

SUBMISSIONS ON BEHALF OF ACCENTURE AUSTRALIA LIMITED

IN RESPONSE TO IBM'S SUBMISSIONS OF 14 JUNE 2013

1. This inquiry has raised significant concerns with regard to IBM's bid for and delivery of the Shared Services Solution program which blew out by 20,000 per cent.¹ In its submissions on the procurement process, IBM made spurious and unfounded allegations² against Accenture and a former employee³ which only serve to distract the Commission from those concerns.
2. Accenture vehemently denies the allegations.
3. Despite IBM's blatant diversionary tactics, it is important to note that Accenture did not play a part in the failed payroll system and did not breach any laws, contractual provisions, codes of conduct or other government standards which governed the procurement of the Shared Services Program. Indeed throughout the procurement process, Accenture sought to educate the government about the extent of the payroll system problem and the need to budget properly to fix the problem. It repeatedly warned the government not to fall for the "ridiculously cheap silver bullet". It is notable that IBM now seeks to attack Accenture apparently for seeking to impress that message on the government.
4. Accenture is particularly concerned that IBM raised the allegations for the first time in publicly-available written submissions, only after the conclusion of the hearings, without putting them to any relevant witness (despite having had ample opportunity to do so) and without the necessary factual or legal substantiation.
5. To a large degree, the allegations are in any event irrelevant to the case that IBM apparently seeks to assert in its submissions.

¹ Minister for Health, 17 October 2012 at Health and Community Standards Committee Estimates Hearing

² At paragraph 166 of IBM's submissions dated 14 June 2013, including the relevant footnote.

³ It must be assumed that IBM also makes these allegations against SAP and/or SAP's employee Mr Pedler, particularly in relation to the alleged breach of the *Trade Practices Act* which necessarily involves two parties.

6. Accenture respectfully submits that the public manner in which IBM has raised the allegations requires the Commissioner to address them directly in order to avoid unwarranted reputational harm to Accenture. Further, because the allegations are contemptuous and lacking in any legal or factual basis, the Commissioner should affirmatively dismiss the allegations in their entirety, and find that there is no evidence of any violation of law by either Accenture or its former employee.

Irrelevance of IBM's allegations

7. IBM has raised these allegations in the context of defending itself against an allegation of misusing confidential information. This is a bizarre and transparently diversionary tactic that has no relevance to the allegations levelled by others against IBM throughout the course of this inquiry relating to IBM's shortcomings in bidding for and delivering the Shared Services Solution program.
8. IBM has based its allegations on a series of misplaced assumptions about the origin and intent of the "Simon" email in Exhibit 32 (**the email**). As Accenture has submitted previously,⁴ the evidence about the email is limited, inexact, inconsistent and ambiguous. It simply does not support IBM's assumptions or allegations.
9. The only clear and unambiguous facts ascertainable about the email are that:
 - The email was found in Mr Bloomfield's draft box on IBM's system. Importantly, it must be noted that the email has been found nowhere else, other than also on IBM's system in a subsequent email from Mr Bloomfield to an IBM colleague.
 - Mr Bloomfield admits that he altered the contents of the email.⁵

⁴ See Accenture's submissions dated 7 June 2013.

⁵ T 12-45:450

- The person thought most likely to have received the email (namely Mr Pedler of SAP) did not recall receiving it⁶ or any request along the same lines.⁷ As Mr Pedler's cross examination proceeded, he became increasingly doubtful about the likelihood that he had received the email.⁸
 - Mr Bloomfield was evasive and lacked credibility when giving evidence about the origins of the email. He also failed to explain satisfactorily why or precisely how he altered the contents.
 - The email only came to light late in the inquiry in rather questionable circumstances when IBM produced the email after coming under considerable pressure to explain its conduct during the procurement process, and after having failed to produce it in response to an earlier summons.
10. IBM has made serious allegations against Accenture and Mr Porter in relation to the email, purportedly to establish an argument that it cannot be held liable for misuse of the information in the email. It was inappropriate and entirely unnecessary for IBM to subject Accenture and Mr Porter to such a grave reputational attack in order to achieve that end.
11. Firstly, witness testimony (obtained largely under cross examination by IBM's Senior Counsel) established that none of the information imparted in the email was confidential. To take the pertinent parts of the email in turn:
- *"We had a meeting today with Bradley, Ford, Perrott and a few others."* The fact that this meeting occurred could not be confidential, being a meeting between a bidder and the government.

⁶ T15-76:2

⁷ T15-120:4-8

⁸ T15-80:53; T15-117:32-45

- *"Gerard wants to know our number ASAP."* The RFP unsurprisingly called upon bidders to price their solutions.
- *"We said we can give a fixed price for the next release but would need to transition in over an up to 6 month period in which time we will be able to fully cost and FP the whole deal."* SAP, IBM and Logica would also have inevitably planned a transition, given the nature of the project.⁹ Such a transition was common practice.¹⁰ No evidence was given about whether the other bidders or the government had any expectation that Accenture would offer a fixed price. However, it is not prima facie confidential information in the context of the email or the RFP process. The RFP simply called for high level solutions to a broadly defined problem.¹¹ The email did not state the actual fixed price, nor did it give the recipient any means of deciphering what was being priced (i.e. what solution Accenture was planning to propose for the government's problem) or for what part of that proposal the price would be fixed.
- *"Next Tuesday we will present a Not to Exceed budget figure. This is a figure we think is a reasonable estimation of the total program and something we will work with them on to scope and manage the program within this number."* It was not unusual for Accenture to offer a not to exceed price.¹² The email does not reveal the actual not to exceed price. The price had not been set at that time.¹³

⁹ 15-120: 18-51

¹⁰ T 13-12: 32- 13:3

¹¹ Exhibit 26, para 19; T1-15 onwards; para 88 of IBM's submissions

¹² T 13-17: 14-26

¹³ T 16-15: 44-47

- *"They say they have about \$100m left. They know that is not enough."* The government's budget was widely known, including by SAP¹⁴ and IBM.¹⁵ The government's opinion that the budget was insufficient could not have been told to Mr Porter (or Accenture) in confidence, given that the opinion was expressed during a RFP process. Therefore, it was not confidential.
- *"One of our concerns is that a competitor will offer them a silver bullet for a ridiculously cheap price ie within the remaining budget."* Accenture had previously conveyed this concern to the government.¹⁶ The opinion could not of itself be confidential, not the least because at the RFP stage each offeror was proposing a highly individual solution to a loosely defined problem,¹⁷ so assessment of the adequacy of the budget was meaningless without insight into what that offeror was proposing as a solution to the government's problem. Note in particular that Mr Pedler did not share the "ridiculously cheap" opinion¹⁸, presumably because SAP was proposing something quite different to Accenture.

12. Secondly, even if the email contained confidential information (which seems unlikely) the defence of iniquity does not arise here. It could only be relied upon if IBM had sought to breach any confidence in the material in order to expose apparent wrongdoing.¹⁹ In fact, as the evidence shows, IBM positively failed to treat the email in that way, choosing instead to use it for commercial purposes.²⁰

¹⁴ T 15-73: 5-40 and T 15-120: 51-121: 2

¹⁵ T 13-13: 38

¹⁶ T 1-37: 48 - 1-38: 55

¹⁷ Exhibit 26, para 19; T 1-15 onwards; para 88 of IBM's submissions.

¹⁸ T 15-93: 10

¹⁹ *A v Hayden* (1984) 156 CLR 532, 546 (Gibbs CJ)

²⁰ T 12-57: 1-12-58: 16

13. Thirdly, the doctrine of clean hands can only be relevant to prevent a claim in equity. The owner of the information has made no such claim. It would have been more relevant had IBM simply asserted that no one other than the party who owns the information can assert an equitable breach of confidence in respect of it.²¹
14. Finally, as Accenture has submitted previously²² even if the email was confidential and the owner had asserted a breach of confidence, there were no laws,²³ contractual provisions, codes of conduct or other government standards in place at the time of the RFP that prevented parties to the RFP process from communicating with each other. Accordingly, it was neither illegal nor unconscionable for Mr Porter to send the email, if he did indeed send it to Mr Pedler. The doctrine of clean hands and defence of iniquity, if relevant, would necessarily fail for lack of an identifiable misdeed of public importance²⁴ or other relevant wrong.²⁵
15. IBM's allegations in relation to the email therefore have no purpose other than as an attempt to distract the focus of the Commission from its concerns regarding IBM's bid for and delivery of the Shared Services Solution program. As a result, the Commissioner should not inquire further into the allegations and should affirmatively dismiss them as a diversionary tactic.

No TPA breach

16. IBM has alleged that Accenture and Mr Porter, (and, by inference, SAP and Mr Pedler) breached section 45 of the *Trade Practices Act 1974*. It relies on the email as evidence of this alleged breach.
17. As explained below, the email is not evidence of such a breach. Furthermore, there is ample evidence that there was no such breach.

²¹ *Fraser v Evans* [1969] IQB349

²² See paras 34 and 35 of Accenture's submissions dated 7 June 2013

²³ See below for more detailed submissions on the trade practices and fraud allegations.

²⁴ *Corns Pavey Whiting & Byrne v Collector of Customs* (1987) 14FCR434 456 (Gummow J)

²⁵ *Meyers v Casey* (1913) 14CLR90,124

18. Because the alleged breach has significant ramifications for Accenture's and Mr Porter's reputations (and presumably the reputations of SAP and Mr Pedler) and because the allegation has been made publicly on the Commission's website, the Commissioner should positively dismiss the allegation and clear Accenture and Mr Porter of wrongdoing.
19. Firstly, a breach of section 45 rests on there being a "contract, arrangement or understanding"²⁶ (an arrangement) between Accenture and SAP.
20. The email is not evidence of such an arrangement.
21. In fact, the evidence before the Commissioner positively refutes the possibility of such an arrangement existing. Namely:
- Accenture and SAP responded to the RFP with very different proposals. Accenture proposed a mixture of fixed and not to exceed prices.²⁷ In contrast SAP did not give a fixed price or estimate a price; it proposed instead charging on a time and services basis.²⁸
 - Mr Pedler gave evidence that the email did not influence SAP's approach to the RFP²⁹, and that SAP did not share the concerns expressed in the email.³⁰
22. The RFP described by Mr Ekert of Corptech, among others, was relatively loose and high-level, in that the problem was broadly defined and the offerors were asked to propose (and price) solutions.³¹

²⁶ Section 45(2) of the TPA

²⁷ See page 13 of "Accenture Proposal to Corptech for Shared Services Solutions Program Prime Services Partner" dated August 2007

²⁸ See email from Commission's Principal Solicitor to DLA Piper dated 28 June 2013

²⁹ T 15-19: 20-30

³⁰ T 15-93: 15-24

³¹ Exhibit 26, para 19

23. Each RFP response therefore presumably reflected the offeror's individual solution and indicative pricing of that solution. Accenture has not had access to the RFP responses of any other bidder. Counsel Assisting the Commissioner has seen the RFP responses and had the opportunity to compare them. Importantly, he has noted that it is difficult to understand how one bid was assessed against another on a "like for like" basis.³²
24. Notably, IBM has itself submitted that Accenture's complaint "that the work could not be done for less than Accenture was bidding" (a reference to the "ridiculously cheap" comment in the email) "begs the question of exactly what 'work' was being bid."³³ This is apparently in recognition of the possible variety of the RFP responses.
25. The descriptions of the RFP responses in evidence before the Commissioner suggest strongly that Accenture and SAP proposed entirely different solutions to the government's problem and priced these proposals entirely independently of one another. Mr Pedler described "a built up price with a lot of conditions and exemptions"³⁴ and SAP apparently proposed charging on a time and services basis. By contrast, Accenture's response was apparently more structured than SAP's, addressing all aspects of the Shared Services Solution program, removing the uncertainty by detailing a plan to deliver a proposed outcome while mitigating project risks and offering a mixture of fixed and not to exceed prices. It appears to have been the antithesis of SAP's proposal.
26. There was also positive testimony from Mr Pedler that SAP did not share the concerns expressed in the email about the "ridiculously cheap price".³⁵

³² T1-15:40 onwards

³³ Para 83 of IBM's submissions

³⁴ T 15-121: 10-28

³⁵ T 15-93:10

27. Under cross-examination by IBM's Senior Counsel, Mr Pedler also gave positive evidence that SAP was not influenced by the email in its response to the RFP.³⁶
28. The evidence before the Commissioner shows that:
- SAP forged its own course in responding to the RFP.
 - Did not share the concerns expressed in the email about the RFP.
 - Was not influenced by the email (if it or Mr Pedler even received it).
 - Constructed a very different response to the RFP that was priced on a very different basis to Accenture's pricing.
29. As such, the preponderance of the evidence shows definitively that there was no arrangement between Accenture and SAP. Accordingly, the Commissioner should dismiss the TPA allegation outright.
30. Secondly, if there was an arrangement (which is denied), it must also be shown that it had the purpose or effect of "substantially lessening competition"³⁷ in the market.³⁸ This requires a complex legal and economic analysis of the alleged conduct. That analysis has not occurred here.
31. The evidence that is before the Commissioner in fact contradicts any suggestion that the email had any effect on competition, let alone substantially lessening it. Most importantly, SAP did not alter its pricing to reflect the supposed arrangement.³⁹
32. Any concerns expressed by the witnesses from government about the impact of the email on "the competitive environment" are merely impressionistic responses. Those impressions alone

³⁶ T 15-119: 20-39 and T 15-121: 3-28

³⁷ S45(2)TPA

³⁸ S45(3)TPA

³⁹ T 15-21: 19

cannot support the allegation of substantially lessening competition. Accenture has previously expressed considerable concerns at the unreliable nature of those impressions, and the danger of giving them any weight in this inquiry, particularly when taken out of their very narrow testimonial context.⁴⁰

33. Finally, even if there was an arrangement that had the purpose or effect of substantially lessening competition (which is denied), it necessarily came to an end on or around 20 August 2007 when SAP withdrew from the competitive process after the RFP ranking announcement because it had not been ranked first or second and could not justify the on-going cost of continuing the bid.⁴¹
34. Given that the ITO proceeded after this point in time, and given that SAP did not participate in that stage, any purported arrangement clearly could not have affected competition during the more formal ITO process.
35. There being no evidence of an arrangement, or that any such arrangement had the purpose or effect of substantially lessening competition, the Commissioner should dismiss in its entirety IBM's TPA allegation.

No fraud

36. IBM's allegation of criminality against Mr Porter is completely lacking a legal and factual foundation. Accenture is greatly concerned that such a serious allegation has been levelled publicly against a former employee, concerning his behaviour when an Accenture employee, without the slightest attempt to establish a factual or legal basis for the allegation.
37. It can only be assumed that IBM seeks to humiliate Mr Porter and/or Accenture and gravely damage their reputations in this market in an attempt to distract from the issues surrounding its

⁴⁰ See Accenture's submissions dated 7 June 2013

⁴¹ T15-95:42 onwards

own bid for and delivery of the Shared Services Solution program under consideration by the Commission.

38. IBM did not once attempt to put its allegation to Mr Porter directly when he was in the witness box. It has chosen to do so only indirectly by public submissions, in a manner that would inevitably cause the greatest harm to Mr Porter's personal reputation and (by association) the reputation of his former employer.
39. It is notable that IBM has not explained how the email, found only on IBM's system, and having been manipulated by an IBM executive, could ever found an allegation of criminal fraud against an Accenture employee.
40. There is clearly no "serious question" that the email "involved a potential commission of an offence" under the Criminal Code.⁴²
41. The evidence of the origin, recipient and intent of the email is ambiguous and inexact.⁴³
42. Importantly, the central element of dishonesty has not been alleged or made out. "Dishonesty" is not defined in the Code and the Queensland Court of Criminal Appeal has held that it be given its ordinary meaning.⁴⁴
43. "Dishonest" is defined by the Macquarie Dictionary as:
1. Not honest; disposed to lie, cheat, or steal...
 2. Proceeding from or exhibiting lack of honesty; fraudulent.
44. At no point does the email ask the recipient to lie or cheat. Specifically, it does not ask the recipient to express a view of the RFP that he/she did not already hold. In fact, it can be inferred from the email that the author assumed the recipient shared the opinion expressed in

⁴² IBM submissions para 184(a) and footnote 329 therein.

⁴³ See Accenture's submissions of 7 June 2013 in this respect.

⁴⁴ *R v Feely* [1973] 1 QB530 at 537-8; applied in *R v Laurie* [1987] 2 Qd. R762.

it. The email suggests that the concerns raised are shared by "everyone" and are best conveyed to the government by someone with "experience with industry".⁴⁵ In light of Mr Pedler's subsequent testimony⁴⁶ that he did not share the view about the "ridiculously low" budget, it may be that the author of the email was mistaken in this assumption. That, however, does not amount to a dishonest intent on the author's part.

45. If Mr Porter sent the email to Mr Pedler:

- He did not "gain any benefit or advantage, pecuniary or otherwise, for any person"⁴⁷ from the email, dishonestly or otherwise.
- Nor did he "cause any detriment, pecuniary or otherwise, to any person"⁴⁸ as a result of the email, dishonestly or otherwise.
- Nor did he "induce" Mr Pedler to do anything that Mr Pedler "was lawfully entitled to abstain from doing"⁴⁹ or to "abstain from doing anything that he was lawfully entitled to do"⁵⁰, dishonestly or otherwise.
- Nor did he apparently attempt any of these things within the proper meaning of section 535 of the Criminal Code.

46. It is not apparent how IBM otherwise asserts that section 408C of the Code applies.

47. Importantly, the email does not offer Mr Pedler an inducement for "persuading Ms Perrott to Accenture's view" (as IBM alleges).⁵¹ The apparent inducement offered in the email is for

⁴⁵ Exhibit 32: "You can also let her know "through your experience with industry" that everyone is sick of their indecisiveness..."

⁴⁶ T15-93:10

⁴⁷ Section 408C(1)(d) Qld Criminal Code

⁴⁸ Ibid subsection (1)(c)

⁴⁹ Ibid subsection (1)(f)

⁵⁰ Ibid subsection (1)(g)

⁵¹ Para 184(a) of IBM's submissions

reporting back information "depending on how good it is". That was entirely permissible within the context of the RFP. Prima facie, the inducement was not offered dishonestly.

48. The email cannot found an allegation of fraud, particularly where neither Mr Pedler nor Mr Porter was under any legal obligation not to seek to raise the matters with Ms Perrott or share with each other what they had learned from her.
49. IBM's allegation of criminality against Mr Porter serves only to distract the Commissioner (and presumably also the media and the public) from the concerns raised during the inquiry relating to IBM's bid for and delivery of the Shared Services Solution. The Commissioner should affirmatively dismiss the allegation of criminality against Mr Porter completely.

Evidentiary standard to be applied to the allegations

50. IBM has levelled these serious allegations against Accenture while purportedly not urging "substantive findings of impropriety against it".⁵² This is a disingenuous proposition in the context of IBM's submissions. IBM clearly seeks to persuade the Commissioner of the allegations that it has levelled against Accenture in defending itself against the allegation that IBM breached confidentiality by using the contents of the email. There could be no other reason for raising the allegations.
51. In considering the allegations, the Commissioner is required to apply the standard in *Briginshaw v Briginshaw*.⁵³ The *Briginshaw* standard, as stated by Dixon J (at 362) is:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proven.

52. The test reflects the:

⁵² Para 183 of IBM's submissions

⁵³ *Briginshaw v Briginshaw* (1938) 60 CLR 336

conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.⁵⁴

53. The test applies to the assessment of evidence in inquiries, as stated by Moynihan J in relation to the Bundaberg Hospital Commission of Inquiry:

The application of that principle [ie *Briginshaw*] means that the gravity of the issue necessarily is reflected in the weight of the proof required to establish the facts founding the conclusion.⁵⁵

54. The Supreme Court has stated more recently:

...on the basis of [*Briginshaw*] it is clear that reasonable satisfaction should not be produced by “inexact proofs, indefinite testimony or indirect inferences”.⁵⁶

55. In light of the *Briginshaw* standard, the Commissioner should therefore have regard to the following matters.

56. Firstly, the evidence about the origin, recipient and intention of the email is ambiguous, conflicting and inexact.⁵⁷

57. As stated above, the only known and unambiguous facts about the email are that:

- It was found on IBM’s email system.
- It has not been found anywhere else.
- It was found in Mr Bloomfield’s draft box.
- Mr Bloomfield admits manipulating the email.

⁵⁴ *Neat Holdings Pty Ltd v Karajam Holdings Pty Ltd & Ors* (1992) HCA 110

⁵⁵ *Keating v Morris & Ors* [2005]QSC243

⁵⁶ *A-G v HTR* [2007]QSC19

⁵⁷ See Accenture’s submissions dated 7 July 2013 further in this regard

58. Furthermore, IBM produced the email in questionable circumstances, Mr Bloomfield's evidence about it was unsatisfactory, Mr Pedler was increasingly doubtful that he had received it⁵⁸, and Mr Bloomfield claimed not to recall who had sent it to him.⁵⁹
59. Secondly, IBM's allegations are serious and grave.
60. The TPA allegation has potentially serious ramifications for Accenture's reputation (as it would for the reputation of any such business) in the markets in which it operates, including in relation to Queensland government IT procurement.
61. It can be assumed that the fraud allegation has grave personal ramifications for Mr Porter. It also has serious ramifications for Accenture's reputation, it having employed Mr Porter in a senior role at the time.
62. Presumably the allegations have similar ramifications for SAP and Mr Pedler, although Accenture does not seek to make submissions in that regard.
63. Taking into account the presumed⁶⁰ unlikelihood that Accenture or Mr Porter committed the TPA breach or fraud as alleged by IBM, and noting the considerable and grave consequences arising for Accenture and Mr Porter (and others) from the allegations, the Commissioner cannot be satisfied on the balance of probabilities, based on the inexact and conflicting evidence about the email, that Accenture or Mr Porter committed those breaches.
64. As such, the Commissioner ought not find that Accenture or Mr Porter committed the breaches alleged by IBM.
65. Furthermore, and in the spirit of *Briginshaw*, given:

⁵⁸ T15-80: 53-56 and T15-117: 32-45

⁵⁹ T12-40: 38

⁶⁰ As per *Neat Holdings*

- The seriousness of the allegations and their grave consequences for Accenture and Mr Porter,
- The public manner in which IBM has raised the allegations,
- IBM's failure to put the allegations directly to the relevant witnesses in cross-examination, despite cross examining them about the email, and
- IBM basing the allegations on the thinnest of premises,

the Commissioner should positively reject the allegations as unfounded and clear Accenture and Mr Porter of the alleged wrongdoing.

Impropriety by IBM

66. It is verging on improper for IBM to level such serious allegations against Accenture and Mr Porter in this context particularly in a public forum and based on such a thin premise as the email.
67. As outlined in Accenture's submissions dated 7 June 2013, the origin, recipient and intent of the email is highly ambiguous, and the evidence about it is inexact and contradictory. Accenture reiterates its previous submission that, in accordance with the *Briginshaw*⁶¹ standard, the evidence cannot support a conclusion that Accenture has breached any laws, contractual provisions, codes of conduct or other government standards⁶². The evidence, in fact, contradicts IBM's allegations.
68. It is utterly hypocritical of IBM to level such serious allegations in its written submissions while objecting just pages later to Counsel Assisting the Commissioner questioning Mr Bloomfield's inability to recall receiving the email. Accenture agrees wholeheartedly with

⁶¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336

⁶² TOR 3(b)

IBM's submission in that regard that "serious findings of this nature require cogent evidence."⁶³

69. It is notable in this regard that Counsel Assisting put directly to Mr Bloomfield that his lack of recall was incredible, giving him the opportunity to respond, and giving the Commissioner the opportunity to assess Mr Bloomfield's veracity as a witness on that point.
70. It is particularly concerning that, by contrast, IBM did not put its allegations directly to Mr Porter or Mr Pedler when each was in the witness box even though both were called after the email was produced.
71. In sum, there is insufficient evidence to support the allegations made by IBM that Accenture and Mr Porter committed the breaches. As set forth above, there is in fact evidence that positively contradicts the allegations. As such, the Commissioner should note the improper nature of IBM's allegations while dismissing them.

Accenture's management of confidential information

72. At paragraph 53 of its submissions, IBM has noted that "an Accenture contractor gained access to IBM's pricing information". It notes simply that "this was ultimately dealt with".
73. This is highly disingenuous. As the evidence and testimony about this incident makes abundantly clear, immediately on discovering that one of its contractors had accessed certain information from Corptech's LAN, Accenture notified the government, terminated the person's contract and did not use the information the contractor had accessed.⁶⁴

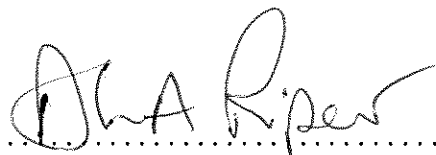
⁶³ Para 201(b) of IBM's submissions dated 14 June 2013

⁶⁴ See for example Exhibit 5 paras 127/8

Conclusion

74. IBM has made unfounded and grave allegations against Accenture and Mr Porter which deflect attention from the serious concerns raised during the course of this inquiry about its own bid for and handling of the Shared Services Solution program.
75. There is no legal or factual basis for any of the allegations.
76. Given the serious and public nature of IBM's allegations, Accenture submits that the Commissioner should:
- 76.1 Dismiss IBM's allegations against Accenture and Mr Porter; and
- 76.2 Find that there is no evidence of any violation of law by Accenture or Mr Porter either in relation to the email or in the context of Accenture's participation in the procurement stage of the Shared Services Solution program.

Dated: 8 July 2013


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DLA Piper Australia
Solicitors for Accenture Australia Ltd