

Case No. 8

'Tender for the design, organisation and management of a quality national event on the eve of May 1, 2004' (Ref. CT2063/04 – EU ACCESSION CELEBRATIONS)

Public hearing at the Department of Contracts, Floriana on Thursday, 19 February 2004 to consider the objection raised by **Production & Event Services of International Trading Company Ltd. (PRES of ITC Ltd)** against the decision to award the tender entitled '**Tender for the design, organisation and management of a quality national event on the eve of May 1, 2004**' (Ref. CT2063/04 – EU ACCESSION CELEBRATIONS) to the **Welcomeurope Consortium**

Present

Public Contracts Appeals Board

- Mr Alfred Triganza Chairman
- Mr Anthony Pavia Member
- Mr Edwin Muscat Member

Production & Event Services of ITC Ltd

- Mr Mario Camilleri
- Prof. Ian Refalo LL.D.
- Dr Malcolm Mifsud LL.D
- Ms Catherine Guillaumier
- Mr Angelo Attard – Technical Adviser

Welcomeurope Consortium Ltd

- Mr Lou Bondi`
- Dr Anthony Cremona LL.D
- Dr Stefan Frendo LL.D
- Dr Robert Attard LL.D
- Mr Anton Attard

Adjudication Board

- Mr Vincent Cassar - Chairman
- Mr Carmel Galea – Member (Ministry of Foreign Affairs)
- Mr Tonio Briguglio – Member (Ministry of Finance and Economic Affairs)
- Mr Mario Attard (Malta Tourism Authority)

Witnesses:

- The above-mentioned members of the adjudication board as well as
- Mr Joseph V. Spiteri – Director General (Contracts)
- Mr Andrew Psaila – Chief Executive PBS
- Mr Mario Camilleri (PRES of ITC Ltd)
- Mr Angelo Attard – (PRES of ITC Ltd)
- Mr Lou Bondi` – (Welcomeurope)

Apologies of Absence

Mr V. Cassar - Chairman of the Adjudication Board informed the Appeals Board that Dr Paul V Mifsud, another Member was indisposed. There was general agreement not to call Dr P. Mifsud in order to give evidence by telephone conference as it was considered unnecessary.

Following the Chairman's introduction during which it was agreed that all members of the Adjudication Board were being allowed to remain seated in the Hall whilst its members would be summoned as witnesses, Prof. Refalo was asked by the Board to initiate proceedings by giving a general overview relating to the points raised in his objection letter.

Prof Ian Refalo started by claiming that a number of documents needed to be exhibited as these were considered indispensable for the objecting firm to substantiate its objections. In this respect he requested that the following documents be made available by the Public Contracts Appeals Board (PCAB):

- Adjudication Board's report
- Minutes of meeting dated 26 January 2004 regarding PRES of ITC Ltd
- Minutes of meeting regarding the presentation of Welcomeurope
- Letter from Welcomeurope relating to TV coverage/transmission by European Broadcasting Union (EBU)
- Welcomeurope's detailed list of equipment
- Certificate of insurance cover by Welcomeurope

The PCAB suspended the sitting for a few minutes to deliberate on the matter. When the meeting was reconvened the Board stated that its role was to hear the objections so as to establish whether they were justified or not. The PCAB informed those present that it was giving a ruling which substantially was reiterating its policy so far adopted in all the public hearings presided by this Board since it was constituted, namely, that it would find no objection for the exhibition of all documentation relevant to the objections formally raised in the complainant's letter (once these would be deemed necessary by the Board) and only after specific mention taking place during the proceedings. However, it was also made clear that this Board would not permit fishing expeditions thus allowing anyone to gain access to documents not related to the formal objections raised.

Dr Malcolm Mifsud stated that his clients submitted their objection on the basis of the following:

- the offer of Welcomeurope Consortium should have been disqualified and considered null and void since they did not submit their offer in accordance with the tender conditions which required that the proposals be submitted for the three components separately and also because the adjudication board had the option to award the tender in whole or in part.
- in their submission Welcomeurope Consortium gave incorrect and misleading information with regard to the 'laser canons' which according to Messrs. Productions and Event Services, they did not exist.
- if a like for like comparison were to be made the offer submitted by his client would be more advantageous.

Furthermore, Dr Mifsud stated that ITC gave various options including others beyond what was required. It also gave a detailed itemised list with relative costs. He contended that in deciding the award of the tender in question the Adjudication Board did not consider (a) the different options given or (b) the possibility of awarding the tender to more than one respondent.

With regards to the TV transmission the complainants lawyer stated that it was not true that the EBU was transmitting the event from Malta in view of the involvement of Welcomeurope. He insisted that the Adjudication Board should not have taken into consideration the EBU transmission since this was broadcasting all the grand spectacles produced by the ten acceding countries to a network covering the entire twenty-five member states anyhow.

Dr Stefan Frendo, representing Welcomeurope, categorically denied that his client did not submit the offer according to tender conditions. He said that according to para 5.1.1 Form of Proposal of Tender Documents there was no indication that the amount in words should have been included individually. Also he made reference to para 2.2 of the Tender Documents which stated that '*Proposals will be received for the three components as detailed at para 1.5 above, **individually or collectively** subject to the condition at para 4.11 below.*' He argued that, if Welcomeurope's proposals were to be considered as null and void because of it submitting a collective offer, his clients would have had grounds to object because they would have been misled.

Dr Frendo stated that Welcomeurope took a commercial risk when they submitted a whole amount for their proposal because even the conditions stipulated that tender could be awarded in whole or in part. He clarified that his client had submitted one submission collectively but under three separate categories.

With regard to 'price', he remarked that there was no obligation to select the cheapest price but the most favourable offer.

As far as the laser canons were concerned Dr Frendo said that they never indicated that they had laser canons. At this stage Mr Lou Bondi` intervened saying that in line with their presentation/submission to the Adjudication Board, Mr Gert Hof (international artistic producer) would make use of a huge amount of Ireos space cannon lights of 7 kW as well as big YAK lasers in his Show. Mr Bondi` claimed that respondents were not required to state type of canons to be used.

Dr Anthony Cremona, another lawyer representing Welcomeurope, stated that the tender did not require an itemised list. Tenderers were requested to provide a spectacle based on a world-renowned artist. The definition of the 'space cannon' mentioned in ITC's objection was incorrect. He said that ITC wanted to condition the artist when they mentioned the use of a particular type of equipment. He added that it was completely not admissible, procedurally, on the part of PRES to propose an adjustment in the number of lasers to be used by their competitor.

With regard to what had been stated by ITC in their motivated letter of objection regarding the international TV coverage, Mr Lou Bondi` stated that EBU would not be transmitting from the 25 European Union countries but only from the 10 acceding ones. He said that in a letter dated 16 January 2004, signed by Mr Stephan Reichenberger (CEO of Schwanstein Entertainments), who was commissioned by the EBU to produce "Welcome to Europe", it was confirmed that on the eve of 1st May 2004, EBU would not only connect with Malta at peak time but also that this particular show would transmit live for a duration of five times more than the time allowed being granted to the other acceding countries and this solely due to the artist whose services were being exclusively utilised by Messrs Welcomeurope.

At this stage the Board started hearing evidence given under oath.

Mr Vincent Cassar, the Chairman of the Adjudication Board, was the first to take the stand. Mr Cassar gave details of the procedure followed by the Adjudication Board throughout the phases leading to the award of this tender. He said that on 28 December 2003 the Ministry for Youth and the Arts issued a call for the submission of proposals for the tender in question. The tender requested that proposals should be made for three components, namely, the 'grand spectacle' (package 1) , 'audio visual' programme (package 2) and the management of *ad hoc* sales and catering concessions in specific localities around the Grand Harbour (package 3).

Three offers were found in the tender box, namely,

- Synergix
- Welcomeurope
- PRES of ITC

(Tenderers No 1, 2 and 3 respectively). These were opened in front of members of the general public and a schedule of the bids was drawn up and published on the Ministry's notice board.

He said that Tenderer No 1 submitted an offer for Package 1 only, Tenderer No 2 offered one collective price for the three packages made up of two options and Tenderer No 3 submitted an offer for the three packages and included separate prices for each package consisting of two options each.

During the opening of the tenders Mr Camilleri (PRES of ITC) remarked that once Welcomeurope did not submit their individual prices for the three packages, their tender should not be considered for evaluation. However, when a representative of Welcomeurope was asked to identify the prices for each package separately, he insisted that the consortium was submitting one price for the three items collectively. The matter was discussed by the Adjudication Board and it considered that their offer was in accordance with the conditions specified in para 2.2 and 4.11 of the Tender Documents. Thus, it was decided to evaluate only Tender Nos. 2 and 3 since the tender price submitted by Synergix was high taking into consideration only Package number 1.

Subsequently, the Adjudication Board requested Welcomeurope and PRES of ITC to make formal detailed presentations of their offer. These were held on 23 and 26 January 2004 respectively. Mr Cassar said that during the presentations each member took notes individually. According to the Chairman of the Adjudication Board both tenderers delivered acceptable presentations.

Mr Cassar stated that the Board members went through the offers and found that both were according to the Tender conditions. However, it transpired that there was a difference in prices between both tenderers. The prices of the first option, which was considered as the basic offer, of both tenderers were low and those of the second option were higher.

When Prof Refalo asked Mr Cassar about questions that were asked (during the PRES presentation) to Mr Robbie Williams, he replied that the Board wanted to establish the difference in prices between PRES's two options (Lm319,969 as against Lm797,303). As far as he was aware, the reason given by Robbie Williams was that Option A represented a programme for local consumption only while Option B represented a programme of international standard that could be televised overseas.

With regard to the discussion mentioned by Prof Refalo in connection with the variation in prices, Mr Vincent Cassar stated that throughout and after Messrs Production and Events Services' presentation he was always of the opinion that the parties present were discussing the difference in prices between Options 1 and 2 of PRES' submission in respect of package 1 regarding the grand spectacle. As a matter of fact this issue was dealt with thoroughly during the presentation. However, Prof Refalo pointed out that at

that time Mr Robbie Williams was referring to the 'audio visual' package because he had transcripts of what was said. Following an intervention by this Board Mr Carmel Galea, Mr Cassar requested not to answer Prof Refalo's question, since Mr Galea was in a better position to answer the question.

Mr Cassar stated that the Adjudication Board wanted to establish a price to meet the basic minimum requirement since both tenders were according to tender conditions. With regard to Welcomeurope's offer he said that they accepted Option 2 and not Option 1 because the spectacle in option 2 reached the required standard. On the other hand, if they considered PRES's Option 1, which was more expensive than the higher Option of Welcomeurope, they would not have reached a satisfactory standard.

When Prof Refalo asked Mr Cassar if the Board had enquired whether Welcomeurope's submissions conformed with the tender requirements or whether they commented about the way they tendered, he replied to remarks that were passed by representatives of Welcomeurope. Subsequently, Prof Refalo requested a complete copy of the Adjudication Board's report. At the PCAB's request Mr Cassar formally exhibited a copy of page 5 of the Adjudication Board's report which was relevant to the matter in question. Mr Cassar argued that other parts of the report might contain commercial and other information of a confidential nature. He confirmed that Welcomeurope's offer was in accordance with the conditions specified in para 2.2 and 4.11 of the Tender Documents.

During Mr Cassar's evidence it was also established that when they were comparing both submissions, there were enough elements to evaluate them collectively rather than individually. However, he did not think that, if the need arose, it would have been impossible to evaluate the three packages separately. However once the offers were both submitted according to tender conditions, there was no need to evaluate the packages individually. He added, that the Adjudication Board recommended Option 2, which was Lm20,000 more expensive than Option A due to the fact that the light show projection produced by international artist Ross Ashton was considered an essential element. He emphasised that the Board was briefed to concentrate on events of high standard which could be televised across Europe, attracting both local and foreign viewers aiming the spectacle to reach a climax at the stroke of midnight on the 1st May 2004. Following the visual submission of the two presentations the Board was of the opinion that Welcomeurope's show was of a higher standard than the one presented by PRES of ITC. He said that although the latter submitted a fully itemised and costed schedule, Welcomeurope's submission apart from the fact that it met the basic requirements of the tender documents, resulted in it being the cheapest and better option acceptable.

When the Chairman of the Adjudication Board was asked to give reasons as to why they did not evaluate each package individually, Mr Cassar replied that according to the tender documents, the Board, although had this option, was not obliged to accept part proposals from different submissions and prospective Respondents. They evaluated every submission from a holistic approach and on its own merits in accordance with para 4.6 of the tender document (page 8). The Board was of the opinion that the tender should not be split because they wanted a coordinated spectacle. Mr Cassar reiterated that even though

certain items from PRES's more expensive offer were to be removed, the result would have been still inferior to Welcomeurope's recommended offer but yet more expensive.

The procedure continued to be discussed in detail between Mr Cassar and Prof Refalo as the latter along with Dr Mifsud, was contending that the offer submitted by Welcomeurope was a conditional bid.

Mr Cassar rebutted such claim stating that the Board he presided over was not conditioned in any way while deliberating on the award of the tender.

At this stage Dr Mifsud continued to persist in requesting that the submission presented by Welcomeurope be made available to them. Mr Bondi` insisted that this contained commercial information of a highly confidential nature and as a consequence he was strongly objecting to such request being acceded to by this Board. The PCAB reiterated its position against allowing parties access to documentation relating to matters falling beyond the scope of the formal objections submitted.

Messrs Production and Event Services Ltd's lawyer proceeded with raising issues pertaining to certain technical aspects of this tender placing particular emphasis on the use of lasers by Messrs Welcomeurope.

Mr Cassar was asked to confirm whether the laser's specifications were thoroughly considered by his Board. In his reply the Chairman of the Adjudication Board stated that the Board was satisfied with the *light show* being offered as well as the creativity of the artist.

Prof Refalo intervened by asking Mr Cassar to quantify the number of lasers and canons to be utilised by Welcomeurope. Furthermore, Dr Mifsud insisted with Mr Cassar for the latter to confirm to those present whether they could make rightful comparisons between the presentations submitted to them.

Mr Cassar reiterated that the Board evaluated the presentations holistically and their objective was solely to award the tender to the offer, which apart from meeting specification requirements, would have provided its target audiences with the best value for money option.

Dr Mifsud continued to contend that the Board could not establish how Welcomeurope's tender worked out to be cheaper than the one submitted by PRES once it seemed clear to him that technical aspects were not thoroughly entered into.

With regard to the Dr Malcolm Mifsud's enquiry about the transmission of the events by international TV Stations, Mr Cassar replied that according to tender conditions they were going to give importance to those respondents who had overseas TV coverage. Also, he knew before the tender was issued that the European Broadcasting Union (EBU) was interested to cover the events in Europe and that they were going to be broadcasted live from two venues – Berlin and Warsaw. He said that every acceding country was

requested to transmit for 6 minutes – 3 minutes recorded which were to be utilised for promotional purposes and 3 minutes taken up by live transmission. Each country was required to send an artist to either Berlin or Warsaw to give a live show. He said that Vittorio Panchetti, who is a former member of the EBU, informed the Adjudication Board that if PRES won the tender, he would start talks with EBU to cover Malta's spectacle.

In reply to Dr Frendo's question, Mr Cassar stated that the procedure used in evaluating the tender was normal. Respondents could have submitted collective or separate prices since according to tender documents at para 2.2 tenderers were requested to submit their proposals for the three components either individually or collectively. He emphasised that they were looking after an artistic presentation which was of an international standard. Apart from this, the price element was also taken into consideration. He said that in this respect, Welcomeurope's offer was superior. With regard to live overseas TV coverage the tender conditions specified that such respondents would be favourably considered. Also he said that their intention was that Malta took advantage of the spectacle

When Mr Lou Bondi` made reference to a particular element (slide projections on St Angelo) which the Board decided upon, despite the fact that such an offer would be more expensive, Mr Cassar answered that both submissions had that element included. With regard to TV coverage Mr Cassar said that both respondents guaranteed that the spectacle would be televised live.

With reference to Mr Camilleri's comment relating to the letter dated 16 January 2004 sent by Mr Reichenberger, Mr Cassar declared that this letter was submitted with Welcomeurope's tender documents and that the Minister for Youth and the Arts did not receive that letter personally.

Before Mr Cassar finished his testimony, he tabled a letter dated 15 February 2004 from YADA dancers containing a declaration that the latter no longer formed part of the Productions & Event Services consortium.

Mr Tonio Briguglio, another Board member, was asked by Prof Refalo about the difference in price of Option 1 and Option 2. Mr Briguglio testified that the question was asked about the whole package/product and not solely on the 'Audio Visual' package. He insisted that, although the reply was given by Mr Robbie Williams, the question was asked in general and not directly to him.

When Dr Frendo asked Mr Briguglio about the reply given by Mr Robbie Williams, he stated that the difference in price was due to the fact that Option 1 catered for local consumption while Option 2 catered also for a wider international audience.

Another Board member, Mr Carmel Galea, corroborated the version previously given by Mr Briguglio confirming that the issue in question was raised at the end of the presentation and not during the 'audio visual' as was stated by Prof Refalo.

However, Mr Galea continued that, irrespective of the above, Mr Robbie Williams' reply had no effect whatsoever on his final decision because at that point he was already decided.

In reply to Dr Malcolm Mifsud's question, Mr Galea declared that, provided that the whole package met the required standard, he always considered to evaluate each tender holistically and not individually. He was convinced that Welcomeurope's Option 2 was the cheapest and the best offer.

Mr Andrew Psaila, Chief Executive Officer Public Broadcasting Services (PBS), took the witness stand and was duly cross-examined by, firstly, Mr Lou Bondi` followed by Mr Mario Camilleri.

Mr Psaila confirmed that they had contacts with the Live Events Department of the EBU and that it was agreed that the Grand Finale of the EU Expansion Celebrations event be televised live from Malta. He said that the programme will be coordinated by the EBU, with the German and Polish TV Stations being responsible to produce it. The EBU, arbitrarily, decided to specifically include Malta because of the Malta Light Monument artistically produced by Mr Gert Hof.

He stated that the PBS was a member of the European Broadcasting Union, which is an association of national broadcasters and that it always had rights to transmit such national events.

As Mr Joseph Spiteri (DG Contracts) was indisposed, all interested parties agreed to take his testimony by way of telephone conferencing following the witness's full disposition to collaborate.

In reply to Prof Refalo's questions, Mr Spiteri said that when the Contracts Committee received the Adjudication Board's report, it agreed with its recommendations. He said that the Minister of Finance and Economic Affairs convalidated the issue of this Departmental tender in terms of Regulation 4 (4) of the Public Service (Procurement) Regulations 1996.

He said that despite the fact that Welcomeurope's submission did not contain detailed pricing, the Adjudication Board informed them that their offer was considered complete. Their offer was accepted because it was the cheapest acceptable and met all tender basic requirements, including live transmission of the spectacle at midnight which included the Light Monument. He was not sure whether Welcomeurope offered lasers or searchlights/space canons.

With regard to PRES of ITC's offer, his impressions were that their offer was much more expensive than Welcomeurope's and that it met the required international standards as well as transmitting at midnight on 01.05.04.

Mr Camilleri asked Mr Spiteri to recall about when he protested with the Contracts Committee regarding the award of the said tender, the reply given was that their show did not qualify because of Mr Robbie Williams statement and that PRES had 4 lasers while Welcomeurop had 100. Mr Spiteri replied by stating that the Committee accepted the cheapest acceptable offer irrespective of the number of lasers. Mr Spiteri added that he was not a technical person and that he did not distinguish space canons and lasers. For him the crucial element was the light monument by Mr Gert Hof and the midnight transmission of the grand finale.

In reply to Dr Stefan Frendo's question regarding the Board's decision and the evaluation procedures, Mr Spiteri confirmed that this was taken unanimously and the process of evaluation was not done haphazardly.

When Mr Lou Bondi` made reference to the meeting he had with Mr Camilleri after the award of the tender, Mr Spiteri stated that any tenderer who felt aggrieved by the decision had a right to enquire why one's offer was not accepted. He added that it was the prerogative of the bidder concerned to decide as to whether he should submit an appeal or not.

Mr Mario Camilleri, the person responsible for various Departments at ITC as well as for the Production and Events Services Ltd, then took the stand giving a detailed procedural analysis of the preparations and subsequent composition of the tender documents. He took into consideration each and every item in the tender document to ensure that they submitted their offer according to the tender conditions.

During his cross-examination by Dr Malcolm Mifsud, he testified that when the tenders were opened, Synergix protested about the fact that Welcomeurope included one price for the three packages collectively. He drew the Adjudication Board's attention to consider whether, in view of these circumstances, they could stop procedures since it would have been difficult to allocate prices among them. The matter was referred to Welcomeurope but nothing changed because the latter convinced the Board that their submission was in accordance with the tender conditions. From the Schedule of Tenders it resulted that apart from a column for each component another column with the heading '3 No Items Together' was included and the reason given was that para 2.2 of the tender documents requested that the proposals for the three components could be given individually or collectively.

Then he gave an account of their presentation and information about the persons (including Mr Adrian Bell - light designer) who were involved in the grand spectacle. He said that Mr Galea should not have asked Mr Robbie Williams about difference in prices of audio visual's options A and B for the simple reason that he was not an expert on the matter. He declared that Mr Robbie Williams, contrary to what was stated earlier by the Adjudication Board members, was referring to the 'audio visual' programme only and not on the whole package when he said that Options A and B were for local and foreign consumption respectively.

As far as the TV coverage is concerned, Mr Camilleri stated that they had sought international television operators to transmit between 30 minutes to an hour of the event . He added that Oasi TV, which covered the whole of Europe and North Africa, was interested in transmitting the grand spectacle. He said that they discussed the uplink with Mr Andrew Psaila, CEO-PBS so that they could provide the necessary facilities to other TV companies.

With regard to prices, Mr Camilleri stated that the Adjudication Board did not consider the different options included in their submission. He contended that should both submissions be compared like with like (exclusive of lasers), PRES's offer would have been more advantageous.

PRES's representative went on to remark that concerning the issue of lasers/canons information given was misleading because Mr Gert Hof only used space canons in his shows, whilst their artistic designer, Mr Robbie Williams, was internationally renowned for light shows.

When Dr Anthony Cremona asked Mr Camilleri to confirm whether he had any kind of contact with Mr Lou Bondi` following the award of the tender to Welcomeurope, Mr Camilleri replied in the affirmative (following a heated cross debate with Mr Bondi`) that a couple of meetings and telephone conversations took place.

Dr Stefan Frendo then insisted with, Mr Camilleri for the latter to state what was the reason behind his meeting with the Minister for Youth and the Arts, the Hon Mr Jesmond Mugliett. He said that he requested this meeting to protest about the fact that, once Welcomeurope did not submit separate prices and itemised lists for the three components, their offer should have been disqualified. Mr Camilleri confirmed that Minister Mugliett did not personally intervene in the matter.

During his testimony Mr Camilleri also declared that he did not have access to Welcomeurope's tender. He was convinced that the tender was lost not on concept but on the 100 lasers.

As regards documentation available relating to international TV coverage, Mr Camilleri said that during their presentation there were Mr Vittorio Panchetti who was one of the owners of OASI and Adrian Bell who was affiliated to Channel 4. At this stage Mr. Camilleri tabled a document indicating that OASI TV were interested in transmitting the event.

Mr Camilleri's evidence was followed by the one given by Mr Angelo Attard - Project Manager and Technical Advisor but also responsible for health & safety, security, fire and quality management (ITC).

When requested to comment about the tender by Dr Malcolm Mifsud, Mr Attard stated that the event had to be of the highest standard and quality. He declared that the question regarding the difference in prices of Option 1 and 2 was asked directly to Mr Robbie Williams during the 'audio visual' presentation.

In reply to Mr Anton Attard's request to explain the distinction between Oasi TV and EBU network, Mr Angelo Attard stated that the former transmitted via satellite without national stations while the latter was a network of European stations.

On taking the witness stand Mr Mario Attard, another member of the Adjudication Board, was first cross-examined by Prof Ian Refalo. Mr Attard said that the question asked to Mr Robbie Williams was asked soon after PRES carried out their presentation because the Board could not distinguish the difference between the two options as far as quality and standard of the show was concerned. He confirmed that he understood that the figures mentioned by Mr Robbie Williams were in respect of the Audio Visual and not concerning the Grand Spectacle. However, Mr. Williams' comments were of concern to the Board. Mr. Attard said that Option 1 was known as the 'basic offer', while Option 2 included a number of extras. He stated that the basic offers of the two respondents were comparable. On the other hand, Option 2 of Welcomeurope was cheaper and of higher quality. He confirmed that the grand spectacle offered by PRES, as far as the basic offer was concerned, met the tender requirements. Prof Refalo clarified that according to the tender conditions it was the grand spectacle which had to be of an international standard and not the audio visual.

When he was cross-examined by Dr Malcolm Mifsud, Mr Attard confirmed that he was present when the tenders were opened. With regard to Welcomeurope's offer he said that in view of the fact that they submitted one price for the whole package, they could not analyse the three components separately but collectively. However, he acknowledged that it was difficult to distinguish the prices of Grand Spectacle from those of the Audio Visual. He opined that Welcomeurope's submission was not conditional because a number of alternatives were available and that the tender conditions allowed them to evaluate every submission in whole or separately.

When Dr Frendo asked Mr Attard to state whether the way Welcomeurope's submission was presented had created any difficulties during the evaluation process, the reply given was in the negative. He said that Welcomeurope's submission was unanimously accepted because of the quality of the presentation, the TV coverage, the high standard of the grand spectacle and the price factor.

Mr Attard was followed by Welcomeurope's representative, Mr Lou Bondi`, who took the stand.

When Dr Frendo asked Mr Bondi` to comment on Welcomeurope's offer, Mr Bondi` said that this was submitted in accordance with the tender conditions and objectives, with particular emphasis on the artistic show. In this respect they contracted two world-renowned artists namely Messrs Gert Hof and Ross Ashton respectively. The former did

the millennium shows in China, Hungary and Germany and was commissioned for the show regarding the launching of the EURO. The latter, who was the designer of the Queen's Jubilee celebrations, would be helping with the projections. He said that although the amount budgeted for these celebrations was considered low when compared to the Lm1 million spent on the millennium celebrations, the tender required respondents to present artists of an international standard.

He said that when they submitted one price for the three components collectively, they took a commercial risk. They also took into consideration the economies of scale. However, they still submitted their offer within the parameters of the tender conditions. He contended that they would not have been interested in providing one of the components or part thereof, since otherwise they would not have been competitive taking into account the fact that the show had to be of high quality within a restricted budget.

When Dr Robert Attard asked Mr Lou Bondi` to comment about the EBU transmission he stated that Mr Roger Waters was expected to premier part of his new opera during Malta's EU accession celebrations. He agreed to feature 15 minutes of his opera *Ca Ira* in the grand manifestation to be held at the Grand Harbour.

Dr Anthony Cremona then asked Mr Bondi` to elaborate on the EBU issue, Mr Bondi` said that the EBU agreed to allocate 15 minutes to Malta's celebrations, as against the three minutes given to the other nine acceding countries. Thus, Malta's manifestations would be broadcast in the most important grand finale show at midnight. He alleged that the other competitor did not have assurance by EBU as regards TV coverage.

With regard to contacts with Mr Mario Camilleri, Mr Bondi` denied that he ever requested any lasers. He said that he never received any proposal to integrate with his consortium.

Finally, Mr Bondi` was requested by Prof Refalo to give the names of the members of NnG, which was a member of the Welcomeurope Consortium, with Prof Refalo alleging that the father of Mr Gianni Zammit of NnG was a member of the Contracts Committee which was responsible for awarding the tender in question. However, following a phone conversation which Dr Frendo had with someone at the other end of the line who was verifying the validity of Prof Refalo's claim there and then, assurance was given to those present that the person specifically mentioned by PRES's lawyer, namely Mr Zammit had desisted from participating in any way during the whole process leading to the award of this tender.

The Chairman declared that the Appeals Board would investigate the matter. This board has subsequently received a sworn statement (dated 23.02.04) by Mr Joseph Zammit L.P. stating that he "did not in any way participate in the discussion leading to the recommendation for the award of this contract to the *WELCOMEUROPE* consortium, nor did" he "in any way whatsoever try to influence the Committee to award the contract to the mentioned consortium."

FINAL SUBMISSIONS

Following the summoning of all witnesses to the stand this Board requested the respective legal representatives to commence their oral submissions.

PRES's legal representative, Prof Ian Refalo commenced his intervention by persevering with his claim that in not being allowed by the Appeals Board to view the documentation requested by him, his client was placed at a disadvantage.

Prof Refalo stated, however, that notwithstanding this Board's ruling to this effect during the day's proceedings his client had managed to demonstrate that Welcomeurope's offer was not submitted in accordance with the tender conditions. Such conditions Prof Refalo argued, specifically required that respondents submit a price for each of the three components separately. The way the tender was presented by Welcomeurope did not permit the Adjudication Board to evaluate each package individually. Apart from this, the interested parties concerned could not compare the prices of each package individually when the schedule of tenders was published. He contended that Welcomeurope's tender should have been disqualified as it lacked a fundamental element of the tender conditions.

It was also argued that the fact that Welcomeurope had refrained from submitting in itemised format as duly requested in the tender specifications was *sui generis* a direct breach of tender conditions. Furthermore, Prof Refalo insisted that the Adjudication Board did not understand Mr Robbie Williams comments which were partly based on issues relating to the Grand Spectacle and partly relating to Audio-Visual matters.

In addressing those present Dr Mifsud strongly urged the Appeals Board to consider his client's claim which contends that the way the other party had presented the offer to the Adjudication Board was substantively misleading.

In his concluding submission and acting on behalf of Messrs Welcomeurope, Dr Cremona remarked that his client had managed to annul every objection raised by PRES amply demonstrating in the process that the award as given by the Adjudication Board was just in all aspects. It was also evident that the said Board had not acted in a negligent manner or frivolously as the members in question had ample experience and would have definitely deliberated upon the issue in a responsible and professional manner.

Moreover, his client did also manage to corroborate with documentary evidence the validity and extent of his offer doing away with any doubt which PRES would have tried to cast during the day's proceedings.

The fact that the tender was presented collectively instead of individually was not incorrect, since this was not a stipulated condition. This was simply a commercial risk taken by Welcomeurope Consortium.

At this stage the hearing came to a close.

Having considered all the above, this Board came to the conclusion that

1. PRES's submission regarding the invalidity of Welcomeurope's tender has not been proven to this Board's satisfaction. Clause 2.2 of the Tender Document clearly states that " proposals will be received for the three components ... individually or collectively ... "
2. the Adjudication Board decided to award the tender to Welcomeurope on the grounds of value for money as well as the quality of the spectacle as formally presented by the two parties in question and this Board finds no reason to cast any doubt on their evaluation method.
3. with regards to comments made by Mr Robbie Williams as referred to in the Adjudication Board's report, this Board feels that although the context of the comments may have been misunderstood by one or more members of the Adjudication Board, this Board considers that such an issue could not have had a marked bearing on the final decision of the Adjudication Board which was taken unanimously.
4. the specifications of the Tender Document did not provide for the supply of any particular number of lasers, space canons or any light equipment but provided for a holistic approach (as stated in Clause 4.6 of the Tender Document) based on a high standard spectacle. This Board therefore considers that the question of whether any number of lasers or any other light equipment were to be used is irrelevant.
5. this Board has already established that the quantity of lasers is irrelevant and that the award of the tender was correctly made on the basis of a holistic approach, it feels that the objection raised by PRES regarding pricing based on the number of lasers cannot be entertained.

On the basis of the above this Board agrees that the objections raised by PRES cannot be entertained and that the award to Welcomeurope was made correctly.

A. Triganza
Chairman
PCAB

A. Pavia
Member
PCAB

E. Muscat
Member
PCAB

27th February 2004