IN THE CROWN COURT AT SOUTHWARK No.

BETWEEN

REGINA

-v-

ROLLS-ROYCE plc

ROLLS-ROYCE ENERGY SYSTEMS, INC.

STATEMENT OF FACTS PREPARED PURSUANT TO PARAGRAPH 5(1) OF SCHEDULE 17 TO THE CRIME AND COURTS ACT 2013

INTRODUCTION

1. This is an agreed Statement of Facts in relation to a Deferred Prosecution Agreement ("DPA") about the alleged commission by Rolls-Royce plc (including Rolls-Royce Energy Systems, Inc.) of offences of conspiracy to corrupt, false accounting and failure to prevent bribery. It relates to the draft indictment referred to in that DPA and numbered U20170036.

2. There is a concurrent investigation being conducted by the US Department of Justice ("DOJ") and the Brazilian Ministério Público Federal ("MPF").

The Company

3. Rolls-Royce plc is a UK incorporated public limited company. Prior to 21 March 2003, Rolls-Royce plc was the ultimate parent company of the companies in the Rolls-Royce group. From 21 March 2003 to date, Rolls-Royce plc has been the wholly owned subsidiary of Rolls-Royce Group plc, which in turn has been wholly owned by Rolls-Royce Holdings plc since 10 February 2011. Rolls-Royce Holdings plc is listed on the London Stock Exchange and forms part of the FTSE 100 index.

4. Rolls-Royce plc and its subsidiaries ("RR") employs over 40,000 people in more than 50 countries. RR Corporate Headquarters are based at Buckingham Gate in London.

5. The allegations against RR arise out of the conduct of its Civil Aerospace business ("Civil"), Defence Aerospace business ("Defence") and former Energy business ("Energy") and relate to the sale of aero engines, energy systems and related services.

6. Civil manufactures engines for the commercial large aircraft and corporate jet markets. It is RR's largest business and generates approximately 50% of RR's revenue.

7. Defence manufactures engines for the military transport market and is the second largest provider of defence aero engine products and services in the world. Defence generates approximately 20% of RR's revenue.

8. Energy was concerned with the manufacture of gas turbines and compressors to power off-shore platforms, the transport of oil and gas through pipelines, and the generation of electricity. Energy generated less than 10% of RR's revenue. Part of that business was carried out by Rolls-Royce Energy Systems, Inc. ("RRESI").

   8.1. RRESI is a private company incorporated in Delaware in the United States. It is ultimately owned by Rolls-Royce plc through three other subsidiaries (Rolls-Royce Overseas Holdings Ltd, Rolls-Royce Overseas Investments Ltd and Rolls-Royce North America (USA) Holdings Co).

8.2. RRESI was previously the principal entity responsible for conducting RR's Energy business, including the manufacture and sale of power systems used in the oil and gas and power generation industries.

8.3. On 1 December 2014 RR sold its whole Energy business. Prior to this sale, on 28 November 2014, the SFO agreed with RR pursuant to a deed that RRESI (amongst other RR Energy companies) would not be wound up without the prior written consent of the SFO. Most of RRESI's business has been transferred, though it does continue to manage certain historical contracts.

9. In early 2012, the SFO sought information from RR in respect of concerns regarding the operation of RR's Civil business in China and Indonesia raised by certain internet postings. As a result, RR investigated these concerns and reported on the findings into these and other issues in Civil and Defence through late 2012 and early 2013. Further, starting in 2013, RR also voluntarily supplied to the SFO reports in respect of its internal investigations into its Energy, Defence, Civil, and Marine businesses. RR's internal investigation, from 2012 until the present date, has included the collection of data from relevant employees; the review of email containers of relevant employees; the review of relevant archive material; 229 internal investigation interviews; and regular reports to the SFO and DOJ on findings. RR has reviewed over 250 relationships it had with intermediaries, agents, advisers and consultants ("intermediaries"). RR closely analysed over 120 of those relationships and disclosed its findings to the SFO. As a result the SFO investigated RR's Defence, Civil, Energy and Marine businesses.

10. The investigation is the largest conducted by the SFO to date. In addition to examining the internal investigations (including the interviews, RR having waived any claim for LPP on a limited basis) the SFO, with the extraordinary cooperation of RR, has conducted its own extensive investigation which included:

10.1. Obtaining from RR the key documents identified by the internal investigations including memoranda of interviews,

10.2. Obtaining from RR complete digital repositories or email containers where available of in excess of 100 key employees or former employees, without filtering the material for potential privilege but instead permitting issues of privilege to be resolved by independent counsel,

10.3. The arrests of domestic and overseas intermediaries including searches of their premises,

10.4. Obtaining documentary evidence through requests for mutual legal assistance,

10.5. The arrests of former RR employees and searches of their addresses both domestically and overseas,

10.6. Conducting numerous interviews voluntarily, under compulsion and of suspects,

10.7. Access generally to RR hard copy documents, and

10.8. Other targeted requests and review of material such as:

10.8.1. Compliance material including historic internal reviews,

10.8.2. Personnel files,

10.8.3. Employee notebooks,

10.8.4. Telephones,

10.8.5. Marketing services agent files, and

10.8.6. Accountancy records.

RR has cooperated fully and extensively with the SFO's investigation, in particular in voluntarily providing the documents and materials described in paragraphs 10.1, 10.2, 10.7 and 10.8, as well as assisting in arranging interviews with employees. These steps have led to the acquisition of and application of digital review methods to over 30 million documents.

11. RR committed to a course of full and extraordinary cooperation with the SFO, in the context of an investigation concerning conduct in multiple jurisdictions, across four of its business lines and spanning a long period of time. RR's proactive approach to co-operation led to the SFO receiving pertinent information which may not otherwise have come to its attention. RR's co-operation has included:

11.1. The genuine cooperation with the SFO in the conduct of RR's own internal investigation, including deferring interviews until the SFO had first completed its interview, the audio recording of interviews where requested;

11.2. The disclosure of all interview memoranda was made despite RR's belief that the material was capable of resisting an order for disclosure on the basis that it was privileged; and

11.3. Consulting the SFO in respect of developments in media coverage and seeking the SFO's permission before winding up companies that may have been implicated in the SFO's investigation.

12. The investigation into RR's Marine business has not resulted in there being a sufficiency of evidence to meet the Full Code Test in the Code for Crown Prosecutors, or there being reasonable grounds for believing that a continued investigation would provide further admissible evidence within a reasonable period of time that would establish a realistic prospect of conviction against RR.

13. The investigation into the conduct of individuals continues. A DPA is only available to a body corporate, a partnership or an unincorporated association. It is not available to an individual.

SUMMARY

14. The draft indictment reflects agreements to make corrupt payments to agents in connection with the sale of Trent aero engines for Civil aircraft in Indonesia and Thailand between 1989

and 2006 (Counts 1-4). The concealment or obfuscation of the use of intermediaries to facilitate its Defence business in India between 2005 and 2009 when the use of intermediaries was restricted (Count 5) and the making of a corrupt payment in 2006/7 to recover a list of intermediaries that had been taken from RR in India (Count 6). An agreement to make corrupt payments to agents in connection with the supply of gas compression equipment in Russia between January 2008 and December 2009 (Count 7). Failing to prevent bribery in conducting its Energy business in Nigeria and Indonesia between the commencement of the Bribery Act 2010 and May 2013 (Count 8) and July 2013 (Count 9) and similar failures in relation to its Civil business in Indonesia, China and Malaysia between the commencement of the Bribery Act 2010 and December 2013 (Counts 10-12).

15. Business was conducted by individuals employed by a variety of RR companies and of varying seniority. For simplicity's sake in this Statement of Facts, they are all referred to as RR "employees" or "senior employees". The term "senior employees" is used to contextualise communications by an employee with a superior, or to identify decision makers.

Written Policies

16. RR had a number of written policies and committees relevant to its appointment of intermediaries. Typically, advisers were those paid on a percentage commission basis linked to RR's obtaining specific contracts. Consultants were those paid fixed amounts not linked to RR success in specific contracts.

17. In 1996 RR issued its first Code of Business Conduct which set out general principles for all employees, including a prohibition on the payment or receipt of bribes. The Code stated that intermediaries should be paid "for services rendered at a rate consistent with the value of those services".

18. RR's Marketing Services department ("MS") had responsibility for overseeing the intermediary appointment procedure, conducting checks on standing and maintaining a master list of appointed intermediaries.

19. MS was part of RR's Corporate Headquarters ("CHQ"). CHQ was sometimes referred as "Buckingham Gate", being a reference to its location. CHQ also included, *inter alia*, the office of the Chief Executive Officer ("CEO"), and General Counsel.

20. In 1999 RR issued its first written policy governing the use of intermediaries, administered by MS. No process for due diligence was specified. Additional approval was required from a senior RR employee where the proposed payment exceeded 5% of the contract price. A revised policy in 2003 extended this additional approval process also to require approval from RR's CEO.

21. In 2003 MS also issued guidance notes on its intermediary policy. MS was responsible for any necessary due diligence; the guidance set out the procedure and what records should be maintained by the relevant business unit. The policy and guidance notes were subject to further minor amendments in 2004, 2005 and 2007.

22. In 2007 RR issued a Global Code of Business Ethics containing a specific section on bribery and corruption. This Code was supported by a number of policies, including a revised intermediary policy which made two significant changes:

22.1. The additional approval process was extended to cover fixed fee arrangements in excess of £150,000.

22.2. A distinction was drawn between advisers and consultants. The former would have to complete an external TRACE (Transparent Agents and Contracting Entities) due diligence process but the latter would complete an unspecified "Company due diligence process" carried out by MS.

23. A 'Big 4' accountancy firm (the "Accountancy Firm") was instructed by RR to conduct an Anti-Bribery and Corruption ("ABC") Compliance Review for RR and completed that work in October 2009. This report resulted in a new policy on intermediaries issued by MS. The Accountancy Firm's review concluded that there was a need for:

> *"group wide ABC compliance risk assessment to be performed […] a formal, group wide [ABC] compliance framework should be developed and implemented, including relevant governance structure, policies, internal controls and reporting mechanisms."*

24. In respect of intermediaries, the Accountancy Firm concluded that accountability and responsibility for intermediaries was unclear and that enhanced due diligence was not seen even in areas of high risk. The review also noted that:

24.1. MS had a role as an adviser to business units on intermediary matters and recorded documents but did not perform any relevant compliance function.

24.2. Some RR business units had a lack of understanding about this role.

24.3. MS suffered from a lack of resources.

25. The 2009 policy was more detailed and extended its remit to include other intermediaries. MS maintained its central responsibility. The policy also prohibited commissions in excess of 10% of the contract price.

26. In 2010, in response to the Accountancy Firm's recommendations, a yet more detailed policy was issued. This transferred overall responsibility for the process to RR's compliance function and imposed requirements of business case, proper identification, and risk assessment for each intermediary. It also required that due diligence and approval processes be defined by the risk rating for each intermediary. RR established a new Compliance team, which replaced MS, and Committee for Approval of High Risk Intermediaries.

27. From at least 1997 until 2008 RR operated a Contracts Review Sub Committee ("CRSC"). This committee met once a year at the time of the year-end audit to consider all material contracts (defined by 2006 as greater than £10 million) where intermediaries had been paid commissions.

28. By 2006 the CRSC comprised the Head of the Audit Committee (chair), another non-executive director, the CEO and Chief Financial Officer ("CFO"). RR General Counsel and an external audit representative also attended.

29. The CRSC was discontinued in 2008. At that time, RR established an Ethics Committee which oversaw the Compliance function. The Ethics Committee reported to the Audit Committee (until 2011 when it became a committee of the Board).

COUNT 1 - **CIVIL INDONESIA**

Conspiracy to Corrupt between 1 January 1989 and 31 December 1998:

RR Trent 700 engines for 6 Airbus A330 aircraft

In Summary

30. RR senior employees agreed to pay $2.25 million and a Rolls Royce Silver Spirit car to an intermediary ("Intermediary 1") or company controlled by that intermediary ("Intermediary 1 Company A"). There is an inference that Intermediary 1 / Intermediary 1 Company A acted as an agent of the office of the President of Indonesia and that this money was a reward for Intermediary 1 showing favour to RR in respect of a contract for Trent 700 engines.

Facts

31. In 1989 RR senior employees discussed developing relationships with figures in positions of influence to advance RR sales in Indonesia, in particular with Garuda Indonesia ("Garuda"), the national airline.

32. In January 1989 an internal memo noted RR's strategy in Indonesia noted:

> *"[…] (b) appoint commercial advisers that have close Palace connections and know the airlines… Item (b) is being pursued by* [the Regional Intermediary] *with* [Intermediary 2's] *guidance, I will stress again to him the importance of having influence and intelligence at all levels…"*

33. Intermediary 2 was a former commander of the Indonesian Air Force with whom RR had an agreement to provide services in Indonesia. The Regional Intermediary provided advisory services to RR in South East Asia.

34. In February 1989 a memo was sent to an RR senior employee which noted, "we are looking at what it would cost to take out insurance by using the Palace Group". It was explained that the Palace Group comprised three close relatives of the President.

35. Following a visit to Indonesia, RR opted to take out this "insurance", appointing as intermediary a private company 55% owned by one of the three close relatives of the Indonesian President who himself held no public office (Intermediary 1 Company A). The Regional Intermediary had recommended using this company.

36. A Commercial Adviser Agreement ("CAA") between RR and Intermediary 1 Company A was signed in July 1989. It provided for a commission of 5% on the price of new engines and spares.

37. In return for recommending him, the Regional Intermediary would receive a commission of 2% of the value of business won via Intermediary 1 Company A, in addition to commission received for having introduced Intermediary 2.

38. The first payment to Intermediary 1 Company A under the CAA was made in August 1989 in respect of the anticipated deal for F100s. It represented 25% of the total commission due. The payment was made before a formal contract had been signed. An internal RR memo dated 31 August 1989 described the payment:

> *"It is agreed that* [Intermediary 1 Company A] *will be paid US$300,000 immediately in recognition of the fact that they achieved the target set of an agreement by Garuda (by the end of August) to buy 12 F100s* […]*, but for our own tactical purposes it is better for us to make the payment now."*

39. The payment was to be classed as an advance and would be recovered from other commissions due if the deal did not materialise. It was made by CHQ, to be repaid by Civil. The payment was made in advance in order to secure Intermediary 1's commitment to the Trent 700 deal.

40. On 31 January 1991 an RR employee noted that Garuda's signature for this deal was "imminent (hopefully)". The employee recommended that RR pre-empt discussions with Intermediary 1 Company A and two companies controlled by the Regional Intermediary ("Regional Intermediary Company A" and "Regional Intermediary Company B") by sending letters "setting out a payment profile for each of them, based upon what we are expecting to receive". The A330 contract was signed on 2 April 1991.

41. Two payments totalling US $2,254,044 were paid to Intermediary 1 Company A on 15 May 1991 and 13 June 1991.

42. Intermediary 1 also received payments in kind. An internal RR memo dated 17 December 1991, which was sent to RR senior employees, noted that Intermediary 1 had interpreted a previous conversation with an RR employee as a promise to reward him with a Rolls-Royce car if the A330 deal was won. The memo noted that the car was not part of the CAA but:

"*one way or another we are going to have to deliver, and recover the costs as best we can. Seen against the future business, particularly in the Military field, where* to [Intermediary 1] *could be obstructive, the cost is not great. I am asking for the best price we can get for a Silver Sprint II.*"

43. A Rolls Royce Silver Spirit II was purchased and delivered.

44. By 14 February 1996 an internal RR memo titled "Deferred Marketing Costs", which was sent to an RR senior employee, observed that no engine deliveries had taken place and the following commissions already had been paid:

> *"*[Intermediary 1 Company A] – *5% of net ($88m value) of which half has been paid - $2.2m.* [Regional Intermediary Company A] – *1 % of net ($184m_ paid 25/25/50. He has received 2 payments of $461,447.* [Regional Intermediary Company B] – *originally 1.5% of net (of $184m) but increased by letter to a minimum of $3m (equates to 1.65%). He has received 2 payments of $750,000. The foregoing sums add up and convert to $2,979,000. No engine deliveries have yet taken place".*

45. By March 1996 it was confirmed that Garuda would purchase only six A330s, which meant RR needed to "revise [the] figures to reflect how the Trent Project intend to manage this deal". The original anticipated commission payments for Intermediary 1 Company A were US $4,474,000.

46. In February 1997 RR terminated its CAA with Intermediary 1 Company A, replacing it with two new CAAs in respect of T700s, T800s, Dart and Tay engines.

47. The six A330 aircraft with installed RR engines were delivered between 1996 and 1998.

48. In addition to the 1991 payments, two payments totalling US $779,784 were paid in 1997 to the managing director of Intermediary 1 Company A in respect of the RR engines for the A330s.

COUNTS 2, 3 & 4 – CIVIL THAILAND

COUNT 2

Conspiracy to corrupt between 1 June 1991 and 30 June 1992 Thai Airways Trent 800 engines (1st Order)

In Summary

49. RR agreed to pay millions of dollars (c. US $18.8 million) to the Regional Intermediary and another intermediary ("Intermediary 3"). A proportion of these monies was intended for individuals who were agents of the State of Thailand and employees of Thai Airways. In particular, the agents of both principals were expected to act in RR's favour with respect to a purchase by Thai Airways of T800 engines.

Facts

50. In June 1991 Thai Airways ("Thai") placed an order of six Boeing 777 ("B777") aircraft which was later raised to eight. RR in turn sold Trent 800 ("T800") engines to Thai for those aeroplanes. At the same time as the sale was made RR arranged for increasing sums of money to be provided to its intermediaries. It is inferred that a proportion of those monies was then passed on by the intermediaries to influence the purchasing decision.

51. The Regional Intermediary was told by RR that up to US $1 million per aircraft was "available for dispersal" in connection with the Thai order.

52. In July 1991 an RR internal memorandum recorded that a total figure of US $8 million was said by the Regional Intermediary to be "the extent of the 'demands'". RR arranged for this money, amounting to US $1.33 million per aircraft, to be paid to Intermediary 3.

53. The employee who drafted the memorandum commented that a single copy of the memorandum would be retained and recommended that other copies should be destroyed.

54. In relation to the contracts described in Counts 2 to 4, when monies were promised or paid to Intermediary 3 a Side Letter amended Intermediary 3's agreement with RR.

55. This Side Letter described the sums of US $1.33 million per aircraft as a "Success Fee". The document made no reference to any third parties who were to be paid.

56. In August 1991 a further memorandum recorded that "Additional requests from the territory", which included an amount sought of "US$1M payable within seven working days of the execution of an irrevocable contract to purchase Trent engines." A manuscript amendment to a document indicates that this was to be paid to Intermediary 3. An RR senior employee approved the commission arrangements.

57. By October 1991 there were discussions between RR and the Regional Intermediary as to when payments would be made.

58. Alongside the large fixed sums being paid to Intermediary 3, that intermediary also stood to receive a separate percentage commission. A payment structure for that portion of the commission was approved by an RR employee whereby Intermediary 3 received 50% of the commission as a first payment – rather than 25%, as was first anticipated – in order to "maintain local enthusiasm for further business".

59. On 14 November 1991 RR won the contract to supply engines for the six aircraft. The commission payments were made during early December 1991 and into February 1992.

60. By the end of February 1992 a total of US $4.75 million had been paid to Intermediary 3. Two of the sums making up that total figure (US $1.9 million and US $2.4 million) were authorised at the point of payment by an RR senior employee.

61. The Government of Thailand's approval of the order was delayed as the number of aircraft sought by Thai rose from six to eight aircraft. Eventually, in March 1992, the expanded order for eight aircraft was approved by the Government.

62. In March 1992 an internal memo sent to two RR senior employees noted that US $4.75 million remained to be paid to Intermediary 3. Approval of the payment was sought from the senior employees. The memo commented that:

> *"We are urged to release the money as soon as the Cabinet endorsement is given, as a prompt payment could have an influence on the thinking of* [a senior officer of Thai]*."*

63. The next day a further memo was sent to the same two RR senior employees. It had been noted that the promise of payment to Intermediary 3 was per aircraft. It was necessary therefore to authorise the payment of a further US $2.66 million to reflect the expanded order by Thai.

64. The final two payments of US $4.75 million and US $2.66 million were made shortly after in March 1992.

65. During April 1992 RR authorised the payment of a further US $100,000 to Intermediary 3. This was done so that Intermediary 3 could pay "disappointed recipients" who had received some payment but had expected more from Intermediary 3's percentage commission.

66. The formal amendment of the contract between RR and Thai, raising the order for the number of aircraft and associated engines, was on 15 May 1992.

67. On 18 June 1992 a letter to Intermediary 3, also marked as hand delivered to the Regional Intermediary, documented the large "success fee" payments which had now been made.

68. However, between 22 June 1992 and 26 June 1992, complaints were received from the Regional Intermediary that his contacts felt "short changed" on the spare engines sold to Thai alongside the installed engines:

> "[The Regional Intermediary] *is anxious as* [a senior military officer in the Royal Thai Air Force] *has threatened to resign and RR can ill afford to lose his support in Thailand."*

69. The response by RR was to create a further Side Letter to Intermediary 3's agreement which stated that:

> *"[…] in view of the special efforts made on the sale of Rolls-Royce Trent engines to power eight {8) Boeing 777 aircraft and the associated spare engines to Thai International, we are prepared to pay further commission"*

70. This Side Letter provided for immediate payment of US $1.33 million and a further US $1.33 million payment contingent on a second sale to Thai of engines for an additional seven B777 aircraft. The day after the Side Letter was agreed, an RR senior employee authorised and paid US $1.33 million to Intermediary 3.

COUNT 3

Conspiracy to Corrupt between 1 March 1992 and 31 March 1997: Thai Airways Trent 800 engines (2nd Order)

In Summary

71. RR agreed to pay US $10.38 million to their intermediaries. A proportion of these monies was intended for individuals who were employees of Thai. In particular, those individuals were expected to act in RR's favour with respect to a second purchase by Thai of T800 engines.

Facts

72. Thai made a second purchase of six B777 aircraft. RR wanted to ensure that its T800 engines were selected by Thai. RR again paid Intermediary 3 and the Regional Intermediary and it is inferred that they passed on a proportion of these monies so as to influence the purchasing decision.

73. In March 1992, when a second order by Thai was first anticipated by RR, an RR employee agreed with Intermediary 3 a "success fee" of 135 million Thai Baht (then approximately US $5.29 million), should Thai order further B777s with T800 engines. This was formalised via a Side Letter to Intermediary 3's agreement.

74. The order did not proceed at that time. Two years later, on 20 May 1994, RR paid US $500,000 to Intermediary 3, despite the deal not yet being concluded. In April 1995, with the order still not finalised, a further Side Letter was sent by RR to Intermediary 3. This increased the 1992 offer to a payment of US $1 million per aircraft (six aircraft were envisaged). There were also changes proposed to Intermediary 3's percentage commission.

75. The Side Letter specified that the US $500,000 payment was an advance on Intermediary 3's percentage commission. Intermediary 3 wrote to RR later in April 1995 to explain that this was incorrect:

> *"the expense of RR only for lobbying* [a senior officer of Thai]. *It is not an advance money at all."*

76. In July 1995 a further Side Letter was drawn up confirming that the US $500,000 payment would be treated as ex gratia and would not be deducted from Intermediary 3's commission.

77. Intermediary 3 also complained about the level of commission. An internal memo noted that the payment terms for Intermediary 3's percentage commission "would not meet his commitments" and the Regional Intermediary needed to manage his "nominees" better.

78. A letter was sent by an RR employee to Intermediary 3 which stressed that:

> *"It is also important that we know where such funds are being placed, albeit that such information is best handled verbally."*

79. A letter was also sent to the Regional Intermediary commenting that if Intermediary 3 had committed beyond his 1% commission then:

> *"[…] all I can offer to do is to review the level again but I have to know how he intends to allocate these monies such that I have some evidence on which I can make a case for such review."*

80. RR subsequently raised Intermediary 3's percentage commission from 1% to 2%.

81. On 30 October 1995 an internal memo asked whether the fixed sums of US $1 million per aircraft should be made payable within seven days of the order by Thai rather than within 30 days, as agreed. The memo commented:

> *"*[the senior officer of Thai] *is waiting to issue the 'Order' to Boeing but before doing so wants evidence from Rolls-Royce that he is going to, through* [Intermediary 3]*, receive funds within 7 days."*

82. On 6 November 1995 a Side Letter was issued agreeing payment to Intermediary 3 within seven days of the order's confirmation.

83. Internal correspondence from 8 February 1996 records the agreement to make payment of US $1 million in advance, despite the order not yet being confirmed. Payment was authorised that day.

84. Following payment of the US $1 million advance, the Board of Thai approved the T800 engine for six B777 aircraft. At this stage Government of Thailand approval was still yet to be secured.

85. In April 1996 an RR senior employee and two RR employees were made aware of the need to pay the additional US $1.33 million promised to Intermediary 3 in June 1992 at the conclusion of the first order of engines.

86. This sum was later reduced to US $1.14 million as the number of aircraft and engines being purchased by Thai had itself reduced.

87. An internal memo in May 1996 referred to the US $1.14 million payment being made to an employee of Thai:

"[…] who has allocated it to the political helpers he has used. I can understand why it is euphemistically referred to as the Power(plant) Group."

88. In November 1996 an internal RR memo noted that the same employee of Thai had asked an RR senior employee to "release" US $1 million of the US $5 million which remained to be paid to Intermediary 3. The memo recommended that payment be made now:

"so that Thai can use it to 'manage the political process.' "

89. Three RR senior employees agreed to this. The second advance of US $1 million was again paid to Intermediary 3.

90. In January 1997 an internal memo sent to two RR senior employees noted that the order by Thai awaited ratification by the Government of Thailand and that:

"*Part of the concession package associated with this contract involves the payment of US$7.14M contingent upon Government approval of the purchase. These funds would be passed through our Commercial Adviser who would take responsibility for the 'in-country' distribution*."

91. The purpose of the memo was to advise of press reports which had suggested that the Thai Government might prefer leased aircraft to a purchase and that RR were therefore exposed to a risk of having paid out US $2 million without having secured the order, albeit repayment of those monies had been guaranteed by the two intermediaries.

92. In February 1997 a meeting of RR's CRSC was held at which were present three RR senior employees who had been involved in agreeing the second advance of US $1 million. The CRSC approved a report which asserted that no payments to agents across RR's business divisions during the previous 12 months were "non-compliant with (relevant) laws and regulations". Included as a significant part of that report were the first and second orders of T800 engines by Thai, and details of the sums paid to Intermediary 3 and the Regional Intermediary. The report was sent on to RR's external auditors.

93. Finally, in March 1997, an internal memo to two RR senior employees confirmed that the Government of Thailand had approved the second order placed by Thai. This would release payments from RR of US $5.14 million to Intermediary 3. There were also smaller payments to Intermediary 3 and the Regional Intermediary described as their percentage based commissions. These payments were collectively referred to as "marketing expenses".

94. The figure of US $5.14 million paid at this stage to Intermediary 3 reflected the initial offer of US $1 million per aircraft, for six aircraft, or US $6 million. Subtracted from this were the two advances of US $1 million. The balance of US $4 million was then supplemented by the 'rediscovered' payment of US $1.33 million which had been reduced to US $1.14 million. The payments were subsequently made.

95. Payments of percentage commissions continued to be made to both Intermediary 3 and the Regional Intermediary, with the timing of those payments linked to aircraft deliveries. Intermediary 3 and the Regional Intermediary were paid around US $1.37 million each.

COUNT 4

Conspiracy to Corrupt between 1 April 2004 and 28 February 2005: Thai Airways Trent 800 engines (3rd Order)

In Summary

96. RR agreed to pay almost US $7.2 million to its intermediaries. A proportion of these monies was intended for individuals who were agents of the State of Thailand or employees of Thai and those individuals were expected to act in RR's favour with respect to a third purchase by Thai of T800 engines.

Facts

97. A third order of B777 aircraft by Thai had been under discussion as early as 1996. The order did not materialise until late 2004. RR again ensured that significant sums of money were available to Intermediary 3 and the Regional Intermediary. It is inferred that, to persuade Thai to purchase further aircraft with T800 engines, a proportion of these monies was passed on, in this instance to contacts connected to the Government of Thailand.

98. An internal RR email from April 2004 notes that the Regional Intermediary had rejected commission terms proposed by RR on the B777 order and had indicated that he would talk to an RR senior employee.

99. The Regional Intermediary was requesting an additional 4% commission, or approximately US $500,000 per aircraft. This would raise overall commissions on this contract to 8%, breaching a recently imposed internal limit as to the levels of intermediary commission.

100. A briefing note addressed to an RR senior employee noted that:

> *"Additional commissions on previous Thai Airways business were paid, and these were approximately twice what we are now being asked to pay. However, more recent Corporate Governance guidelines prevent this, and the commercial deal has less margin with which to fund such payments."*

101. In May 2004 the Regional Intermediary was written to with a proposal for a new commission structure. The proposal provided for less commission than the Regional Intermediary had sought and made a proportion of the commission conditional on RR securing a Total Care Agreement ("TCA") with Thai. TCA was RR's maintenance product providing for engine repair costs to be spread across a long-term service contract based on the number of hours flown. Selling such agreements was a priority for RR.

102. The same letter noted that the Regional Intermediary might wish for some commitments to be made with Intermediary 3.

103. In June 2004 after a meeting with the Regional Intermediary an internal RR email noted that:

> "[The Regional Intermediary] *stated RR has an impasse with Thai on add'l 6 x 777s - he informed* [an RR senior employee] *today that airline will not accept engine concessions linked to TCA,* and [Regional Intermediary Company B][Intermediary 3 Company A] *engine commissions cannot be linked to TCA, but* [the RR senior employee] *informed him that RR cannot change its present position.*"

104. Around this time a briefing note to the RR senior employee referred to in paragraph 100 commented that commissions for the Regional Intermediary and Intermediary 3 had not been approved as:

> "[The Regional Intermediary] *advised Airlines that there was a significant risk the PW/A330's would be selected over the RR/777's if total commissions on Engines were less than 8% of net Engine revenue (excluding TCA). Airlines did not accept this position and* [the Regional Intermediary] *rejected the Airlines final offer* […] *The latest information indicates that the airline will choose either RR/777s or RR/A340s"*.

105. In mid-July 2004 the Regional Intermediary was written to following a meeting with him. It was recorded that RR's offer on commissions was final.

106. On 28 July 2004 Thai's Board decided to purchase the six B777s and two further Airbus A340 ("A340") aircraft. They selected RR engines for the B777s, while the A340 was a 'sole-source' aircraft which only took RR's Trent 500 ("T500") engines.

107. However, a letter from August 2004 records that discussion as to commission levels between the Regional Intermediary, employees of RR and a RR senior employee were ongoing.

108. At the end of September 2004 the Board of Thai confirmed further details of its order: five spare engines for its A340/T500 fleet, and two spare engines for the B777/T800 fleet.

109. On 13 October 2004 a memo to the same RR senior employee proposed paying 4% to Intermediary 3 and 2% to the Regional Intermediary in respect of T800 engine sales.

110. On 15 October 2004 a further memo was sent to the senior employee and dealt with concerns raised by the senior employee as to the Regional Intermediary's expectations. The memo clarified that the proposal represented 6% in total on T800 engine sales for the two intermediaries to share, as well as additional commissions were a TCA to be secured. The senior employee asked that a different RR senior employee communicate with the Regional Intermediary.

111. A Side Letter of 22 October 2004 agreed to make payments to Intermediary 3 of 2% commission on seven spare T500 engines. These commissions were, at this point in time, described as payable in two parts.

112. The agreement covered seven spare engines, however there was no contemporaneous sale of seven such engines. There had been, a year earlier, a sale of two spare engines of the T500 model. There was then a decision by Thai to purchase five further spare engines, which decision had already been taken a month prior to this agreement to pay commission. The commission was nonetheless expressed as relating to seven spare engines.

113. Intermediary 3's commissions for the T800 engines were initially to be spread over 7 to 10 months, with payment made in three stages. Two of those stages were around one to two months after the expected date of Government of Thailand approval of the engine order, with the balance to follow around six months later.

114. Following a meeting on or before 11 November 2004 the Regional Intermediary was described as being frustrated at the time taken to approve the commission arrangements. He commented that he had had to use his friendship with an RR senior employee to ensure the arrangements were approved.

115. Both the Regional Intermediary and Intermediary 3 requested that the T800 and T500 spare engines commission be paid "up front". To do so required internal approval from an RR senior employee.

116. A letter was subsequently issued to Intermediary 3 with a proposal to pay three quarters of his commission on 7 January 2005, contingent on Government approval, and the remaining quarter on the delivery of the aircraft. A similar letter made the whole of the 2% T500 spare engine commission also payable by the same date.

117. An internal RR email dated 19 November 2004 recorded that a meeting had taken place between Intermediary 3 and the Regional Intermediary and a member of the Thai Government. It was reported that there had been a:

> "*Very good meeting, very positive feedback on new A340 and 777 business, on track for Cabinet 23rd Nov".*

118. The email went on to discuss commission payments. Intermediary 3 and the Regional Intermediary had rejected RR's proposed phasing of payments and insisted that they needed all of Intermediary 3's:

> "*4% on Government approval, i.e. Dec 04*".

119. The Regional Intermediary was recorded as having threatened to raise this issue of the timing of payments with the RR senior employee. Later that day an internal RR email records:

> "*Do we think all of the 4%* [Intermediary 3 Company A] *flows through to....? I assume not all of it does.*"

120. On 22 November 2004 a further letter was sent to Intermediary 3 offering to pay all but 12.5% of the commission on 7 January 2005, assuming Government of Thailand approval had been given.

121. The next day, when the Cabinet of the Government of Thailand was scheduled to meet, a final letter was sent to Intermediary 3, stating that the full T800 commission would be paid on 7 January 2005, again assuming Government approval had been given.

122. On 4 December 2004 an internal RR email stated that the order by Thai was approved:

> "*Calls between* [certain Thai Government ministers and a Thai Airways employee] *yada, all positive. Airline still not heard the good word yet and not clear if POs signed.* [Intermediary 3 and the Regional Intermediary] *have commitment from* [the Thai Government deputy minister whom they had met] *that it will be sorted by tomorrow.*"

123. However, Intermediary 3 was seeking payment of half of the T800 commission by 17 December 2004. The 4 December 2004 email concluded:

> "*WARNING:-*[the Regional Intermediary and Intermediary 3] *have dinner with* [the Thai Government deputy minister whom they had met] *on 18th Dec and hence* [the Regional Intermediary] *may suddenly decide to support* [Intermediary 3]*'s request.*" […] "*we should be firm in my view. Comments?"*

124. Two RR employees replied, agreeing that there should be no further movement by RR.

125. On 20 December 2004, an updated CAA was signed by Intermediary 3. Intermediary 3 sent back pro-forma invoices for the payments RR were due to make.

126. On 4 January 2005 RR made payment of US $3,797,718 to Intermediary 3, authorised by an RR senior employee. The payment was described as being for the contract signature for T800 engines to be installed into six B777 aircraft, and two spare T800 engines. On the same date RR also paid US $1,497,339 described internally as an “Additional 2% for sale of seven (sic) spare T500s to Thai”.

127. A corresponding payment of US $474,715, described as relating to the sale of installed and spare T800 engines, was made to the Regional Intermediary one month later, with subsequent payments bringing the total to US $1,898,860. Between Intermediary 3 and the Regional Intermediary a total of US $7,193,917 was paid in connection with the T800 engines and T500 spare engines order.

128. The formal contract for the five T500 spare engines was concluded on 17 January 2005 with Thai. The T800 engine contract was concluded the following year on 15 June 2006.

COUNTS 5 & 6 – INDIA DEFENCE

Count 5

False Accounting between 24 March 2005 and 30 September 2009

In Summary

129. In summary, during this period the use of intermediaries in connection with Indian Government defence contracts was restricted by the Indian authorities. The terms of some RR defence contracts contained undertakings that intermediaries had not been used. Breach of the undertaking entitled the Indian authorities to cancel agreements and prevent bidding for future contracts. However RR continued to use one of its key intermediaries ("Intermediary 4") in relation to relevant defence contracts. RR created contractual documents in respect of the payments thereby due to Intermediary 4 which recorded the payments as being due for general consultancy services, rather than as commissions due in respect of those relevant defence contracts. The contractual documents therefore did not correctly record the real reasons for these payments to Intermediary 4.

Count 6

Conspiracy to Corrupt between 1 January 2006 and 31 August 2007

In Summary

130. In 2006 the Indian tax authorities came into possession of a RR list of its Indian intermediaries dated May 2002. RR paid Intermediary 4 to retrieve the list and prevent further investigations. There is an inference that this involved payment to a tax inspector. These payments to Intermediary 4 were also made through contractual documentation which did not correctly record the real reason for the payments.

Facts

Relevant Indian Procurement Rules & Requests

131. RR's relationship with Intermediary 4 occurred against a backdrop of developing Indian procurement rules.

132. In January 1989 the Indian Ministry of Finance issued a circular on 'Indian Agents of Foreign Suppliers', applicable to "all civil purchases of imported stores by all Government Departments and public sector enterprises under [government control]". The circular noted that whilst the Government did not encourage the use of intermediaries, where it was necessary, registration of intermediaries was required together with disclosure of all arrangements, including commissions.

133. In or around October 1995 RR was informed of an Indian Government requirement that it sign an undertaking to pay no fees or commission in respect of a contract with the Indian Navy.

134. In November 2001 the Indian Ministry of Defence ("MOD") issued instructions supplemental to the 1989 circular. These stated that the MOD saw "advantages" in using "authorised" intermediaries, subject to various restrictions. These restrictions included full disclosure, intermediary registration, authorisation/accreditation by the MOD, and scales of commission payable as per MOD guidelines.

135. On 1 September 2006 the MOD's Defence Procurement Manual 2006 brought into force a requirement for all of its foreign suppliers to sign a standard "Pre-Contract Integrity Pact" for supplies worth over INR 1 billion (c. US $25 million).

136. The Integrity Pact also contained undertakings that the bidder:

> *"6.5... has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation".*
>
> *"6.6...shall disclose any payments he has made, is committed to or intends to make to officials of the Buyer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments".*

137. A bidder's violation of the pact entitled the buyer, *inter alia*, to cancel "all or any other contracts with the bidder", debar the bidder from future Indian Government contracts for a minimum five year term, and recover all sums paid in violation of the pact to "any middleman or agent or broker with a view to securing the contract".

<u>New Commercial Consultancy Agreements ("CCAs") 2005-2007</u>

138. As of 2003 RR changed its contractual arrangements with Intermediary 4 in two ways:

138.1. RR contracted with a variety of different commonly owned Intermediary 4 companies or individuals.

138.2. The new CCAs all purported to pay fixed fees for the provision of general consultancy services across a number of territories (Asia, Middle East, Russia, Ukraine, Mexico and China). None described payment of a percentage commission fee linked to orders placed with RR by Indian military authorities.

139. The payments made were not in fact referable mainly or at all to those general services. The terms of the CCAs therefore did not record the real reasons for the payments.

RR Turbomeca licence agreement

140. On 26 March 2004 a licence agreement was signed by RR Turbomeca Ltd (a joint venture between RR and a French company) ("RRTM") and Hindustan Aeronautics Ltd ("HAL"), a state owned company managed by the Indian MOD. The licence agreement gave HAL licence to manufacture, assemble and repair the RRTM Adour Mk 871-07 engines. The fee payable to RRTM was £7.5 million.

141. The licence agreement was a precondition to a larger contract by which RR supplied Adour engines for BAE Systems Hawk aircraft sold to the Indian Government. This contract was signed (by BAE Systems) in 2004 (with a value to RR of £122 million).

142. The licence agreement contained an undertaking almost identical to what was to become clause 6.5 of the Integrity Pact, with similar consequences for breach.

143. In or around April 2005, an MS employee informed a senior RR employee that four CCAs were to be used to pay Intermediary 4 £1 million in respect of the licence agreement. Another senior RR employee had by 24 March 2005 already signed 'Proposed Appointment' forms authorising the four CCAs.

144. The approval of a more senior RR employee would be needed because the level of commission proposed exceeded a threshold imposed by internal RR policy.

145. The senior employee was informed by the MS employee that the Indian Government did not permit advisers on contracts with Government agencies, and that there was a declaration to this effect in the licence agreement. He was provided with a copy of the relevant clause. The MS employee stated that:

- Intermediary 4 had materially assisted in RR Defence Aerospace obtaining a licence fee of £7.5 million, when the Indian Government was initially considering a maximum fee of £4 million;
- RR Defence Aerospace had verbally agreed to pay £1 million commission to Intermediary 4 by means of awarding a lucrative consultancy contract rather than direct commission (Chief Executive and President Defence Aerospace approval was not obtained);
- The £1 million commission had been cleared in a Business Evaluation for the licence agreement;
- RR Defence Aerospace was proposing to pay the retainer fees to four commercial consultancies all owned and operated by Intermediary 4 and associates; and
- RR Defence Aerospace believed it could provide sufficient evidence of services by Intermediary 4 to justify these retainers.

The MS employee also stated that he wanted to discuss possible ways for RR Defence Aerospace to deliver its commitment to Intermediary 4 while complying with the applicable legislation.

146. On or around 23 May 2005, MS informed an RR senior employee that the £1 million was approved in return for securing the £7.5 million licence fee and confirmed that MS supported the proposal. Additional approval was provided by the RR senior employee.

147. On or around 3 June 2005, a more senior RR employee was briefed and, following his approval, all four of the new CCAs were signed by RR from 12 July 2005 onwards. All described fixed fees payable for general services. Two of the agreements were new CCAs with further companies of Intermediary 4, describing the same general services in relation to the potential RR market in Russia and Ukraine respectively. The other two agreements were Side Letters to existing CCAs which similarly did not reveal any link on their face to the earlier contract for which they had been set up to pay Intermediary 4. The Side Letters described additional work related to potential RR 'Regional Service Centres' to support the maintenance of RR products. None of the RR proposal forms or subsequent agreements revealed any link on their face to the licence agreement.

148. The £1 million was paid to the four Intermediary 4 companies on or around 1 September 2005. Within RR's accounting system none of the payments were categorised as 'Adviser Remuneration' or settled to a specific project. Rather they were settled to 'Non Project' as "DEF (Aero) NP – Admin" and "Sales Related Non R&D".

Payments to retrieve a list of advisers

149. In January 2006, RR India's Delhi office was the subject of a tax survey by the Indian tax authorities and documents were removed by a tax inspector.

150. On or around 3 February an RR employee attended Delhi's Income Tax Office in connection with the ongoing RR India Ltd tax investigations. The tax inspector had produced to him a document which had been removed from RR's India office during the tax survey. This was a May 2002 list of RR advisers ("the adviser list") which included a number of entries for an Intermediary 4 company. The tax inspector provided a written copy of his request for information about the adviser list, to be supplied within seven days, which required the RR employee to give complete names and addresses of those advisers listed, and the amounts of money paid to them and purpose of their engagement with RR.

151. There followed debate on or around 24 February 2006 within RR about how to address matters, involving both Defence Aerospace and RR employees in London. An RR employee reported that the implication of having RR's position subjected to vigorous and possibly public

hostile scrutiny was unattractive. RR employees liaised with Intermediary 4 about the adviser list and what should be done.

152. A 1 March 2006 handwritten note by MS records:

> "[RR senior employee] *points*
> ↓
> ●*get doc back*
> ●*purge R.O.s* [regional offices]
> ●[MS employee] *manages Advisers*
> ●*legal, contractual position*"

and separately

> "[Another RR employee]
> *- approves mechanism, including CCA (CHQ) for* [Intermediary 4 company].... *(up to £500k, but hopefully £200k)"*

153. On the same day an RR employee explained that recent events had focused on the need to review internal confidentiality in respect of intermediary agreements. He directed those concerned to review all files to ensure that they contained no correspondence relating to such agreements (old or current), no copies of such agreements, no references or notes to any commission commitments or consultancy payments, and that all original intermediary agreements should be held in Buckingham Gate by the Director of MS.

154. On around 7 March 2006 an MS employee expressed concern that, whilst he had no evidence of illegal payments by intermediaries or any other illegal activity by RR employees, there would be possible consequences in the event that the Indian tax authorities were to pass the adviser list to the Indian MOD. The employee stated that it was likely that there would be an investigation by India's Central Bureau of Investigation ("CBI") due to the references in the adviser list to commercial advisers and consultants for defence business and the commission levels mentioned.

155. The same employee was also concerned that it appeared that for some customer contracts secured with the assistance of advisers on the list, the RR company concerned may have breached the terms of the relevant contracts (prior to 16 May 2002 and after) and applicable Indian Defence Procurement Rules, either by appointing an adviser or consultant for defence business or by failing to disclose such an appointment. He was therefore concerned that it could be damaging to RR's position in any investigation, if it were to be found that any such breach had occurred, and that the outcome could be that any RR company was debarred from contracting with any Indian government agency for five years, or more.

156. By 8 March 2006 another RR employee indicated that a 'nil return' response was being prepared to the tax inspector's requests. The employee stated that this would almost certainly precipitate formal reaction which might include possible parallel investigation by the MOD, a

more detailed tax search of RR's offices (potentially accompanied by police presence and searches of individuals' homes), and media attention.

157. On 15 March 2006 an RR senior employee in Defence confirmed to another RR senior employee who had approved the CCA mechanism for payment, that he had told the MS employee that, while RR could accept no legal or fiscal liability for Intermediary 4's action, they were however grateful and should look to see if mutually beneficial future business through which RR could give tangible form to that gratitude could be found.

158. A proposal for one of the new Defence CCAs through which Intermediary 4 was to be paid was approved on the same day.

159. By 20 March 2006 two new CCAs through which RR in London was to make some of its payment to Intermediary 4 had received senior employee approval.

160. Hence a decision in London that RR would pay Intermediary 4 to retrieve the adviser list had been made by 20 March 2006 at the latest. Whilst it has not been established that a payment was made to a tax inspector or any other official, there is an inference that this decision was made in the expectation that the list could only be retrieved and the attendant investigations prevented if a payment was made to a third party. By 27 April 2006 it was reported to senior RR employees that the tax issues in India had been satisfactorily resolved.

161. By 11 May 2006 seven new contracts had been signed. It is accepted that these contracts were the mechanism by which RR made payments to Intermediary 4 in connection with the adviser list. Three of the new contracts were Side Letters to existing CCAs. The remaining four were new CCAs describing fixed fees payable for general services in relation to a number of territories. None of the proposal forms, Side Letters or CCAs revealed any link to the adviser list issue.

162. By late May 2006 another CCA paying an additional £500,000 to an Intermediary 4 affiliate had also been signed. This similarly purported to be for general services. It is accepted that this payment also related to the adviser list issue.

163. The £1.85 million was paid by RR to Intermediary 4 entities between April 2006 and August 2007. Within RR's accounting system some payments were set up as 'non-project Sales Related non R&D costs'. Other payments were settled to a cost centre within 'Commercial and Administrative Costs', (i.e. not linked to sales).

164. There was a meeting between two RR employees and Intermediary 4 on 2 June 2010 at which RR terminated the relationship. At the meeting, Intermediary 4 mentioned the help Intermediary 4 had given to RR in resolving the tax difficulty in the RR India office in 2006,

that Intermediary 4 had paid out a lot more than received from RR to resolve the matter and that, had Intermediary 4 not done so, some RR employees, including one based in India, would have gone to jail, and RR would have been closed out of the Indian market for 25 years.

Approach to payments from summer 2007

165. In September 2006 the MOD's standard Integrity Pact clause came into force.

Pegasus LTA2 Contract 2007

166. In 2007 a Pegasus Long Term Agreement 1 ("LTA1") between RR and the Indian MOD dated 1 October 2002, concerning the Indian Navy's Sea Harrier aircrafts' Pegasus engines, was extended through Pegasus Long Term Agreement 2 ("LTA2"). Under LTA2 RR would supply relevant parts for a further five years. The contract was dated 19 February 2007 with a value of £43 million.

167. This was the first occasion on which RR was required to sign the Integrity Pact. On 24 November 2006 an RR employee stated that due to recent press reports there would now be insistence on total compliance with the new rules and Integrity Pact by the Indian authorities, and no procurements of any size were advancing (including LTA2). An RR employee signed the Integrity Pact and the contract containing similar terms to clause 6.5 of the Integrity Pact.

168. The June 2006 LTA2 "Business Evaluation Form" recorded commission as 0% but also recorded a figure of 13% under "Other" sales related costs.

The Dubai Warehouse

169. In early 2007 Defence put forward a proposal for RR to establish a warehousing/distribution facility in the United Arab Emirates ("UAE") for certain Defence products traded in India. By July 2007 the proposed arrangement (named Project Jasper) involved a 10 year arrangement with a Dubai registered Intermediary 4 company which had already been used for a CCA in respect of adviser list payments. The proposal described payment by RR to the Dubai company of a service fee based upon the throughput of the goods traded. The fee would be a maximum of 10%. A project assessment formally to launch the project was approved in July 2007.

170. Final approval to proceed was not signed by Defence and CHQ until July 2008. On 20 July 2008 an RR employee signed a 'Justification for a Single Source Purchase' document. This meant that a tender process for this work was not undertaken.

171. A supply agreement for the warehouse arrangement was signed by both the Dubai company and RR with an effective date of 1 November 2008. The agreement specified an overall service fee of 9% of the value of the shipped parts plus a single payment of £170,000 to cover

initial investment costs. The agreement set out total base prices per month up to the end of 2010. These totalled £8.76 million. Whilst the project assessment set out a business case for setting up a warehouse facility in Dubai, the contract gave no indication of any additional or ancillary purpose beyond the warehousing arrangement, namely that it also provided a means of remunerating Intermediary 4 for assistance provided on MOD contracts, including the LTA2 contract.

172. Apart from one test-run supply of parts in January 2010, the warehouse never became fully operational and no other parts were shipped through it. Regular amounts due under the contract were paid to the Dubai company from February 2009 until September 2009 (the advance fee and the monthly payments due for November 2008 until June 2009). These payments totalled £3.32 million.

173. The final invoice RR paid was for June 2009. Further invoices were submitted but no further payments were made after 1 September 2009. By the summer of 2009 there were discussions within RR about the appropriateness of its connections with Intermediary 4 and the commercial validity of the warehouse.

174. Within RR's accounting system none of the payments were categorised as 'Adviser Remuneration' or settled to a specific project. They were recorded under a 'Dubai Warehouse Purchase Order' as non-project 'Sales Related Non R&D' costs.

COUNT 7 – RUSSIA ENERGY

Conspiracy to Corrupt Between 1 January 2008 and 31 December 2009

In Summary

175. In 2008 RR won a contract to supply the Russian state-owned company Gazprom with gas compression equipment. This contract formed part of a liquefied natural gas project called the Portovaya project.

The Facts

176. RRESI has been included on the indictment as the relevant RR entity for this project. While the contracting entities were Rolls-Royce Power Engineering and Rolls-Royce International LLC, RRESI was supplying, manufacturing and selling equipment for the project. RR also accepts that a senior Rolls Royce Plc employee was working on behalf of RRESI and its business on this project, and at a functional level sufficiently senior to bind RRESI (the "RRESI senior employee").

177. Over the course of the Portovaya tender, an official of Russian state owned company Gazprom (the "Gazprom official") requested payment in exchange for influence over the

project in RRESI's favour. The RRESI senior employee worked with other RR employees to provide a Russian intermediary ("Intermediary 5") with commission. It is inferred that a proportion would be designated for payment to the Gazprom official.

178. RRESI's connections with individuals in Gazprom preceded Portovaya:

178.1. The RRESI senior employee and other RR employees had been in direct contact with the Gazprom official in July 2005.

178.2. An RR employee had identified key individuals within Gazprom's organisations on a list relating to a Portovaya meeting in July 2006.

178.3. In October 2006, an RR employee recommended the son of the Gazprom official as one of the potential candidates for an Energy sales position in RR's Moscow office.

178.4. There were meetings between RR employees, the Gazprom official and other Gazprom personnel in July 2007.

178.5. In November 2007 Gazprom officials visited the Dolphin project site in Abu Dhabi and RR gave RR-branded watches as presents to its visiting guests.

179. RRESI worked with Intermediary 5 and another intermediary ("Intermediary 6"), on Portovaya. The tendering process for the Portovaya project commenced in January 2008. Contact with Intermediary 5 and Intermediary 6 in relation to Portovaya commenced in June 2008.

180. On 5-6 June 2008, the RRESI senior employee and other RR employees arranged for meetings in Moscow "relative to Advisors", describing the details of the meetings as "somewhat confidential". On 16 June 2008 the RRESI senior employee emailed the personal address of a representative of Intermediary 5 suggesting a commission of 2% on the contract value for the equipment.

181. Agreement was reached on the price to be paid to the two intermediary companies towards the end of June 2008:

181.1. Intermediary 5 was to receive 2% commission.

181.2. Intermediary 6 was initially to receive 2% commission, but the commission rate was reduced in December 2008 to 1.5%.

182. According to records provided by RR, the commission to the two intermediaries amounted to approximately £8 million.

183. Discussions with and about the intermediaries were deliberately kept to a small circle within RR by the RR senior employee and other RR employees. On 27 June 2008 RR was selected as the recommended winner of Portovaya. News that RR was selected as the recommended winner was disseminated internally from an RR employee following two discussions he had with Gazprom officials on 27 June 2008. The senior RRESI employee sought clarification on

this internal communication directly from Intermediary 5, who responded saying that his "*friend*" told him the same.

184. On 7 July 2008 an RR employee in Russia was contacted by a Gazprom official. The RR employee reported back to colleagues (including the RRESI senior employee and another RR employee):

> *"I was summoned for one-to-one meeting with* [the Gazprom official]*. He was pretty brief. We applied a lot of efforts to ensure you get the deal on Portovaya. How shall we "be strengthening our relations"? Will it be consultancy or what? I assume it is along the lines of what you discussed with* [representative of Intermediary 5]*."*

185. The same RR employee sent a further email (also to the RRESI senior employee and a further RR employee) a few hours later stating:

> *"I asked* [the Gazprom official] *who we contact at Gazprom for this activity, he said it is him for the beginning, later they will nomonate (sic) another person."*

186. That the Gazprom official had an important role in securing the tender for RR is shown by a later email in which RR employees described him as having been "instrumental" in selecting the RRESI equipment for Portovaya.

187. RR employees were sensitive about such discussions appearing on email. Following another similar message, an RR employee emailed:

> *"I told* [the RR employee in Russia] *on Monday I do not want to see any of this stuff appearing in an email in future. If he does it again, I'll bring him back to London so we can give him a face-to-face scrubbing."*

188. It is inferred that RRESI agreed with the intermediary to provide funds for the payment of the Gazprom official.

189. The Portovaya contract itself was signed on 19 December 2008.

190. The contracts for Intermediary 5 and Intermediary 6 were signed approximately six months later, in June and July 2009, but were made effective from 30 June 2008. At the time of the award being made to RR, there was no formal contract in place with either intermediary, and the appropriate due diligence on them had not been completed. The fact of the delay in finalising the contracts with the intermediaries came to light in 2009, when RR directed an internal review of the contract arrangements.

COUNT 8 - INDONESIA ENERGY

Failure to Prevent Bribery between 1 July 2011 and 31 July 2013

In Summary

191. In 2007 RR employees engaged an intermediary ("Intermediary 7") to act in relation to an open competitive tender for a long term service agreement ("LTSA") on Samarinda Island in

Indonesia. Certain RR employees, through Intermediary 7, agreed to pay commission to a member of a competitor consortium to ensure that it submitted an uncompetitive bid. In addition, it is inferred that, in agreement with RR employees, Intermediary 7 arranged to pay money directly to individuals working for the state-owned customer, PLN. As a result of this arrangement, RR won the project. Intermediary 7 received regular commission payments for the duration of the LTSA. Count 8 relates to those payments which were made after 1 July 2011.

The Facts

192. In the 1990s RR sold two generator set packages to an Indonesian state-owned power company known as PLN. They were installed at the Tanjung Batu power plant ("Tanjung Batu") in Samarinda. In 2000 RR secured a seven-year maintenance contract for the project.

193. As that maintenance contract came to an end, PLN needed an LTSA for the maintenance of Tanjung Batu.

194. PLN decided to open a limited tender process for bids for the LTSA. On 16 October 2006 a director of Intermediary 7 informed RR that the decision to have an open tender as opposed to not having a tender was "due to recent situation in PLN regarding corruption watch", which meant that PLN wanted to avoid direct negotiations.

195. The director of Intermediary 7 assumed in correspondence with RR employees that RR's competitors on the tender would likely be Rolls-Wood Group (a RR joint venture) and another vendor (potentially in consortium with a private Indonesian company ("the Indonesian competitor company")).

196. The director of Intermediary 7 told RR that he had an appointment to meet the person in charge at PLN Head Office ("HO"):

> *"I will arrange the strategy to make RR having more advantage than the competitors, could be* [a company in the consortium] *or Rolls-Wood (direct).*
> *Pls adv what is the competitors disadvantages than RR capability, how RR could block* [the company in the consortium] *and Rolls-Wood that they could not offer specially for Tanjung Batu RB211 package. And what's the other ideas to tell PLN HO to deisgn (sic) the bid doc for RR benefit.*
> [A PLN official] *asked me to help them prepare Terms of Reference (TOR) for the bid document, of course for our benefit, pls help me from your side…."*

197. An RR employee sent a detailed response, expressing shock at the "sudden change" to a limited tender process, and setting out the nature and abilities of the possible competitors. RR developed a strategy to ensure that the bid process favoured RR as much as possible. One suggestion was that RR could cause Rolls Wood Group not to tender at all, and refuse to

provide the other possible competitors with the required supporting letter confirming that they had the relevant expertise to service the existing RR equipment:

> *"If PLN really need to chose at least 3 bidders, I would recommend that they chose* [the Indonesian competitor company]*, Rolls-Royce and Rolls-Wood Group (RWG). We can influence RWG by telling them to decline quoting for this tender which should then leaves RR and* [the Indonesian competitor company]*/*[another company in the consortium]*. Can you advise whether if this will work.*
> *With regard to the Terms of Reference (TOR), we can try putting the following:*
> *1. PLN has to prequalify all bidders*
> *2. All bidders must have supporting letter from the OEM* [Original Equipment Manufacturer] *(in this case Rolls-Royce) for the Tanjung Batu installation. This would mean that if* [the Indonesian competitor company] *do not have the supporting letter from RR, then they could be disqualified…."*

198. On 3 May 2007 RR staff attended a meeting with Intermediary 7 and a director of PLN. The RR note of the meeting indicates that "players" and "influencers" at PLN were identified by RR. RR anticipated the threat of the competitor consortium submitting a lower priced proposal in the tender than RR.

199. In an email that afternoon, another RR employee in Jakarta indicated that he had arranged a meeting that evening with an individual who was president of the Indonesian competitor company:

> *"My meeting tonight with* [the president of the Indonesian competitor company] *looks sufficiently promising to have a further discussion with him tomorrow and I am grateful to you for offering to come to Jakarta. Please would you confirm your flights……Please would you treat this initiative confidentially!"*

200. RR employees later circulated a letter they had sent to the president of the Indonesian competitor company. The letter stated that RR wished to work with another company of which he was also president:

> *"to secure an effective solution for the PLN combined cycle power plant at Tanjung Batu….specifically through a Long Term Service Agreement. The value of the contract is £21,169,500 over a 7-year period. If we are successful in securing the contract, our Commercial Advisor* [Intermediary 7] *will contract with you …, to share 2% of the total value of the contract. The Agreement will need to be between our Commercial Advisor and* [your other company]*."*

201. The arrangement as communicated by RR employees, therefore, involved the president of the Indonesian competitor company receiving payments in the equivalent of 2% of the value of the contract from the director of Intermediary 7. This was in exchange for the president of the Indonesian competitor company ensuring that the consortium submitted a deliberately uncompetitive bid to PLN to assist RR to win the tender.

202. RR submitted its bid to PLN on 8 May 2007. A PLN document of 14 May 2007 shows that the consortium put in a bid US $1 million higher than RR's bid.

203. It is inferred that the director of Intermediary 7 anticipated payments to PLN, as well as the payment to the president of the Indonesian competitor company.

204. In June 2007 pressure was mounting for the LTSA to be concluded as the interim maintenance arrangement between RR and PLN was due to expire. The director of Intermediary 7 emailed about his difficulty ensuring that everybody necessary at PLN had signed up to the RR agreement. He noted that he did not have a budget for PLN's HO. RR concluded the LTSA with PLN on 20 August 2007.

205. On 30 November 2007 the director of Intermediary 7 chased two RR employees for payment of his commission on the LTSA "*due to my commitment to PLN &* [the president of the Indonesian competitor company]*….".*

206. There was email discussion between September and December 2007 about precisely how the director of Intermediary 7 was to be paid. He wanted to be paid partly in Indonesia and partly to an account in Singapore in a private name. When trying to resolve the situation internally, an RR employee asked if "*[the president of the Indonesian competitor company]* 2% can come from the offshore payment?"

207. Eventually the director of Intermediary 7 was persuaded to open another Indonesian bank account. He still received his commission in two currencies and in two separate bank accounts. In the email chain, when trying to persuade RR to allow him to receive money in Singapore, he referred to money he was passing on to PLN:

> *"If no room to avoid this matter, I can prepare another Indonesian Bank Account for GBP portion, but subject to taxes application such as VAT and additional Income Tax to cover PLN portion. (Additional fee is 1% on top of 6.5%, so total become 7.5% of LTSA price (2% IDR, 5.5% GBP)…"*

208. RR paid Intermediary 7 commission in respect of the LTSA pursuant to a 2008 CAA. That payment arrangement was not subjected to the appropriate scrutiny according to of RR's evolving compliance procedures. Certain enquiries regarding payments to Intermediary 7 started to be made internally in January 2012, with the Energy Compliance Officer becoming involved. In March 2013, confirmation was sought that Intermediary 7 was not in breach of any contract or applicable law. Despite such confirmation never being provided and despite the apparent knowledge of some RR employees that the intermediary was acting corruptly on RR's behalf, RR continued to make ongoing, regular commission payments to Intermediary 7 until July 2013. Intermediary 7 continued to make payments to the President of the Indonesian company and, it is inferred, to PLN. The purpose of those payments was to compensate the President of the Indonesian company for actions that secured and retained an advantage to RR in the pursuit of the LTSA.

COUNT 9 - NIGERIA ENERGY

Failure to Prevent Bribery between 1 July 2011 and 31 May 2013

In Summary

209. Between 2009 and 2013 RR employees engaged a Nigerian company (the "Nigerian Company") in relation to projects in Nigeria. RR failed in that period to prevent the payment of bribes by the Nigerian Company to Nigerian public officials, which served to obtain commercial advantage for RR on two tenders in Nigeria: the Adanga project and the Egina project. RR eventually withdrew from the Adanga tender due to the product being unsuitable. On the Egina project, RR was on course to win the tender, but withdrew from the project prior to signing a contract, after concerns were raised internally about the receipt of confidential competitor information.

The Facts

210. Adanga concerned the sale by RR of two gas compression engines to Addax, an international oil and gas exploration company. National Petroleum Investment Management Services ("NAPIMS"), a public entity responsible for supervising the Nigerian government's investment in the oil and gas sector, oversaw the bidding process.

211. Egina was an offshore oil field project operated by Total Upstreams Projects Nigeria ("TUPNI"), among others. TUPNI was responsible for bid evaluation and the submission of recommendations to NAPIMS.

212. RR worked with the Nigerian Company between 2009 and 2010 on Adanga. RR worked with the Nigerian Company between 2009 and 2013 on two bids relating to Egina: the supply of gas turbine generators and a related LTSA ("the PG Tender"), and the supply of gas turbine compressors and a related LTSA ("the C Tender").

213. RR had dealt with the Nigerian Company on previous contracts in Nigeria, including one in the Delta State.

214. The Nigerian Company had a number of directors, three of whom were related. A fourth member of this family ("Individual A") was not formally a director, but was intimately involved in the business, while also being employed by NAPIMS. The Nigerian Company and RR enjoyed close relationships with other members of NAPIMS staff.

215. The Nigerian Company was initially classified as a customer by RR. This classification allowed the Nigerian Company to earn substantial mark-ups far in excess of the commissions which it would have been paid if it had been classified as an intermediary (RR policies set limits on percentage commissions and mark-ups for intermediaries).

216. On 19 March 2012, the Nigerian Company entered into a Distributorship Agreement with RR. This distributorship arrangement permitted the Nigerian Company to charge a mark-up on RR products, at a rate to be agreed on a case by case basis for new unit products and certain other product categories, or up to a certain limit for other products. On at least one occasion, the Nigerian Company's staff internally acknowledged the need to account in their mark-up for "any additional costs associated with politics etc.", which it is inferred meant improper payments to Nigerian public officials.

217. RR made additional payments of around US $760,000 to the Nigerian Company, apparently for expenses such as office space and drivers. In at least one instance, an RR employee raised the possibility of the Nigerian Company overcharging RR for those expense categories:

> *"RN has rented 20 Square Meters from* [the Nigerian Company] *at $5,000 per month……..so in essence we are paying 3 times the going rate. We should be receiving 66 Square Meters for $5,000 per month. Do you think I should send* [the Nigerian Company] *an email to understand why we are being ripped off?"*

218. During 2009 to 2011 a number of payments were made by the Nigerian Company to officials in the NAPIMS approval processes for Nigerian energy contracts. These officials included NAPIMS officials working on RR projects, including the Adanga and Egina projects. These payments were often listed as 'PR' in the internal financial documents of the Nigerian Company.

219. The improper nature and purpose of those payments is clear from Nigerian Company internal emails.

220. An email dated 9 May 2010 noted:

> *"in the meantime there is an immediate requirement for $225k from the Delta. Will explain on the phone.* [A Nigerian Company director]*, considering that these funds will all be going out in cash, we need to raise 'dummy' third party invoices for them. For example "Consultancy Services" provided. The funds will add up to quite a bit at the (sic) of the project, and will surely not look good on our balance sheets. Please take this very seriously."*

221. An email dated 7 June 2010 referred to a hotel reservation for one of the Nigerian Company's NAPIMS contacts:

> *"Now more than ever we need to keep the wheels well oiled. He's writing the GEC [Group Executive Committee] Memo on Adanga today, and I shall meet with him at his home upon return to ensure that we are in a good place. He departs Nigeria today on the 2pm Emirates. We must therefore make available the cash latest by midday."*

222. In an email dated 28 October 2010 the Nigerian Company's NAPIMS contacts provided details of a private bank account in London and specified "5k Stlg" as the amount to be paid. £5,000 was paid into the account on 1 November 2010.

223. An email dated 24 June 2009 shows the Nigerian Company and its NAPIMS contacts discussing how to protect their "interest" with RR:

> *"As far as RR is concerned, we are fully covered I assure you. … But with you guys on our side, we will no doubt come out smelling like roses! The good news is that the Oil & Gas arm of RR is referring to us on the matter. This is being helped by the excellent relationship we have with their colleagues."*

224. In return for such payments, RR employees received confidential information about the bidding processes on Adanga and Egina, and influence over the requirements of the customer in the tendering process. Examples include:

224.1. During the Adanga tender process, RR staff asked the Nigerian Company to "get a view from within NAPIMS".

224.2. RR employees received confidential minutes of meetings held by the Adanga contractor, including timings and technical details.

224.3. RR employees asked the Nigerian Company to "stop" particular proposals on Adanga. On 9 June 2010 an RR employee mentioned a bid by Solar Turbines and demanded: "You need to stop this by ensuring it cannot be accepted due to lack of running hours." The Nigerian Company forwarded that instruction to its NAPIMS contacts who responded: "As discussed, will continue to assist accordingly…We are aware of Solar's constraints". This was fed back to RR.

224.4. RR received from the Nigerian Company a copy of the 'recommendation to award' document for part of Egina. It included details of the pricing of RR's competitors GE and Negris.

224.5. In February 2012 RR staff obtained a table of pricing comparisons on Egina. This was used to inform discussions within RR about Egina which went to the top of RR's Energy division.

224.6. In April 2012 the Nigerian Company provided RR with a letter from TUPNI to NAPIMS asking NAPIMS to reconsider its previous recommendation to award Egina to GE, and to reconsider the Nigerian Company's bid. The letter was circulated to RR employees' personal email addresses.

225. As a result of receiving confidential competitor intelligence, RR employees made amendments to RR's bid on Egina. Following discussion of the amended bids in clarification meetings held in February 2012, TUPNI reversed its recommendation for the C Tender by recommending RR instead of GE. Both the C Tender and the PG Tender were awarded to RR on 28 December 2012.

226. RR staff had direct and indirect contact with NAPIMS officials through the Nigerian Company:

226.1. RR employees had meetings with the Nigerian Company's NAPIMS contacts in RR's London offices, including the public officials who were the recipients of bribes from the Nigerian Company.

226.2. RR staff had meetings with NAPIMS contacts in Nigeria. An internal RR email noted: "*[A Nigerian Company director]* arranged a meeting with the GGM *[Group General Manager]* of Napims, apparently his very good friend."

226.3. The Nigerian Company provided RR staff with reassurance directly from NAPIMS officials that the officials were influential and would "support the position that best protect the interest of RR/Mann-Turbo".

226.4. The Nigerian Company reassured RR staff that when an unanticipated issue arose, a NAPIMS contact had immediately contacted the Nigerian Company to seek instructions on how to handle the matter.

227. RR employees made specific requests for guidance or information from the Nigerian Company and its contacts to inform or assist its strategy:

227.1. An email chain in March 2010 shows the Nigerian Company passing a specific request for information from RR staff to its NAPIMS contacts, and then sending the response back directly, all on the same email chain.

227.2. On 10 February 2011 an RR employee asked the Nigerian Company to ensure that another RR employee could meet "your partner and then the key individual within NAPIMS, who I assume should be the head of PSC's [Product Sharing Contract], unless you suggest otherwise."

227.3. On 1 March 2012 an RR employee asked a colleague and the Nigerian Company to "socialise the attached proposal with both *[a Total employee]* and Napims to understand whether we are going in the right direction with the right tone."

227.4. On 4 December 2012 an RR employee sought the "inside news" on Egina from the Nigerian Company. The email was forwarded to Individual A.

227.5. In an internal email dated 20 December 2012 a senior RRESI employee asked, "Any intelligence out of Nigeria re Napims meeting yesterday?", and received the response, "I've just spoken to *[a representative of the Nigerian Company]*, he's off to a meeting to find out."

228. RR did undertake some compliance in relation to the Nigerian Company. It was ineffective, and failed to detect the corrupt nature of the relationship between the Nigerian Company and NAPIMS:

228.1. In March 2011, RR employees became aware of concerns expressed in the Nigerian press about the misappropriation of funds by government officials on the Delta State project involving RR equipment.

228.2. On 1 April 2011, due diligence checks were conducted on the Nigerian Company by RR's third party due diligence provider Altegrity Kroll. The Altegrity report that was

produced highlighted a number of risks in relation to the Nigerian Company including:

228.2.1. Taking advantage of political connections to former and current government officials;

228.2.2. Concerns about allegations of corruption surrounding the Delta State Project; and

228.2.3. Specific concerns about the role of Individual A's family in the Nigerian Company, given their political connections.

228.3. In light of the obvious concerns presented, in April 2011, RR conducted a meeting with the Nigerian Company to discuss the Nigerian Company's compliance with anti-corruption laws.

228.4. A further due diligence report was obtained from another external due diligence provider, Stirling Assynt, on 6 May 2011. The Stirling Assynt report questioned how the Nigerian Company had been able to procure contracts prior to its incorporation in 2008, but suggested that 'this company is more acceptable as agents of foreign companies than others in the country', suggesting the Nigerian Company was 'a suitable partner for you'.

228.5. In addition to the above due diligence concerns regarding the Nigerian Company's business practices, concerns were raised internally by RR employees:

228.5.1. In December 2010, an RR employee internally conveyed two specific concerns that had been raised by other RR employees; that the Nigerian Company would not pass the Trace International due diligence process, and that it had potential Nigerian government family connections.

228.5.2. In July 2011, the same RR employee raised bribery concerns of RR employees regarding the Nigerian Company with the new Compliance officer.

228.5.3. In July 2011, the new Compliance officer did interview one of the concerned RR employees, and was informed of concerns about the Nigerian Company's relationships with a lower level NAPIMS official, and of RR employees who had witnessed Nigerian Company employees suggesting that they made improper payments, and/or were willing to do so.

228.6. The Higher Risk Committee of RR met to consider the Nigerian Company in January 2012. They had before them the two due diligence reports, and the outcome of the due diligence meeting. It is clear that the material considered at that meeting was insufficient:

228.6.1. The concerns raised by various RR employees were not discussed.

228.6.2. Neither due diligence report before the committee made any mention of the role played in both NAPIMS and the Nigerian Company by Individual A.

228.6.3. The due diligence meeting was not independent. It had been conducted with RR employees who had been responsible for the relationship with the Nigerian Company.

228.7. The Nigerian Company was nonetheless approved by RR on 9 March 2012, shortly before the signing of the Distributorship Agreement.

229. Notwithstanding the issues raised by RR employees, the Nigerian Company was approved by RR on 9 March 2012, shortly before the signing of the Distributorship Agreement.

230. In March 2013 an RR employee was prompted by RR's due diligence review of the Energy business to alert Compliance to certain irregularities on the Egina project. Compliance's summary of the allegation was as follows:

> *"…competitive intelligence obtained by* [the Nigerian Company] *that was used to set pricing levels for the Egina project. It shows a document was obtained by* [the Nigerian Company] *confirming Total* [the project operator] *had switched their recommendation in favour of R-R for both the PG and O&G* [Oil and Gas] *portions of the project……* [The Nigerian Company] *had obtained earlier documents that indicated GE was Total's first choice and included pricing for all bidders. That earlier document was used to set the price reduction when Total asked R-R for synergy discounts for awarding the PG and Compressor packages together…..he understood they originated from someone in one of the Nigerian government departments. Obviously, the use of personal email calls into question the appropriateness of the information."*

231. The above description confirms that the information provided by the Nigerian Company to RR staff in February 2012 led to RR making changes to its pricing for the C Tender.

232. In May 2013 RR withdrew from the Egina tender process as a result of these concerns being raised.

233. Payments were made by the Nigerian Company to Nigerian public officials. It is inferred that the purpose of those payments was to secure an advantage to RR at least in the conduct of its business on the Adanga and Egina projects, if not the pursuit of further business opportunities in Nigeria.

COUNT 10 - INDONESIA CIVIL

Failure to Prevent Bribery between 1 July 2011 and 31 March 2012

In Summary

234. There is an inference that RR failed to prevent its intermediary ("Intermediary 8") from bribing employees of Garuda in respect of contracts for Total Care, and T700 engines for A330 aircraft to be supplied to Garuda. Despite some RR employees being aware of evidence that Intermediary 8 was acting corruptly on RR's behalf, RR failed to sever its relationship with Intermediary 8 until March 2012, having already made two commission payments totalling in excess of $1 million in that month.

The Facts

235. Following the resignation of the Indonesian President, RR understood that companies with associations with the previous regime were "likely to come under scrutiny by the authorities". There was a need to "screen off relationships that are a liability", namely the relationship with Intermediary 1.

236. However, on 23 February 1999, RR entered into two CAAs with Intermediary 8, who throughout the relevant period had been the managing director of Intermediary 1 Company A. The Regional Intermediary felt strongly that RR should continue its relationship with Intermediary 8 "in some form". The CAAs were agreed with a company of which Intermediary 8 was president ("Intermediary 8 Company A"). RR's relationship with Intermediary 8 continued until 2012.

237. Following Intermediary 8's appointment, RR did not secure any major business with Garuda until October 2008, when the two companies signed a TCA in respect of A330 Trent 700 engines. The only business achieved in this period was the supply to Garuda of spare parts for Trent and Spey engines.

238. In the lead up to the TCA deal, Intermediary 8 identified several senior Garuda employees who were favourable towards RR. They held a range of senior positions, including at Board level and across various Garuda departments. From mid-2007 these were key decision makers on the TCA deal, and RR personnel recognised the need to "start lobbying", "support" and "strike quickly" through Intermediary 8.

239. In 2008 Intermediary 8's CAA through another company controlled by him ("Intermediary 8 Company B") was under renewal. This CAA had previously encompassed sales to Garuda of Trent 700 spare parts, but it was now to be amended to include commission in respect of the TCA deal.

240. In a RR Civil Large Engines 'Advisor Review Meeting' in April 2008, it was stated that the "default position" for CAAs covering TCAs was a "small percentage" of engine selling price - rather than any percentage linked to TCA revenue, which was substantially greater in value - phased over five years.

241. On 8 September 2008 RR agreed a Side Letter to the CAA with Intermediary 8 Company B. The Side Letter provided for commission of 2.6% of TCA revenue, two years' worth of which was to be paid up-front, on signature of the TCA.

242. On 28 May 2008 the Regional Intermediary wrote saying that Intermediary 8 was also to represent another company seeking business from Garuda, and that this was "a condition

requested by *[a senior Board member]*". A letter of consent was sent on behalf of RR to Intermediary 8 undertaking this role.

243. The TCA was signed on 29 October 2008. On 16 January 2009 RR paid US $1,232,182 to Intermediary 8 Company B.

244. On 7 March 2009 an RR employee and Intermediary 8 met in Indonesia. Intermediary 8 requested an additional US $500,000 commission in respect of the recently signed TCA.

245. The RR employee proposed paying this sum via commission on an expected lease of four aircraft by Garuda. Intermediary 8 warned the employee:

> *"I have to take care of these People the same way as the previous Tca meaning proportionately based on new Tca Contract I have to disburse some funds up front to them as well".*

246. Similarly, in an email on 23 June 2009, Intermediary 8 noted:

> *"On the subject of Tca contract, the existing one and the one to be signed on the new 4 leased aircrafts, We still have 2 pending issues that we need to resolve soon. One is the additional usd 500K which I had requested long time ago and the necessity for Me to have some upfront fund on any Tca contract to take care of these people. I cant pay these people on installment basis. I personally do not receive nothing till the 2nd Year of any Tca contract just for your information."*

247. Having already received over US $1.2 million in respect of the first TCA, and in light of his request for an additional advance of US $500,000 on 24 June 2009, Intermediary 8 transferred US $500,000 from an Intermediary 8 Company B account to an account of a company owned by Intermediary 8. This was an account from which payments were later made to a senior Garuda employee.

248. An RR employee made a note on 26 June 2009 recording that payment would be "unethical". He voiced his concern with an employee.

249. However, in August 2009 several RR employees discussed the need for a push to conclude anticipated deals in respect of an additional TCA on leased aircraft, and an order of six further A330 aircraft (with TCA), before the Garuda management team changed. Two weeks later an RR employee proposed to Intermediary 8 that the US $500,000 be paid as an advance against commission on the six new A330s.

250. Intermediary 8 agreed, and a new CAA was signed with another company controlled by him ("Intermediary 8 Company C") on 1 November 2009. This provided for payment of US $500,000 on signature of the deal for the six A330s, together with a provision that two years' commission would be paid on commencement of the new TCA on T700 engines.

251. The following day, on 2 November 2009, US $200,000 was paid out of an Intermediary 8 Company B account in Singapore.

252. Ultimately, the US $500,000 commission was not paid to Intermediary 8].

253. Between 2009 and 2011, TCAs were signed by Garuda for eight new leased aircraft. On 23 July 2010 an advance payment of US $293,910 was made to Intermediary 8.

Classification of Intermediary 8 as high risk intermediary

254. On 1 October 2010 RR's Compliance department categorised Intermediary 8 / Intermediary 8 Company C as 'High Risk', contrary to the 'Moderate' assessment given by the Civil business unit. The factor which tipped the balance was that Intermediary 8 Company C was registered in Singapore but provided services in Indonesia.

Payment of bribe by Intermediary 8

255. On 11 October 2010 US $100,000 was transferred from an Intermediary 8 Company C account to an account of a company owned by Intermediary 8 held in Singapore, with instructions to transfer it to an account in the name of a senior Garuda employee. A further US $10,000 was paid to the same account on 14 October 2010.

256. The Intermediary 8 Company C CAA was due to terminate on 31 October 2010. The renewal was delayed while a review took place in light of the new categorisation as 'High Risk' and the amendment to pull forward TCA commissions.

257. In December 2010 an RR employee met Intermediary 8 at The Dorchester hotel in London, the purpose was said to be to carry out an independent check on Intermediary 8's probity. By this time RR's new ABC Global Intermediaries Policy was in effect.

258. The employee produced a draft report of the meeting which was sent to another RR employee for comment. By the time it was issued to two other employees it had been modified. For instance, the draft report referred to the early payment of TCA commissions as a "pull forward". This phrase was omitted from the final report and the payment structure was described instead as "TCA compatible but with staged payments commencing on first a/c delivery". A record of one of Intermediary 8's responses had also been altered, adding the explanation that the pull forward had been sought as "arising from the complexity of the TCA deals".

259. An RR senior employee and two RR employees met on 7 January 2011 to review Intermediary 8's CAA, in accordance with RR's new Global Intermediaries Policy which dictated that approval from a higher level was now required for the renewal of High Risk intermediaries. The two RR employees had known about Intermediary 8's "unethical" request for US

$500,000 in 2009 but not raised any concerns. One of the two employees sought to provide further justification for the TCA commission structure.

260. The two employees approved renewal of the CAA, as did the RR senior employee "subject of course to the outcome of the high risk assessment process".

261. RR Compliance sought an explanation in February 2011 as to Intermediary 8's cost base. One of the two RR employees responded. It was explained that Intermediary 8 did not elaborate,

> *"so we do not know specifically but we recognise he has diverse business interests hence his cost base was understood to cater for this wider aspects."*

262. A due diligence report on Intermediary 8 / Intermediary 8 Company C by an independent risk consultancy, dated 17 February 2011, was produced in accordance with RR's new policy as it applied to High Risk intermediaries. This revealed Intermediary 8's connection to the former Indonesian President. It was recommended that RR visit Intermediary 8 in Indonesia.

263. On 22 February 2011 an RR Legal and Compliance employee was warned that if Intermediary 8's services were not retained, the TCA deal might fall through.

264. On 2 March 2011 the RR Legal and Compliance employee above, a Compliance colleague and an RR employee attended a meeting in Indonesia at which Intermediary 8 denied making payments to senior Garuda employees. Following the meeting Intermediary 8 was reclassified as 'Low Risk' and on 18 March 2011 was granted a new CAA.

265. On 30 April 2011 US $250,000 was paid from an Intermediary 8 Company B account in Singapore.

266. On 5 May 2011 RR paid Intermediary 8 Company B US $463,561 in commission for the 2008 TCA in respect of A330 T700 engines. On 19 May 2011 US $462,379 was paid out of the account.

267. In January 2012 Intermediary 8 submitted two invoices: one for further commission for Intermediary 8 Company B for the 2008 TCA, and one for commission for Intermediary 8 Company C on the supply of an engine for a seventh A330 delivered in November 2011. The amounts were confirmed as US $397,384.73 and US $617,536.90 respectively.

268. On 9 February 2012 a business case was signed for the reappointment of Intermediary 8 for a further two years.

269. On 22 February 2012 an RR Compliance employee brought to colleagues' attention that the Higher Risk Committee had approved the use of Intermediary 8 Company C for a further two

years in early 2011 but the CAA with this company had been for a single year. The employee insisted that Intermediary 8 Company C be submitted to the Higher Risk process again before contract renewal, contrary to the wishes of an RR employee.

270. On 29 February 2012 the SFO made a telephone enquiry of RR asking if it could provide further information concerning the subject of online allegations of corruption made by a former employee of RR. An RR employee then emailed employees, attaching the 2008 email and 2009 memo on the topic. RR Compliance was provided with an internal RR memo from 2009 on the subject of the former employees' allegations.

271. An updated due diligence report on Intermediary 8 Company C was provided by a subsidiary of the independent risk consultancy on 2 March 2012. It included various updates to the previous report of 17 February 2011. The additions included that:

271.1. Intermediary 8 was not heavily involved in the aviation industry until he was appointed by RR. He developed his contacts through his relationship with RR.

271.2. Intermediary 8 was closely associated with a "crony" of the previous Indonesian President who had been a senior employee of Garuda. He was also close to another Garuda senior employee.

271.3. Intermediary 8 brokered several deals between RR and local airlines, including Air Sempati, which was owned by the Indonesian President's family.

271.4. Intermediary 8 and Intermediary 1 were friends since the late 1980s and involved in many business dealings together. Intermediary 8 brokered the first RR deal with Garuda in the early 1990s when Intermediary 1's family would still have closely controlled the procurement for Garuda.

271.5. There was no indication of Intermediary 8's involvement in fraud, corruption or any financial crime.

272. On 5 March 2012 a Compliance employee sent an email asking if this information had been considered by the Higher Risk Committee in 2011 and if RR had built safeguards into its continued use of this intermediary.

273. The Compliance employee, after encountering opposition to the need for additional clearance, wrote further:

> *"The issue is based on the fact that the SFO is now asking questions.* […] *We need to be able to justify what we have done to satisfy ourselves that* [Intermediary 8 Company C] *is an appropriate business partner, despite these allegations. It is showing up in the due diligence report. And I don't know what information was provided to the Committee when you got 2 the 2 year approval. We need to be clear that all information within the company is corralled into one spot and considered in total."*

274. On 10 March 2012 an RR employee confirmed that he had signed Intermediary 8's outstanding invoices and payment was to follow that week.

275. On 13 March 2012 the Compliance employee updated an RR employee by email, including the online allegations, and stating, "this clearly puts *[Intermediary 8]* in the frame". Compliance employee continued,

> *I am aware that the Committee approved* [Intermediary 8 Company C] *last year – and I have asked for a copy of the documents provided to the Committee at that time.*
> *My concern is that the full picture (in terms of the information we have regarding* [Intermediary 8] *and his various businesses) has not been compiled into one place, and was not all considered when the Committee approved* [Intermediary 8 Company C]*. I'm not aware anyone has put these allegations to* [Intermediary 8] *for his response, or that we have put anything in place to mitigate any prior issues with* [Intermediary 8]*.* […]
> *Irrespective of the SFO's enquiries, the updates to the due diligence reports are concerning. Under all circumstances, we have to be able to explain why we are proceeding forward with this relationship despite the obvious red flags. That isn't to say the red flags are an absolute show-stopper: they are not. But we have to explain why we are comfortable doing business despite the red flags.*
> *I have also looked at the interview notes (which were not provided to the Committee), and note that* [Intermediary 8 Company C] *has no independent premises, facilities or staff.* [Intermediary 8] *only spends part of his time on* [Intermediary 8 Company C] *business. It would be helpful to understand the business justification for paying these amounts of money for this amount of effort.*
> *I know you are anxious to move* [Intermediary 8 Company C] *forward, but under these circumstances we need to get to a much higher comfort level."*

276. RR Compliance continued to gather more information surrounding Intermediary 8 and his various companies, including a list of payments made by RR and payments which were outstanding, which it received on 14 March 2012.

277. On 15 March 2012, RR agreed a 'stand down' letter to Intermediary 8 Company C requesting that it cease activity on behalf of RR as of 17 March 2012, and explaining that ongoing due diligence would have to be completed before the contract could be renewed.

278. Payments in settlement of both Intermediary 8 Company B and Company C invoices were made on 16 March 2012: US $397,000 and US $617,000 respectively. The Company B account into which payment was made was closed on 23 May 2012 with the balance (US $396,000) paid to Intermediary 8's UBS account. The Company C account into which payment was made was closed on 1 June 2012 with the balance (US $317,000) transferred to a Company C account at Barclays.

Belated recognition of need to stop payments to Intermediary 8

279. On 25 April 2012 the Compliance employee informed an RR employee:

> *"we do need to stop all payments to* [Intermediary 8] *until we can work through our current review."*

280. Intermediary 8 was not reappointed and no further payments were made to him.

281. Between 11 June 2012 and 23 May 2014 payments were made from an account held by Intermediary 8 to accounts for the benefit of two Garuda officials.

COUNT 11- CHINA CIVIL

Failure to prevent bribery between 1 July 2011 and 31 August 2013

In Summary

282. RR failed to prevent its employees from providing a US $5 million cash credit to China Eastern Airlines ("CES") at the request of a board member, in return for his showing favour to RR in the purchase of T700 engines for A330 aircraft, and an associated TCA. Some or all of the funds were intended to be used by CES to pay for a two-week Master of Business Administration ("MBA") course at Columbia University in New York to be attended by various CES employees, and including four-star hotel accommodation and lavish extra-curricular leisure activities.

The Facts

283. In August 2010 RR was negotiating the sale of T700 engines for 16 A330 aircraft to CES. CES is a majority state-owned Chinese airline.

284. On 18 August 2010 three RR employees met a CES board member in Shanghai who requested that RR make a financial contribution towards a training programme for senior managers which the CES board member wished to roll out at a premier business school. It appears that there was also a request for RR to make a payment into a Pilots' Healthcare Centre ("PHC") fund which was understood to be "a pet-project" of the board member and would "close the deal".

285. The matter was discussed with various RR employees. A decision was made that RR would accede to the CES board member's request.

286. On 20 August 2010 an RR employee sent a letter to a senior employee of CES setting out RR's "Closing Position Clarifications" for the CES A330 engine selection. These included RR contributing US $3 million to a fund for high level business school training for CES employees, and US $1 million towards the construction of a PHC for CES. Later that day RR employees agreed to provide a further US $1 million towards the PHC.

287. A Letter of Intent for the 16 A330 deal was signed on 20 August 2010. It was hoped that the final contracts (comprising a Product Agreement, TCA, and a Supplemental Financial

Assistance Agreement ("SFAA") which would detail RR's contributions to the training programme and PHC) would be effective by 15 December 2010.

Signing of SFAA in November 2011

288. In September 2011 details emerged of a MBA course developed by Columbia Business School ("Columbia") and CES, which included a programme of events to be paid for by RR out of the US $3 million MBA fund. There were indications that this was to include RR paying for hotel accommodation and multiple social events.

289. Members of RR Compliance and Legal were made aware of the MBA fund. A Compliance employee noted in an email dated 19 October 2011:

> *"[…] this is a big problem from an ABC standpoint. We are not in the business of providing "high level business training". By allowing CES to flow their money through us for this purpose is a problem…the argument that it is "CES's money" is not the issue. It is all their money. But the point is that we are providing something of value to government officials as a result. The fact that we are apparently also paying for hotels and meals, and this is in a city where we have no facilities or offices, all compounds the issue. We will do our best to deal with this situation as it presently exists."*

290. These concerns led to a law firm being instructed to advise on liability under the US Foreign Corrupt Practices Act 1977 ("FCPA"). The law firm advised that the payment of expenses incurred by Chinese Government officials undertaking the MBA course could risk potential FCPA violations. The law firm suggested a number of steps for RR to mitigate its risk, and sought more information on the PHC fund in order to advise on that matter.

291. It was acknowledged by employees within RR that CES would be unhappy if RR did not meet its commitments. It was suggested therefore that the SFAA would be signed and then the credit converted to cash, via a Side Letter, for CES to spend as it wished. The Compliance employee stressed that this would serve only to increase the ABC risk.

292. RR employees sought further advice on 31 October 2011 in respect of four suggested solutions to mitigate the risk carried by the PHC fund. The Compliance employee noted that none of the solutions would eliminate the risk. The PHC fund, which was higher risk than the MBA fund, was "so far afield as to be difficult to justify".

293. The law firm's advice in respect of the PHC fund noted the inconsistency between the documents which referred to funding the construction of the PHC on the one hand, and an equipment list which suggested the funding of equipment, on the other. It recommended a further investigation of the facts in order to decide whether any risk could be mitigated.

294. Under the proposed terms of the SFAA, RR would provide, *inter alia*, "a fund of US $3 million for High Level Business School Training" for CES's "future business leaders", which RR would "facilitate and administer in full consultation with the customer". In light of the law firm's advice, RR Legal proposed that the SFAA also provide that "The agreed scope (and administration

process for utilisation) of the High Level Business School Training Fund will be set out in a separate agreement entered into between the parties, with such agreement on scope and administration of the fund having regard to any applicable Law." The SFAA also provided for US $2 million which CES "may use to finance a pilot's health centre". Use of the PHC fund by CES was subject to agreement by RR and limited to US $1 million in 2012 and US $1 million in 2013.

295. The SFAA was signed on 7 November 2011 by an RR employee. The first aircraft was due to be delivered to CES on 10 November 2011.

Non-escalating spare parts credit

296. Compliance employees then met an RR employee on 17 November 2011 to discuss the way forward. The plan was to "determine the approach with CES if we were to ask them to administer the credit themselves" and in relation to PHC fund "to come up with a way we a (sic) mechanism which may allow us better control of this risk".

297. On 2 December 2011 RR sought further external legal advice regarding the MBA fund. No mention was made of the PHC fund or the fact that RR had recently signed the SFAA.

298. The law firm advised that the lowest risk option was for RR not to proceed as planned. Additionally, the law firm cautioned against providing the same benefit, dollar-for-dollar, by a different method or through a disguised discount.

299. They noted that offering a sales price reduction would not eliminate entirely the risk associated with the benefit currently described in the draft contract. Nonetheless this course would serve to avoid amplifying the current level of risk. If the benefit was to be provided, RR needed to exert strong controls to ensure that funds were dispensed according to the terms intended. Letting the customer determine how the funds should be spent, and/or providing the funds directly to the customer to use would be lacking in control or visibility.

300. They emphasised the above advice was based on the assumption that the proposed transaction remains in negotiation and all associated documents remain in draft form.

Attempted controls

301. On 20 January 2012 an RR employee emailed Columbia stating that, for "legal and commercial reasons", RR wished to provide a "sponsorship fund" to cover the development and delivery of the MBA course content, accommodation in a four-star hotel, lunch and refreshments on campus, transport to campus, and interpretation.

302. However, when the draft programme of events was received, it revealed numerous lavish social activities which appear to have been arranged privately between Columbia and CES.

A Chinese travel agency was to be paid US $100,000 for "evening venues, meals and transportation".

303. This raised immediate concerns from RR's Compliance employee on 25 January 2012:

> *"we need to stop and take stock immediately. We cannot pay for any tours or entertainment, no 4* hotels, no days off on Friday. We cannot justify any of this where there is only 7 days of training over a 14-day period. This cannot proceed as planned… "we can pay for the training activities. We cannot pay for the Peter Lugar steak house, Woodbury Commons, etc. …CES is more than welcome to pay for its own activities. The other issue is the abundant leisure time built into the schedule. Ringing the bell at the NYSE is not training – it is leisure. …the accommodation is lavish and we cannot pay for W Times Square…Columbia's own housing or 3* hotel is appropriate. We have a problem in that CES has prepared an itinerary that clearly contemplates a significant tourist/leisure component. This will significantly reduce the amounts that we are able to pay. And it risks the entire programme being put under scrutiny as a subterfuge for a holiday trip. We need to rework the programme to fit its stated purpose – training".*

304. On 1 February 2012 an RR employee sent a letter to CES setting out the limitations of RR's sponsorship of the MBA training course and noting that this would be formalised via a supplementary agreement, as had been stated in the SFAA. The response from CES was negative. An RR employee was "asked (summoned?!) to Shanghai on Monday to discuss".

Reconsideration of providing cash to CES

305. RR therefore reverted to looking for other routes to satisfy CES. It was suggested that the credits could be restructured by Side Letter and turned into TCA credits paid on a dollar for dollar basis.

306. On 6 February 2012, after meeting a senior CES employee, an RR employee reported that "CES feel strongly that if credits are paid to them it is down to their discretion to use them within the bounds of their audit processes". The RR employee made a number of suggestions to avoid a "massive relationship death spiral" with CES, including turning the PHC fund into a spare equipment credit, and paying cash either to CES or to Columbia in respect of the MBA fund.

307. The Compliance employee responded:

> *"the problem with the proposal re: cash is that now we are giving them cash. The whole "it is the customer's money" argument goes out the window the second the money hits our bank account! The options are 1. We don't take their money in the first place; or 2. We can only pay for limited expenses (as outlined), I am sorry this has become such as (sic) customer relationship issue, but the question has to be asked how the customer came to have these expectations and why the expectations were not better managed"*

308. RR ultimately decided to offer the option of CES taking the credit in cash, having been considered the least preferable option by RR Legal. RR Legal noted that certain conditions should be satisfied if the credit was to be paid in cash:

308.1. Efforts should be made to treat the MBA and PHC funds in the same way.

308.2. The warranties in the SFAA should refer to the credit.

308.3. The SFAA should be redrafted rather than amended by Side Letter.

308.4. The SFAA should make clear that any "cash" would be paid by bank transfer to the named customer account used for other purposes associated with the Product or Services Agreement.

308.5. No payments or credit notes should be made or issued to individuals.

309. The original SFAA was terminated and a new SFAA was signed on 8 March 2012 which incorporated the option chosen by the business unit, together with RR Legal's suggested additional conditions. The MBA and PHC funds were deleted and replaced with a fixed "non-escalating spare parts" credit to the value of US $5 million, payable in four instalments between February 2012 and August 2013.

310. On 7 February 2012 an internal RR email explained that the US $5 million cash structure for CES had been approved by RR Finance and would hopefully address concerns as it would more than cover the Columbia course in March 2012.

311. On 8 February 2012 an internal email to the Compliance employee noted that the Civil business unit would pay a credit by bank transfer to the spare equipment fund. This was likely to be to the same bank account RR paid CES for everything else. The Compliance employee approved this not knowing until 2013 that the credit had been paid in cash.

312. As noted in an internal RR email dated 7 February 2012, efforts were then made to "disassociate ourselves completely from the Columbia training course – ask CES to contract direct with CES (sic) and take no part in the course itself". On 9 February 2012 an RR Legal employee wrote:

> *"I recommend that we make the structure look as much like the existing spare equipment credit, i.e. with the option of a general credit note, application towards a/c purchase price or cash. I recognise the expectation is that they will take cash but it gives more apparent flexibility. The principles are intended to be exactly as per the existing credits".*

313. The CBS course was due to start on 12 March 2012. Following the event, on 4 April 2012, a senior director of Columbia noted in an email to an RR employee that the "entire package – Columbia, New York City, business meetings, touring, shopping- everything seemed very well received".

COUNT 12 - MALAYSIA CIVIL

Failure to Prevent Bribery between 1 July 2011 and 30 November 2013

In Summary

314. RR failed to prevent its employees from providing an Air Asia Group ("AAG") executive ("the AAG executive") with credits worth US $3.2 million to be used to pay for the maintenance of

a private jet despite those employees believing that, in consequence, the AAG executive intended to perform a relevant function improperly. This financial advantage was given at the request of the AAG executive, in return for his showing favour towards RR in the purchase of products and services provided by RR and its subsidiaries, including TCA services to be supplied to Air Asia X ("AAX"), a subsidiary of AAG.

The Facts

315. In August 2011 a senior employee of AAX ("the AAX senior employee") made contact with RR employees seeking information about RR's engine maintenance programme. The enquiry was in respect of a private jet which the AAG executive was planning to purchase. The enquiry was passed to RR Deutschland ("RRD"), the division managing RR's CorporateCare service, which is described on RR's website as "a comprehensive, fixed-cost engine maintenance management plan".

316. In November 2011 an RR senior employee met the AAG executive and reported to other RR employees that:

> *"*[I] *met a very offended* [AAG executive]*…. because of the CorporateCare rate he had been offered on a new Global he has just bought".*

317. In a follow-up email, the RR senior employee instructed an RR employee to deal with the issue, and to do so in a manner compliant with ABC policy. AAX and other companies connected to the AAG executive were sources of potential further business for RR.

318. The CorporateCare programme required a US $3 million entry fee due to the condition of the aircraft, and the maximum discount RRD could provide was 15% or US $450,000. In addition, the jet, it was discovered, was privately owned by the relevant AAG executive, a second AAG executive and other private individuals. An internal RR email noted:

> *"On the corporate jet, not good news it's a syndicate of private Malaysian investors. So working a trick between deals is a non-starter. I'll check with legal though.*"

319. RR Compliance was consulted and provided the following advice:

> *"As discussed, the expectations of the* [AAG executive] *need to be tempered.*
> *RR cannot give preferential rates on Corporate Care for the* [AAG executive's] *personal aircraft just because of the business done with RR by the Airline of which he is* [an executive]*. The two should not be linked as there are both legal and ethical implications to doing so.*
> *Let me know if you require the extracts from both the FCPA and UKBA that underpin this."*

320. RR Compliance also advised that the AAG executive should negotiate the costs of the aircraft's maintenance with RRD, and not with RR's Civil division.

321. This was raised with the RR senior employee by an RR employee, who suggested that "we had agreed to handle this separately with a minor reduction rather than link it to this deal".

The RR senior employee's response was: "I don't recall agreeing what you suggest on the corporate jet".

322. In April 2012 RR employees began to discuss a "solution" which involved funds being transferred directly to AAX.

323. When the AAG executive made a further request for "help", this "solution" was explained to him by the RR senior employee. The AAG executive's response was:

"Okay understand. Maybe a discount to x who passes it on."

324. That response received no reply or objection from employees at RR. Instead it was forwarded to more junior employees.

325. During June 2012 an RR employee met the AAX senior employee. The RR employee relayed to colleagues what had been discussed:

"Corporate Jet, unclear on contracting parties, we suggested AirAsia acting as a manager to the individuals, would certainly help us on a number of aspects."

326. On 8 August 2012 the same RR employee reported to the RR senior employee and others that the AAX senior employee was reporting that the AAG executive wanted a 50% buy-in fee discount as a "special deal" and was "furious" at the entry fee. The senior RR employee stated his support for meeting these requests within any larger deal with AAX.

327. On 17 August 2012 an RR employee reported to the RR senior employee and others that the AAG executive was seeking to make the corporate jet deal "invisible" with its "value covered within additional A330 TCA charges" for AAX.

328. In early September, as a commercial deal between RR and AAX first took shape, the AAX senior employee emailed the RR senior employee to complain about the CorporateCare rate on the private jet. The RR senior employee passed the complaint on to RR employees and noted: "we seem to have a death wish on this subject".

329. In parallel, RR employees developed a proposal to provide US $2 million of credits to AAX which AAX could decide to spend how it wished. It would be for AAX to declare to its shareholders if those funds were used to maintain the private jet.

330. On 2 October 2012 this proposal, but without all of the relevant background known to the RR employees, was put to RR Compliance. The proposal noted that the use of credits would incentivise AAX to "firm further business" with RR. Approval was received from RR Compliance and RR Legal.

331. However, the shape of the anticipated commercial deal changed, prolonging discussions between RR and AAX, as well as the parallel discussions between RR and the AAX senior employee.

332. By March 2013 a larger aircraft purchase was under consideration, and the level of discount offered by RR to the AAG executive for his jet's maintenance had increased to US $3.5 million.

333. In communicating this proposal to the AAX senior employee the RR employee pursued other issues of prompt payment of debts by AAX. The AAX senior employee reacted strongly, both to the structure of the altered proposal on the jet, and on the separate issue of debt repayments, commenting in an email to several RR employees: "I will not meet with liars next week" and requesting the RR employee's removal from the account.

334. On 15 March 2013 this RR employee emailed one of his seniors to report that the AAX senior employee "wants a cash settlement that is off the record and not visible to the AAX group". A cash settlement was not ABC compliant, he said, and he would "rather not be on the account" as this was "unethical and most likely illegal".

335. The next day the AAX senior employee emailed others at RR, including two RR senior employees, to express his displeasure, as well as the RR employee. The RR employee again explained to his senior that what the AAX senior employee was seeking was "an unlawful cash payment for *[the AAG executive]*'s private jet".

336. The RR employee's superior explained some of the employee's concerns as to illegality to the RR senior employees but suggested that RR simply respond acknowledging the AAX senior employee's complaints without any challenge as to his behaviour.

337. The RR employee was removed from the account for around two months. He summarised his dealings with the AAX senior employee to his superior, noting that the AAX senior employee had avoided discussing the private jet in front of other AAX or RR employees and would not email on the subject, only using verbal discussions or Blackberry Messenger. He reported also that the AAG executive had been told that a commercial deal to fund the CorporateCare costs would go ahead. Moreover, the AAX senior employee had resisted any proposal that permitted full visibility of the corporate jet's maintenance costs to AAX.

338. In an interview with the SFO the RR employee noted that this went as far as the AAX senior employee suggesting that the CorporateCare entry fee be secretly spread across other AAX payments to RR:

> *"*[The AAX senior employee's] *view was… there is lots of volume of aircraft and there's lots of flying hours, because for every hour an aeroplane flies we get paid under total care… there is a 20 year term we have, so there is millions of flying hours. If you want to make*

Four Million not register then you put that Four Million spread over and it's a few cents per flying hour and nobody inside financing in Air Asia knows about it"

339. By May 2013 a final commercial deal between RR and AAX was nearing its conclusion: AAX was to lease six A330 aircraft with RR engines from International Lease Finance Corporation (which had been sold separately to International Lease Finance Company with no involvement of AAX), and would purchase RR's TCA for the maintenance of those aircraft.

340. RR employees had continued to discuss the matter of the jet with the AAX senior employee, and a proposal had been approved within RR to issue four credits to AAX, amounting to US $3,252,000. The value of those credits could then be applied by AAX to the cost of the jet entering RR's CorporateCare programme.

341. RR employees believed that the relevance of the jet to the issuing of those credits was most likely to be concealed from AAX executives by the AAX senior employee. Even the contractual document (an SFAA) which would formalise the grant of credits by RR to AAX, was initially not discussed by the AAX senior employee in front of other AAX senior employees.

342. The RR employee explained matters to his superior, and received a limited reply from him:

Employee: *"*[…] *The SFAA which contains the 4x $0.8m Goods and Services credit notes (planned for usage against* [the AAG executive's] *CorporateJet) was not openly discussed in front of the team.*
We picked up from [the AAX senior employee] *that the SFAA will be signed by* [the AAG executive] *himself, meaning that these financials will not be openly shared with* [two executives of] *AirAsia X. The SFAA is mentioned in the TCA and its execution is a condition precedent of the TCA, but* [the AAX senior employee] *has also again specifically said that the SFAA should be sent only to him and nobody else at AAX.*
The approved language in the SFAA is still being used and as mentioned above there is clear linkage between the documents, but based upon the fact we know this is most likely being shielded from [an AAX executive]*, should we be re-validating the ABC regarding the credit notes?"*
Senior: *"Not sure I understand; sounds like we need to talk."*

343. RR Compliance again agreed to the use of credits on the basis that the relevant documents were delivered to AAX "in the normal manner".

344. Around the same date the RR senior employee, who had passed on the requests from the AAG executive, resigned from RR for reasons unrelated to this contract. However, this did not lead to any change in approach from the remaining employees.

345. By June 2013 RR employees continued to be aware that the AAX senior employee was concerned to conceal the full facts surrounding the jet from other employees of AAX and its legal department. A script was drafted for a senior RR employee to explain to the AAX senior employee that the contractual documents referring to the credits would have to be sent to the "normal distribution list", including employees.

346. On 8 July 2013 three contractual documents were signed by RR and AAX. This included the SFAA which referred to the US $3.2 million of credits. None of the three documents made reference to the anticipated use against the private jet.

347. Whilst the documents had been seen by persons within AAX other than the AAX senior employee the purpose of the credits had become merely discoverable and not clear or transparent to anyone other than the AAX senior employee and the RR employees.

348. It was expected within RR that the value of the credit notes issued by RR would be applied to a company which was the vehicle through which the AAG executive and other private individuals owned the jet.

349. By the end of November 2013 those credits had been transferred by the AAX senior employee to this company. They were then redeemed with the RR Civil business unit, which then transferred the funds to RRD to cover the cost of the AAG executive's jet entering the CorporateCare programme.