffrey Herbert as Liquidator, potentially invalid.⁴⁶

3.57 Consequently, on 22 June 1999, interested parties were advised that the tender process would be further delayed pending resolution of the issue.⁴⁷

3.58 In order to counteract the potential effect of the High Court decision on many other companies and liquidators around the country, on 13 July 1999 the Western Australian State Parliament enacted the *Federal Court*

42 A copy of the fax can be found at Annexure 27, PPB Ashton Read, Submission No. 7, p. 487.

43 Correspondence attached at Annexure 28, PPB Ashton Read, Submission No. 7, p. 490.

44 PPB Ashton Read, Submission No. 7, p. 59.

45 PPB Ashton Read, Submission No. 7, p. 59.

46 *Re Wakim: Ex parte McNally* (1999), 163 ALR 270.

47 Correspondence is attached at Annexure 30, PPB Ashton Read, Submission No. 7, p. 498.

(State Jurisdiction) Act 1999 (the FSA Act). This act 'sought to validate relevant actions of the Federal Court by deeming them to be actions of the Supreme Court'.⁴⁸

- 3.59 On 19 July 1999 Mr Herbert was advised by solicitors acting on behalf of the former directors that they would be challenging the validity of the FSA Act as well as the validity of his appointment as Receiver/Manager and Liquidator of CIR. Furthermore, they advised that if they were successful, any actions undertaken to sell or realise the assets of CIR would be considered trespass.⁴⁹

Recommencement of the tender process

- 3.60 Mr Herbert received legal advice from his solicitors that in order to continue with the tender process an order would have to be sought in the Supreme Court of Western Australia, transferring his appointments from the Federal Court to the Supreme Court, in accordance with the FSA Act. In addition, a further court order would have to be obtained directing Mr Herbert to continue with the sale of the casino and resort.⁵⁰
- 3.61 These orders were obtained in the Supreme Court on 23 November 1999 and 12 January 2000 respectively.
- 3.62 On 10 August 1999 parties were advised that the tender process would recommence with the following revised timetable:

**Table 10 Revised Timetable
(as at 10 August 1999)⁵¹**

30 August – 28 October 1999	Due diligence
29 October 1999	Lodgement of tenders
1 November 1999 – 1 May 2000	Probity review
2 May 2000	Acceptance of tender
3 July 2000	Execution of contract
3 August 2000	Settlement

48 PPB Ashton Read, Submission No. 7, p. 60.

49 Correspondence attached at Annexure 32, PPB Ashton Read, Submission No. 7, p. 503.

50 PPB Ashton Read, Submission No. 7, p. 60.

51 PPB Ashton Read, Submission No. 7, p. 61.

Ramifications of delays to the tender process

- 3.63 In total, claims of a mortgage over the leases, and legal challenges to the appointment of Mr Herbert, delayed the tender process by approximately eight months. These delays had significant ramifications for the cash resources of CIR and the number of EOIs which proceeded to tender.
- 3.64 Following the eight-month delay in the tender process, cash resources allocated from the realisation of non-core assets for the care and maintenance of the casino and resort were insufficient to cover costs. It was therefore necessary for the Liquidator to realise the Christmas Island Lodge (CIL) separately from the other assets. Tendering parties were advised formally on 19 August 1999 that the Lodge would be sold separately by auction.
- 3.65 On 17 September 1999 the Liquidator also advised the former directors of CIR that 'if they were to provide funding for the care and maintenance of the casino and resort, then the need to auction CIL could be avoided'.⁵² On 28 September 1999 solicitors representing the former directors advised only that, in their belief, the question of the validity of Mr Herbert's appointment as Liquidator was a constitutional one and that they would therefore be applying to have the matter removed to the High Court for consideration.⁵³
- 3.66 On 29 September 1999 CIL was auctioned for \$700,000, \$400,000 above the market valuation initially provided by JLW.
- 3.67 Significant delays in the tender process also had a detrimental effect on the number of tendering parties. In his submission, Mr Herbert states that:

It became evident around this time that some parties who had lodged EOI's had lost interest in the casino and resort due to external factors including the deterioration of the Australia's relationship with Indonesia (a key market of the casino and resort) due to the East Timor crisis, and the rumoured acquiescence to the establishment of casinos in Jakarta by the Indonesian authorities.⁵⁴

52 PPB Ashton Read, Submission No. 7, p. 61.

53 Correspondence attached at Annexure 36, PPB Ashton Read, Submission No. 7, p. 514.

54 PPB Ashton Read, Submission No. 7, p. 62.

Receipt of tenders

Round One

3.68 At the closing date of 29 October 1999, only three tenders were received. All three had conditions attached to them and were consequently nonconforming. Details of those tenders lodged are as follows:

ComsWinfair Pty Ltd

3.69 The tender submitted by ComsWinfair Pty Ltd (ComsWinfair) was for \$11.5m, and conditional upon completion of all due diligence inquiries by 13 December 1999.

Hospitality and Gaming Investments Pty Ltd

3.70 The tender submitted by Hospitality and Gaming Investments Pty Ltd (HGI) was for \$20m, and conditional upon a capital raising in the entire amount of the purchase price.

JDW Management

3.71 The tender received from JDW was verbal and for \$19.5m. It was conditional upon the payment of \$10m at settlement, with the remainder to be paid, either within twelve months or upon the reopening of the casino and resort, as well as upon JDW reaching an agreement with a casino operator.

3.72 No other parties who had submitted EOIs submitted a formal tender.

Extension of deadlines

3.73 On 5 November 1999, in an effort to reduce, or eliminate entirely, some of the conditions attached to the three tenders, the Liquidator advised all parties that the deadline for receipt of tenders would be extended to 15 December 1999.

3.74 In his submission to the Committee Mr Herbert stated:

It was evident that the tenders of HGI and JDW were, in essence, subject to finance and, while I was doubtful of the ability of these parties to obtain financing, I expected that an extension of 45 days would allow ComsWinfair to finalise its due diligence enquiry, and submit an unconditional offer.⁵⁵

Due diligence period

- 3.75 Following extension of the deadline from 19 October to 15 December 1999, tenderers were free to pursue investigations into various aspects of the operation of the casino and resort.
- 3.76 DoTRS states that ‘two potential purchasers of the resort contacted the Commonwealth with queries as part of their due diligence process during December 1999 and January 2000’.⁵⁶ One of these potential purchasers was ComsWinfair Pty Limited.
- 3.77 Following the first round of tenders, ComsWinfair quickly emerged as the most viable tenderer for the casino and resort. Without the constraints of heavy capital raising, and with experience in gaming operations, ecotourism and aviation chartering, ComsWinfair was considered the only group in the tender process with the resources to successfully undertake operation of the casino and resort.

ComsWinfair Pty Limited

- 3.78 ComsWinfair is an Australian company, 50 per cent of which is owned by eGlobal International Limited (previously called Coms21 Limited) and 50 per cent owned by the Winfair Group Limited from Canada.⁵⁷
- 3.79 At the time of the tender process, Coms21 Limited was an Australian listed company with interests in technology operations and a significant investment in the gaming sector through a controlling interest in eBet Limited, an Australian based Internet gaming services provider. In addition, certain directors of Coms21 had ‘considerable experience in casino financing, development and operations’.⁵⁸
- 3.80 The Winfair Group Limited, which is based in Canada, ‘operates several large businesses, including private jet charter, resort development, ownership and operation, ecotourism, luxury boat construction and chartering, and aircraft reconditioning’.⁵⁹ The Winfair Group’s aviation business includes operations in Singapore and Jakarta.
- 3.81 ComsWinfair was formed specifically for the purpose of tendering for the Christmas Island Casino and Resort properties, with the intention of owning and operating the resort following licensing and refurbishment.⁶⁰
- 3.82 In its submission to the inquiry, ComsWinfair stated:

56 DoTRS, Submission No. 4, p. 20.

57 ComsWinfair, Submission No. 9, p. 1197.

58 ComsWinfair, Submission No. 9, p. 1197.

59 ComsWinfair, Submission No. 9, p. 1197.

60 ComsWinfair, Submission No. 9, p. 1197.

Our plans for the Resort provided for immediate refurbishment and re-opening on a reduced scale, with a view to complete make good and refurbishment of the properties at an estimated cost of \$27 million, ultimate employment of around 300 persons, and a market share of around 10% of the Australian premium and junket casino business. Winfair was to provide or arrange necessary air travel services from target markets. Our plans further envisaged the development of new resort properties and activities, and the creation of a broader tourist offering.⁶¹

- 3.83 Following extension of the deadline from 29 October 1999 to 15 December 1999, ComsWinfair undertook an extensive due diligence process.
- 3.84 ComsWinfair states that it ‘engaged the services of legal, management, construction and engineering consultants to assist in due diligence,’ and undertook extensive on-site investigations in the period up to 15 December 1999.⁶²
- 3.85 A significant part of these investigations involved excursions to the Island for on-site inspections of the casino and resort, as well as ancillary facilities and services on the Island. Representatives from ComsWinfair made two trips to the Island, the first in April 1999 and the second in November of the same year.
- 3.86 In late April 1999 Mr Jack Tse and Mr Roger White from the Winfair Group travelled to Christmas Island to assess the potential of the Island and the facilities of the casino and resort. The Committee was told that on 25 April 1999 Mr Jack Tse held discussions with Mr Bill Taylor, Administrator of Christmas Island, regarding governance and regulation of the casino and resort.
- 3.87 Island businessman, Mr Ed Turner, told the Committee that after the meeting Mr Tse related the substance of the discussions to him:
- The Administrator naturally was not involved in the sale process, nor, I believe, was the Administrator given at any time any instructions to answer any questions on behalf of Territories. So Mr Tse went away quite dissatisfied, but he was impressed with the potential of the Island...[and] when he left he indicated that he thought there was enough interest by his group to send a delegation of other executives...to carry out a detailed feasibility...⁶³

61 ComsWinfair, Submission No. 9, pp. 1197-98.

62 ComsWinfair, Submission No. 9, p. 1198.

63 Mr Ed Turner, *Hansard*, p. 163.

- 3.88 A senior management team from the consortium made a second trip to the Island between 21 and 25 November 1999. Representatives included:
- Mr Rodger Mortleman, Chief Executive Officer, Coms21 Ltd;
 - Mr Roger White, Vice President, Winfair Group;
 - Mr Herb May, Company Secretary, Coms21 Ltd;
 - Mr Alan Smith, Managing Director, Alan Smith Consulting;
 - Mr Barry Wormald, Principal, EMF Griffiths, Consulting Engineers;
 - Mr John Wicks, Principal Casino Consultant, Global Gaming Consultants; and
 - Ms Gail Mortleman, Director, Rodmain Pty Ltd.
- 3.89 ComsWinfair states that ‘during this period the principals met with Commonwealth and local government representatives, and with industry and business interests on the Island’.⁶⁴
- 3.90 On 23 November 1999 members of the ComsWinfair consortium met with Mr Hugh Moore from the Department of Transport and Regional Services. Mr Moore undertakes progress inspections of capital and infrastructure works on the Island every two months. These inspections involve regular community consultations. Mr Moore was on the Island at the same time as the ComsWinfair consortium, and an informal meeting was arranged at short notice for a briefing on infrastructure issues.
- 3.91 During discussions with the ComsWinfair group Mr Moore raised a number of issues concerning potential changes to the boundaries of the lease. ComsWinfair were advised that:
- **Linkwater Road**
Maintenance of the road would be taken over by the Commonwealth and public access to the road would have to be allowed.
 - **Water Supply**
\$500,000 was required to upgrade and repair the water facility, and the Commonwealth would be taking over the facility. Henceforth, the casino and resort would have to purchase water supplies at commercial rates.
 - **Public Access to Waterfall Bay**
The Commonwealth would require the construction of a road to allow public access to Waterfall Bay.

In addition, the Commonwealth was considering potential tuna boat operations in the bay.

■ **Further Construction/Workshop Area**

It was unlikely that ComsWinfair would be able to develop the site above the water table, on the construction and workshop area.

ComsWinfair was further advised that that the area was polluted and that it would most likely be served with a notice from the Commonwealth to clean up the site.

3.92 Mr Ed Turner, who assisted the consortium in its inspections on the Island, told the Committee that:

The principals of the Consortium spoke with me immediately after that meeting expressing alarm at the hardline position of the government...Both Roger White and Rodger Mortleman were extremely despondent after the meeting with Territory officials. Mr Roger White felt that Mr Tse would now not submit a tender. Mr Mortleman indicated that the whole process had now changed and that if they did tender it would be highly conditional and at a much lower figure.⁶⁵

3.93 The Committee heard further evidence that, while on the Island in November 1999, the ComsWinfair Group also received a copy of a letter dated 30 August 1999, from the Minister to the Liquidator. This letter further summarised some of the proposed changes to the leases and to the gaming tax rates.

3.94 Mr Mortleman of ComsWinfair told the Committee:

The letter of 30 August 1999 from the Minister to the Liquidator...has three very important material matters in it. One is the transfer of services infrastructure to the Commonwealth. The second is the potential to freehold the property. The third is his views on what an appropriate casino tax rate should be.⁶⁶

3.95 On 25 November 1999 the Liquidator wrote to the Department seeking clarification, and expressing concern over the response of ComsWinfair to some of the issues raised during the consortium's inspection of the Island.

3.96 Mr Herbert also raised ComsWinfair's concerns at the Commonwealth's proposal to raise the gaming tax minimum from \$1 million to \$2 million,

65 Mr Edward Turner, Submission No. 10, p. 1204.

66 ComsWinfair, *Hansard*, p. 195.

despite the 10 per cent rate under the previous tax regime being lowered to 8 per cent under the current proposal.⁶⁷

3.97 In the same letter to the Department Mr Herbert also asked:

If I agreed to allow a period of four (4) weeks from the date of acceptance of Winfair's offer for the satisfaction of the conditions (say by 25th January 2000), would this be a practicable time frame for the resolution of these issue?⁶⁸

3.98 On 14 December 1999 DoTRS responded:

There are clearly conflicting understandings about the nature of the advice provided by Mr Moore during his discussions of 23 November 1999 with representatives of Winfair/Coms21. Of the statements attributed to Mr Moore by the Winfair/Coms 21 representatives...eight are incorrect according to a record of the meeting subsequently prepared by Mr Moore and confirmed by four other attendees.⁶⁹

3.99 With regard to the lease changes raised by ComsWinfair as areas of concern, DoTRS replied that all of the issues raised could be readily clarified and that none should be considered 'showstoppers'. DoTRS further advised that gaming tax arrangements should be discussed with the Minister, as they were outside the jurisdiction of the Department's portfolio.

3.100 With regard to a proposed timetable, DoTRS stated that it would be unable to provide an unequivocal guarantee that the Commonwealth would be able to deal with any queries within a specified timetable, as January was a time in which 'budget preparations take priority' and 'many of the key staff may be on annual leave'.

Round Two

3.101 On 15 December 1999 only two tenders were submitted.⁷⁰

ComsWinfair Pty Ltd

3.102 ComsWinfair's tender bid had now dropped to \$5.5m and a number of conditions were attached to the offer. These included:

- negotiation of a taxation rate and regime with the Commonwealth to ComsWinfair's satisfaction;

67 Annexure 38, PPB Ashton Read, Submission No. 7, pp. 520-524.

68 Annexure 38, PPB Ashton Read, Submission No. 7, p. 522.

69 Annexure 39, PPB Ashton Read, Submission No. 7, pp. 525-527.

70 JDW had not submitted owing to its inability to locate a suitable casino operator.

- assignment of the Crown leases on terms agreeable to ComsWinfair;
- the Casino Control Ordinance and other relevant legislation governing the operation of the casino being to ComsWinfair's satisfaction; and
- assignment of the liquor licence on terms acceptable to ComsWinfair.⁷¹

Hospitality and Gaming Investments Pty Ltd

3.103 HGI's tender was submitted at \$14m and was subject to:

- successful capital raising for the purchase price;
- assignment of the Crown leases on terms acceptable to HGI; and
- favourable consideration of the provision of land for twelve 'kit homes'.⁷²

Termination of the tender process

3.104 Following receipt of the final tenders, uncertainty continued regarding the finalisation of negotiations on the conditions attached to each tender and the time period required to conduct the probity review.

3.105 The Liquidator notes:

The probity review of the successful tenderer – pursuant to the consideration of an application for a Casino Licence – had to be completed once a tender was selected...I had been advised that this process could take up to six (6) months in the case, particularly of foreign applicants (ComsWinfair was partly foreign based). It was, therefore, foreseeable that the settlement of the tender, allowing for time to negotiate conditions and for the settlement to take place, may not have been effected for some nine (9) months or longer.⁷³

3.106 The Liquidator subsequently undertook to resolve, or to facilitate negotiations with the Commonwealth with a view to resolving, the conditions attached to each tender.

Negotiations with HGI

3.107 As noted above, the tender from HGI was conditional upon successful capital raising for the purchase price, in addition to lease and licensing issues requiring discussion with the Commonwealth.

71 PPB Ashton Read, Submission No. 7, pp. 65-66.

72 PPB Ashton Read, Submission No. 7, p. 66.

73 PPB Ashton Read, Submission No. 7, p. 67.

3.108 On 16 December 1999 the Liquidator met with representatives of HGI, in order to 'obtain some certainty in relation to the timing and likelihood of the capital raising required to fund the acquisition of the casino and resort'.⁷⁴

3.109 In correspondence to HGI dated 17 December 1999, Mr Herbert stated:

it is difficult to accept the contract on the basis that the funds to support the acquisition of the casino and resort are still to be raised and it may also be difficult from your point of view to raise these funds without having an accepted contract. It would therefore be necessary, should you proceed to a capital raising, to provide a non-refundable deposit to allow for the continuation of the liquidation should the public offering fail to raise the capital required to purchase the casino and resort.⁷⁵

A preliminary estimate of the deposit required was set at \$250,000-300,000.

3.110 Mr Herbert maintained contact with HGI between 4 January and 7 January 2000, regarding the progress of capital raising for the purchase price. On 7 January HGI advised that they 'were pursuing the possibility of achieving an offer conditional only on the granting of an Internet gambling licence'.⁷⁶

3.111 On 13 January 2000 the Liquidator received a letter from HGI stating that it had been advised by Laverton Gold NL, the company through which HGI was conducting the capital raising, that it no longer wished to pursue its Christmas Island Resort bid.⁷⁷

3.112 Mr Herbert wrote to the Commonwealth on 14 January 2000, advising that HGI had withdrawn from the tender process.⁷⁸

Further negotiations with HGI

3.113 Following the cessation of HGI's involvement in the formal tender process, the Liquidator continued to pursue the possibility of an unconditional cash offer from HGI.

3.114 On 2 February 2000 HGI informed the Liquidator that it anticipated being able to submit an offer of \$9m which would be subject to a number of conditions, including the granting of a casino licence, an Internet gambling licence and a liquor licence.

74 PPB Ashton Read, Submission No. 7, p. 70.

75 Annexure 49, PPB Ashton Read, Submission No. 7, p. 560.

76 PPB Ashton Read, Submission No. 7, p. 71.

77 Annexure 52, PPB Ashton Read, Submission No. 7, pp. 569-570.

78 Annexure 57, PPB Ashton Read, Submission No. 7, pp. 581-583. DoTRS, Submission No. 11, pp. 1340-1341.

- 3.115 On 14 February 2000 Mr Herbert was advised that an offer, unconditional with respect to funding, would be made by 18 February 2000. However, this would still depend upon the granting of Internet gambling, casino and liquor licences. The Liquidator informed HGI that in order for HGI to remain competitive, an unconditional offer would have to be made.
- 3.116 On 18 February 2000 no offer was forthcoming. On 19 February 2000 the Liquidator was informed by HGI's financier that 'at this time the parties interested in financing the project had not been able to provide any assurances that they would proceed and, as such, that an offer could not be made'.⁷⁹

Negotiations with ComsWinfair

- 3.117 On 17 December 1999 the Liquidator corresponded with representatives of ComsWinfair regarding the price and conditions attached to its tender. The e-mail requested that ComsWinfair provide as much detail as possible regarding the conditions on the tender.⁸⁰
- 3.118 On 24 December 1999 ComsWinfair responded that the company 'had bid the highest price it deemed commercially viable', taking into account the high-risk nature of the operation, and that 'it was not prepared to alter its tender price'.⁸¹
- 3.119 First among ComsWinfair's concerns were gaming tax and operational arrangements for the casino. ComsWinfair was prepared to accept a tax rate increasing to reflect increasing revenues, but was not prepared to proceed with an initial tax rate of 9 per cent or a minimum licence fee, because it was unaware of a 'minimum tax rate...levied by any State Government for any other Australian casino'.⁸²
- 3.120 In addition, matters relating to the lease, including Linkwater Road, the water supply, environmental pollution, access to Waterfall Bay and the potential for further development on the site, were detailed.
- 3.121 In a letter to Mr Rodger Mortleman, dated 7 January 2000, the Liquidator stated that in his opinion, 'matters relating to the casino tax rate comprise the only "deal breaker" amongst all the issues raised'.⁸³
- 3.122 On 14 January 2000 the Liquidator wrote to the Minister detailing verbal advice provided by Mr Mortleman regarding ComsWinfair's requirements for the gaming tax rate. He summarised these requirements as follows:

79 PPB Ashton Read, Submission No. 7, p. 72.

80 Annexure 40, PPB Ashton Read, Submission No. 7, pp. 528-529.

81 PPB Ashton Read, Submission No. 7, p. 68.

82 Annexure 42, PPB Ashton Read, Submission No. 7, p. 534. ComsWinfair, Exhibit No. 7.

83 Annexure 44, PPB Ashton Read, Submission No. 7, p. 542.

- no minimum licence fee;
- the rate of tax on the first \$100m of revenue to be 5 per cent inclusive of the 1 per cent Community Benefit Fee, while revenues in excess of \$100m at a rate of 9 per cent would be accepted; and
- no review of the casino tax rates for at least ten years and preferably no review clause included in the casino licence agreement at all.

3.123 The Liquidator stated that ComsWinfair also indicated that:

They believe that, following discussions with the Minister most, if not all, of the other conditions precedent could be deleted.⁸⁴

3.124 The Liquidator wrote to the Minister again on 20 January, confirming arrangements for a teleconference on 24 January 2000 and summarising some of the issues to be dealt with, including ‘the likelihood and timeframe for satisfying the conditions precedent, in particular, the tax rate’.⁸⁵

3.125 On 27 January 2000, in response to Mr Herbert’s letters of 14 and 20 January, as well as telephone discussions on 24 January 2000, the Minister wrote to the Liquidator summarising the Commonwealth’s position on issues raised by ComsWinfair. The Minister stated:

I would be prepared to consider a licence fee which was below the lowest rate currently applying to an Australian casino...it could be between 1% and 2% below that rate. However I will need to consult with my colleague the Minister for Finance and Administration on any final figure. I would only consider this provided that all organisations which submitted expressions of interest are informed of this and given the opportunity to consider whether a lower rate would induce them to submit a tender...In regard to the period of any rate, I would also be prepared to keep the rate in place for the first three years, after which a review would be conducted.⁸⁶

3.126 In summarising the Commonwealth’s response in a letter to ComsWinfair dated 28 January 2000, the Liquidator stated that the Minister further indicated that ‘he would propose in a minimum licence fee to cover the costs of surveillance of the Casino’ and would be ‘flexible with regard to implementing a minimum licence fee reflecting the costs of surveillance’.⁸⁷

3.127 Mr Mortleman of ComsWinfair told the Committee that:

84 Annexure 57, PPB Ashton Read, Submission No. 7, p. 582. DoTRS, Submission No. 11, p. 1340.

85 Annexure 58, PPB Ashton Read, Submission No. 7, p. 585. DoTRS, Submission No. 11, p. 1342.

86 Annexure 45, PPB Ashton Read, Submission No. 7, p. 547. DoTRS, Submission No. 11, p. 1344.

87 Annexure 45, PPB Ashton Read, Submission No. 7, p. 545.

Basically in that letter I believe the Minister said that he would agree to a tax rate of one to two per cent below the lowest applying in Australia. The lowest applicable tax in Australia is in Alice Springs and Darwin where the junket tax is eight per cent. Two per cent from eight per cent means a tax of six per cent. We were hoping to get five per cent; six per cent would have been close enough.

The letter also said that he would entertain the reasonable proposition on the minimum charge amount to be applied on a per annum basis. We did not get the opportunity to get around a table to decide what that might be, but it certainly provided us with some comfort that it would not be the \$2 million figure but something substantially less than that.⁸⁸

3.128 A meeting was arranged between the Liquidator and ComsWinfair for 2 February 2000, to discuss their position on the Commonwealth's response. Mr Herbert informed the Committee that two major issues emerged from these discussions:

- A: ComsWinfair felt that it was unfair for the other interested parties to be advised of the proposed tax rate charges;
- B: ComsWinfair was not prepared to continue to negotiate with the Commonwealth unless its tender was accepted.⁸⁹

3.129 ComsWinfair told the Committee that:

During the final stages of the tender process we advised the Receiver that we considered that it would be necessary to select a Preferred Tenderer, who would then be in a position to resolve lease and licensing conditions with the relevant Commonwealth authorities. We considered it impractical to ourselves resolve the leases and licences with the Commonwealth authorities unless selected as Preferred Tender.⁹⁰

3.130 At this stage, negotiations between ComsWinfair, the Liquidator and the Commonwealth reached an impasse. Mr Herbert told the Committee that:

Our problem in December [1999] was that we were running out of money. There was a two-phase process from there: first, the satisfaction of all these conditions and, second, the probity review. The Government told us that, where foreign companies were involved, the probity process may take up to six months. ComsWinfair was a company that was ultimately controlled by

88 ComsWinfair, *Hansard*, p. 197.

89 PPB Ashton Read, Submission No. 7, p. 69.

90 ComsWinfair Pty Ltd, Submission No. 9, p. 1200.

foreign interests, so we had the possibility of a six-month probity review and a preparatory period for the satisfaction of these conditions.

It may have taken nine months for this to happen, and they may have walked away at any time, because the Government did not agree to something which they, at their sole discretion, could accept...Our concern was that we could go through the entire nine months, end up without an offer and then be in a position where we did not have the capacity to offer the assets to the market again because we were out of money.⁹¹

- 3.131 On 4 February 2000 Mr Herbert wrote to ComsWinfair to advise the company that he could not accept its offer 'owing to the numerous uncertainties attaching to it and concerns as to the amount of [its] offer'.⁹² Mr Herbert advised ComsWinfair that any further negotiations would have to be conducted directly with the Commonwealth. In summary, the Liquidator said:

In the circumstances, whilst I am happy to maintain discussions with you to see if we can achieve a mutually acceptable deal, it is not appropriate to continue to try and pursue this in the context of the tender process, which has effectively come to an end.

- 3.132 Mr Herbert stated further:

I confirm that I am prepared to provide you with a reasonable opportunity to resubmit a bid in the event that an offer from a third party is received, but I cannot agree to the grant to you of a right of first refusal on the sale of the properties.⁹³

Further negotiations with ComsWinfair

- 3.133 Throughout February 2000 Mr Herbert maintained contact with Rodger Mortleman of ComsWinfair, in order to facilitate discussions with the Minister and to determine any progress made regarding resolution of ComsWinfair's conditions.
- 3.134 Mr Mortleman informed the Committee that ComsWinfair became aware by late January or early February 2000 that its bid was going to be unsuccessful. ComsWinfair subsequently 'endeavoured to set up a meeting with the Minister or his department' but 'no meeting came about'.

91 PPB Ashton Read, *Hansard*, p. 69.

92 Annexure 46, PPB Ashton Read, Submission No. 7, pp. 552-554.

93 Annexure 46, PPB Ashton Read, Submission No. 7, pp. 553-554.

ComsWinfair then 'engaged a lobbyist to try and find out what was going on' but by this stage, ComsWinfair was 'going nowhere'.⁹⁴

3.135 On 23 March 2000 the Liquidator received a letter from ComsWinfair advising that ComsWinfair would consider tendering a new price for the casino and resort if Mr Herbert would be prepared to accept conditional offers.⁹⁵

3.136 Mr Mortleman told the Committee that ComsWinfair 'made a final attempt to re-enter the process sometime in mid to late March...but did not really manage to get anywhere with it with the Liquidator'.⁹⁶

3.137 In his submission the Liquidator stated that he contacted Mr Mortleman by telephone and that 'Mr Mortleman could not, or would not, provide details of the increased offer ComsWinfair might make and did not have any suggestions as to how [Mr Herbert's] concerns about the lack of certainty as to the completion of its offer might be resolved'.⁹⁷

3.138 ComsWinfair told the Committee:

It was never a possibility for us to go unconditional, because we believed the assets had no value without the casino licence. Had he approached me on that basis I would have said no...there were too many variables still outstanding... the Liquidator sent us a letter saying that he had terminated the process and encouraged us to deal directly with the Minister on resolving the licence and lease conditions. But we were already getting plenty of feedback that the deal was going elsewhere.⁹⁸

Sale of the casino and resort

3.139 Following the loss of the HGI tender in early January 2000 and continuing uncertainty as to the resolution of conditions in ComsWinfair's offer, the Liquidator began considering other options for the sale of the casino and resort.

3.140 In his submission the Liquidator stated:

The only remaining offer – ComsWinfair's – was at a price which I believed could be obtained from the sale of the assets on an unconditional basis: in particular, without the need to satisfy

94 ComsWinfair, *Hansard*, p. 193.

95 Annexure 48, PPB Ashton Read, Submission No. 7, pp. 557-558.

96 ComsWinfair, *Hansard*, p. 193.

97 PPB Ashton Read, Submission No. 7, p. 70.

98 ComsWinfair, *Hansard*, p. 197.

conditions in relation to the approval of a Casino licence and changes to the Casino tax rate.

I consequently began investigating the possibility of attracting a purchaser for the casino and resort who would not require a Casino Licence as a condition precedent to the sale.⁹⁹

- 3.141 In May 1999 the Liquidator had commissioned CB Richard Ellis to prepare a valuation of the properties on a 'walk in-walk out' basis. CB Richard Ellis valued the casino and resort at \$10m.¹⁰⁰ In January 2000 the Liquidator sought confirmation from CB Richard Ellis that the valuation was still current. The valuation of the casino and resort was revised to \$5m, owing to an increased deterioration in the properties and an exacerbation of the risk factors involved in the enterprise, brought about by the East Timor crisis.¹⁰¹
- 3.142 The Liquidator told the Committee that upon receipt of the final tenders on 15 December 1999, and based on the revised valuation of the casino and resort provided by CB Richard Ellis, he:

instructed JLW and Frank Woodmore to advise interested parties identified through the tender process, and others of whom they were aware, that the casino and resort might be available on a cash unconditional basis.¹⁰²

Negotiations with other parties

- 3.143 After it became known that the casino and resort might be available on a cash unconditional basis, a number of parties based on the Island contacted Mr Michael Asims, manager of the casino and resort, for financial information on the resort complex.
- 3.144 One potential purchase involved a campaign by the Union of Christmas Island Workers (UCIW) and the Shire of Christmas Island (SOCI) to assemble a community bid for the casino and resort.
- 3.145 On 17 December 1999 Mr Frank Woodmore advised the Liquidator that he had spoken to three potential buyers for the casino and resort on a cash unconditional basis.
- 3.146 The first party was based in Melbourne and was associated with a potential Chinese purchaser. The Liquidator informed the Committee that a detailed information package was sent to the consortium and further

99 PPB Ashton Read, Submission No. 7, p. 74.

100 Annexure 61, PPB Ashton Read, Submission No. 7, pp. 599-658.

101 Annexure 62, PPB Ashton Read, Submission No. 7, pp. 659-662.

102 PPB Ashton Read, Submission No. 7, p. 75.

encouragement given to submit an offer. However, 'communications between the Melbourne and Chinese groups of this party broke down' and an offer was not submitted.¹⁰³

3.147 The second potential buyer was based in Cairns and interested in acquiring the casino and resort with a view to establishing a time share operation. Mr Herbert further stated that 'the nature of this type of operation meant that without freehold title to the land, financial backing would be difficult to obtain'. In addition, the Cairns party was interested in establishing gaming operations, in particular Internet gambling operations, and would not have been able to submit an unconditional offer.¹⁰⁴

3.148 The third party to be identified by Mr Frank Woodmore was Asia Pacific Space Centre (APSC). In his submission to the inquiry Mr Herbert told the Committee:

It seemed to me that APSC were obvious contenders for the purchase for the casino and resort, given their business interests and their accommodation requirements on Christmas Island.¹⁰⁵

Negotiations with APSC/Soft Star Pty Ltd

3.149 Initial discussions between the Liquidator and Mr David Kwon of APSC began in January 2000, following continued difficulties experienced in attempts to resolve conditions precedent to the two remaining tenders.

3.150 On 14 January 2000, in a letter to the Minister pertaining predominantly to negotiations with ComsWinfair over gaming tax arrangements, the Liquidator also referred to the fact that he would be meeting with Mr David Kwon the following week to discuss a potential offer from APSC. In the letter Mr Herbert noted that 'any offer made by APSC would most likely be for the buildings of CIR', which would only be 'a fall back position'.¹⁰⁶

3.151 In evidence to the Committee, Mr Kwon stated that APSC relied upon the resort for the accommodation of 'very high profile people, sometimes foreign country government people and sometimes very senior company people' when they were visiting the Island in relation to the proposed APSC satellite launching facility. During the tender process, APSC had experienced difficulties in accessing the facilities of the resort.¹⁰⁷ Mr Kwon

103 PPB Ashton Read, Submission No. 7, p. 75.

104 PPB Ashton Read, Submission No. 7, pp. 75-76.

105 PPB Ashton Read, Submission No. 7, p. 76.

106 Annexure 57, PPB Ashton Read, Submission No. 7, p. 583.

107 APSC/Soft Star, *Hansard*, p. 45.

stated that it was very important for APSC to have reliable access to accommodation.

Because of the nature of Asia Pacific Space Centre, we think it is very important for us to secure that our people, our guests, our clients, come to stay over there when we are operating a local launch facility. We did expect the tender to successfully close and be won by other people and we had a plan to try and negotiate with the winner of the tender but, unfortunately, no one won the tender. That is what we knew. That lease is most important to us, because we also expect that when the spaceport is operating, the resort might be a very prosperous business. That is what we expect.¹⁰⁸

- 3.152 Following the failure of the tender process, APSC was concerned that if it did not get involved the resort might remain closed for a lengthy period without an owner. Mr Kwon told the Committee that the Liquidator informed APSC that ‘the tender [had] closed twice and it was possible that it could be negotiated’.¹⁰⁹ He then began investigating options for APSC to purchase the casino and resort.
- 3.153 In correspondence to the Minister dated 20 January 2000, the Liquidator again referred to the possibility of an offer from APSC, and asked ‘whether the Commonwealth would consent to the assignment of the lease of Christmas Island Resort to APSC, given that it may or may not operate a casino on the site’.¹¹⁰
- 3.154 The Minister’s response, dated 27 January 2000, stated that:
- It is unlikely that the Commonwealth would withhold consent for the assignment of the lease of the resort to a genuine purchaser. There is no reason why the resort should not be sold solely as a resort. If the purchaser of the resort does not wish to operate a casino, it would be possible for the purchaser to sub-let the designated casino area to a third party. Any third party would need to apply to the Commonwealth for a casino licence.¹¹¹
- 3.155 On 2 February 2000, while in Sydney for discussions with ComsWinfair regarding the conditions precedent to its tender, Mr Herbert also arranged to meet with Mr David Kwon.

108 APSC/Soft Star, *Hansard*, p. 28.

109 APSC/Soft Star, *Hansard*, p. 45.

110 Annexure 58, PPB Ashton Read, Submission No. 7, p. 586.

111 Annexure 59, PPB Ashton Read, Submission No. 7, p. 595.

- 3.156 After initial discussions, in which APSC had suggested that it would be prepared to offer \$4.5 million,¹¹² APSC indicated at this meeting that it was 'prepared to offer \$5.5m for the sale of the casino and resort, subject only to the excision of Linkwater Road and the water supply facilities from the Crown leases and the granting of a Liquor Licence'.¹¹³
- 3.157 The Liquidator confirmed the substance of APSC's offer for the purchase of the casino and resort in a letter to Mr Kwon dated 3 February 2000.¹¹⁴ On 4 February 2000 ComsWinfair was informed that the tender process had 'effectively come to an end'.¹¹⁵
- 3.158 On 7 February, in response to correspondence from the Liquidator, APSC 'advised that they did not require the excision of the water supply facilities or a liquor Licence to be conditions precedent to the sale'.¹¹⁶
- 3.159 In negotiations conducted during February 2000 regarding assignment of the leases, the Commonwealth continued to seek to excise the water supply facilities from the lease and to suggest that new leases be drawn up.¹¹⁷
- 3.160 In order to avoid another potential sticking point, the Liquidator wrote to the Commonwealth on 25 February 2000 and requested that the Crown leases 'be assigned in their current form and that, if necessary, the Commonwealth deal with modifications to the lease after settlement of the sale'.¹¹⁸
- 3.161 The Commonwealth subsequently agreed to assign the leases in their current form at the time.
- 3.162 Simultaneously, negotiations continued between the Liquidator and APSC regarding the terms of the contract of sale and the purchase price. By 16 March 2000 an offer was procured for the amount of \$5.7 million.
- 3.163 On 21 March 2000 a draft replacement lease, a draft Deed of Surrender and a draft Deed of Services Easement were sent to the Liquidator from DoTRS.¹¹⁹
- 3.164 On 30 March the Contract of Sale was executed by Soft Star Pty Ltd.

112 PPB Ashton Read, *Hansard*, p. 80. APSC/Soft Star, Submission No. 13, p. 1420.

113 PPB Ashton Read, Submission No. 7, p. 77.

114 Annexure 63, PPB Ashton Read, Submission No. 7, pp. 663-667.

115 Annexure 46, PPB Ashton Read, Submission No. 7, p. 553.

116 PPB Ashton Read, Submission No. 7, pp. 77-78. Correspondence attached at Annexure 64, PPB Ashton Read, Submission No. 7, p. 669.

117 Annexure 67, PPB Ashton Read, Submission No. 7, pp. 674-675.

118 PPB Ashton Read, Submission No. 7, p. 78. Correspondence attached at Annexure 68, PPB Ashton Read, Submission No. 7, p. 677.

119 Annexure 69, PPB Ashton Read, Submission No. 7, pp. 678-709.

- 3.165 The Committee was told that following the signing of the contract, there was some disagreement between the Liquidator and Soft Star regarding a number of the terms of the contract.
- 3.166 The Liquidator stated that there was so much difficulty getting to settlement that at one stage he seriously thought that Soft Star was repudiating the contract.¹²⁰ He told the Committee, however, that these difficulties were eventually resolved:
- There was a bit of disagreement about some of the plant and equipment. We resolved that eventually by agreeing that various items that we thought had been excluded should be included, but the value was not reflected in the material.¹²¹
- 3.167 On 6 April 2000 the Liquidator formally requested that the Commonwealth assign the leases over the casino and resort to Soft Star Pty Ltd, and on 28 April 2000 the Administrator of Christmas Island provided his consent under delegation of the Minister's powers.¹²²
- 3.168 Settlement occurred on 5 May 2000.

Correspondence and meetings with creditors and the Committee of Inspection

- 3.169 The Committee was informed that throughout the liquidation process the Liquidator has endeavoured to keep creditors apprised of developments, through written circulars, a meeting of creditors and meetings of CIR's Committee of Inspection (COI).¹²³
- 3.170 Additional information regarding circulars and correspondence sent to creditors is attached at Appendix E.
- 3.171 On 27 August 1999 a meeting of all creditors to CIR was convened in Perth. At this meeting the Liquidator informed creditors of the background to his appointment, his dealings with the former directors of CIR and the progress of the realisation of the casino and resort.
- 3.172 During the creditors' meeting, and in accordance with Section 548 of the *Corporations Law*, the creditors of CIR voted to appoint a Committee of Inspection to represent them. Additional details of the COI are attached at Appendix E.

120 PPB Ashton Read, *Hansard*, p. 82.

121 PPB Ashton Read, *Hansard*, p. 83.

122 Annexures 70 and 71, PPB Ashton Read, Submission No. 7, pp. 710-713 and 714-715 respectively.

123 PPB Ashton Read, Submission No. 7, p. 80.

3.173 The Liquidator informed the Committee that:

The COI were aware of the process of the tender, the difficulties I encountered in finalising the sale of the casino and resort and the risks CIR faced in the process.¹²⁴