

25 NOV 1998 14:49 SOL 83 COMMERCIAL BRANCH

TO 901714121305 P.1.01/03

FAX TRANSMISSION

BIRD & BIRD

To: DSS
Atten/Ref: Marilynne A Morgan
Ron Powell

Fax No.: **GRO**
Fax No.:

CC: Sarah Graham
George McCorkell

Fax No.: **GRO**
Fax No.:

From: Hamish Sandison

Client: BA/POCL

Account No: BPOCL.0001

Date: 25 November 1998

Time:

Number of pages (including this page): 2

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Message:

Dear Marilynne & Ron,

LEGAL ADVICE: ROLE OF THE JOINT PROGRAMME LAWYER

I thought that you should see this letter from Joe Ashton. Please note the penultimate paragraph. Can we discuss this before our meeting with Catherine Churchard and Joe Ashton which is now scheduled for Friday November 27 at 10.30 am?

Warmest Regards.

GRO
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Harnish Sandison
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Our Ref **GRO**
Your Ref

Date 25 November 1998
E-mail: joe.ashton **GRO**
Solicitor and Legal Services Director

CATHERINE CHURCHARD LLB

BY FAX

Dear Harnish

BA/POCL - HORIZON PROJECT

I am writing to brief you, prior to this afternoon's meeting as to the views which POCL takes in relation to the issues raised by Robert Ricks in his letter to you of 23 November 1998.

Following the numbering of Robert Ricks' letter, they are as follows:-

1. The only safe way of terminating the contracts is to serve notice making time of the essence. Notices should not be served before 9 December 1998. A decision as to the optimum time for service of such notices can only be taken in the light of the state of any further negotiations between the parties.

Any time of the essence notices must give ICL Pathway a reasonable time to comply. It follows that any notice period would have to give ICL Pathway in the region of 8-9 months, as opposed to the 13 weeks suggested by DSS.

There are several responses which ICL Pathway might make to the service of time of the essence notices. It might, for instance, (a) purport to treat the contracts as repudiated and issue proceedings to recover damages, or (b) it might be induced to return to the negotiating table and to adopt a more reasonable stance in Option 1 negotiations or (c) it might seek to negotiate a consensual termination of the contracts or (d) it might perform the contracts.

2. POCL remains willing at all times to participate in any reasonable without prejudice negotiations with a view to resolving its differences with ICL Pathway. It does not consider that a standstill agreement having the effect of suspending the Programme, has any place in supporting such negotiations.
3. The service of time of the essence notices should not be preceded or accompanied by any suggestion from the Authorities that without prejudice negotiation might take

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effective and that ICL Pathway are obliged to perform those contracts. It is considered the adoption of such a position will drive ICL Pathway to be the party and to suggest further negotiations and that ICL Pathway's position in such negotiations would be weaker than if the further negotiations had first been proposed by the Authorities.

4. It is agreed that Ministers cannot indicate that they regard the contract at an end if time of the essence notices had been served and that public pronouncements can only record that notices have been given to ICL Pathway requiring them to perform by a certain date.
5. POCL is committed to ensuring that the positions of POCL and DSS are as "joined-up" as is possible. However POCL and DSS may not have entirely corresponding interests and for that reason must be separately represented in any negotiations. POCL would expect its side of the negotiations to be led by a lawyer instructed independently of DSS.

POCL is aware that you have previously taken a different view on the length of the time of the essence notices and may feel unable to support our views on that issue. In relation to that issue, and any other where there is a conflict between DSS and POCL, POCL would ask you to refrain from putting forward any argument which could be seen as supporting the views of one client at the expense of another.

I had hoped to be able to discuss these issues prior to faxing this letter but that has not proved difficult. If you feel that a brief chat about POCL's views prior to the meeting would be of assistance, it may be possible to reach Catherine Churchard or me at the office of Marilynne Morgan whom we are due to be meeting at midday. Alternatively either Catherine or I will be attending this afternoon's meeting and doubtless we would be able to speak briefly for a few minutes before it gets underway.

Yours sincerely,

GRO

JOE ASHTON