

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

07 DECEMBER 2020

DAY 319



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 07 DECEMBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Good morning DCJ.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: Yes Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you. Chairperson this week the commission from the Eskom work stream will be leading
10 evidence on what we have referred to as the transections and it is mainly the Tegeta issues emanating from some of the evidence that was led in phase 1 in regard to the pre-payments decisions made by the board.

Just by way of introduction in regard to that Chairperson back in 2015 and 2016 Eskom did some decisions – took some decisions in regard to a company called Optimum Coal Mine.

This mine Chairperson was at that time in some challenging position in regard to mining and the provision
20 of coal to Transnet – to Eskom I beg your pardon and it was seeking to negotiate better deals with Eskom.

There was some cooperation agreement concluded in 2014 which was to serve before the board. That cooperation agreement with an addendum to the coal agreement that existed at the time in order to amend the

terms of the agreement in regard to pricing served before the BTC in April.

The BTC did not make a decision Chairperson it referred the matter to the board. The timing is important because this matter was referred to the board on the 23 April 2015.

The board did not make a decision on the issue rather it decided to refer it to the newly seconded Mr Brian Molefe the announcement of whom was made on the 17
10 April 2015 by Minister Lynne Brown to second him.

The gains that had been made in the negotiation process with Optimum saw the beginning of the end of that process Chairperson as Mr Molefe then terminated the cooperation agreement, terminated negotiations agreements, insisted on Optimum continuing to provide coal to Eskom.

CHAIRPERSON: Ja as I recall one or other previous witness who testified on the matter – on the transaction I think may – it may have been I think probably it was Mr –
20 Is it Ephron from...

ADV SELEKA SC: Ephron.

CHAIRPERSON: Ephron.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes that they had – they had reached an understanding with various officials or structures within

Eskom who supported the proposal they had made for an adjustment I think on the price of coal. And there was a memorandum that was placed before the board.

ADV SELEKA SC: Yes.

CHAIRPERSON: Which had the support of management.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Of Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: But when that matter came before the
10 board Mr Brian Molefe had joined Eskom about three days
before

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: And his arrival saw a complete change of
attitude on the part of Eskom towards the deal that had
been proposed and been supported by various levels of
management.

ADV SELEKA SC: Yes.

CHAIRPERSON: And he adopted quite a hard line towards
them.

20 **ADV SELEKA SC:** Towards Optimum.

CHAIRPERSON: Yes. Maybe it was justified to do so
maybe it was not but I do recall that part of the evidence.

ADV SELEKA SC: Yes.

CHAIRPERSON: That there seemed to have been – he
seems to have taken a very hard line.

ADV SELEKA SC: Yes.

CHAIRPERSON: Towards them. Yes.

ADV SELEKA SC: Yes Chair. Yes indeed Chairperson.

So there the board on the 23 April 2015 does not decide the matter. It refers to Mr Molefe who had just arrived and in fact in the same meeting you see the board making its first decision in regard to the secondment of Mr Molefe.

The approved the secondment which was effective to start effectively on the 20 April 2015. And the handling
10 of the matter then leads to the termination, the enforcement of the 10.1 billion penalties which I might add while referring to them Chair once Tegeta obtained Optimum – acquired Optimum the – the penalties of 2.1 billion they get settled with Tegeta at R599 million but there are still deductions to be made to that amount.

The payable amount ultimately is only R255 million to be paid over 20 months Tegeta still defaults on that amount. It pays hardly half of that and immediately thereafter it goes into business rescue.

20 So Eskom although it used the – a huge amount against Optimum it reduced it significantly when Tegeta was the owner of the mine.

And then by the decisions regarding pre-payments which are made in favour of Tegeta and the narrative is that there are pre-payments made on an urgent basis.

The first one by Round Robin, the other one by telephone conference were made on an urgent basis for a different purpose – an ulterior motive. That motive being to assist Tegeta in the acquisition of Optimum.

There will be two submissions in respect of both decisions made and we will deal with the motivation contained in those submissions and the witnesses will be asked questions relative to the validity or otherwise of those motivations Chairperson.

10 We have that – that is the evidence and the elements of it will unfold Chairperson during the evidence of the various witnesses this week. I think that sums up what we have to do this week.

CHAIRPERSON: You may wish as you proceed with the evidence of various witnesses you may wish to try and identify areas that are really not in dispute that have been testified to by other people and focus on those where they are – there may be disputes.

ADV SELEKA SC: Yes Chair.

20 **CHAIRPERSON:** If possible.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja okay alright.

ADV SELEKA SC: Yes. Yes I am – ja – with that in mind Chair the persons that will be called mainly today are those that – I mean this week are those that for lack of a

better word implicated in the masterminding of these transactions. Thank you Chair.

So the first witness this week Chairperson is Ms Suzanne Daniels. She was the Company Secretary in 20 – from October 2015 at Eskom and she is ready to take the oath.

CHAIRPERSON: Do remember to raise your voice you have a soft voice.

ADV SELEKA SC: Ja.

10 **CHAIRPERSON:** So do remember to raise your voice.

ADV SELEKA SC: Indeed Chairperson.

CHAIRPERSON: Hm.

ADV SELEKA SC: So the first witness is Ms Suzanne Daniels who was the Company Secretary from October 2015 at Eskom and she is ready to take the oath.

CHAIRPERSON: Okay please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

ADV SELEKA SC: Suzanne Margaret Daniels.

20 **REGISTRAR:** Do you have any objections to taking the prescribed oath?

MS DANIELS: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MS DANIELS: Yes.

REGISTRAR: Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

MS DANIELS: So help me God.

CHAIRPERSON: Welcome back Ms Daniels. Thank you for coming back. Alright. You may proceed Mr Seleka.

ADV SELEKA SC: Thank – thank you Chair. Thank you Chair.

10 **ADV SELEKA SC:** Chairperson we using Eskom Bundle 18 – 18 Exhibit U34.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Ms Daniels affidavit is found on page 236.

CHAIRPERSON: Yes Ms Daniels looks like she wants to say something.

MS DANIELS: Yes please Mr Chairperson.

CHAIRPERSON: Yes.

20 **MS DANIELS:** May I please make a few remarks it will not take long before we start?

CHAIRPERSON: Okay five minutes, ten minutes?

MS DANIELS: It should not be...

CHAIRPERSON: A few min – okay alright.

MS DANIELS: It should not be that long.

CHAIRPERSON: Okay go ahead.

MS DANIELS: Thank you Chairperson. Thank you for the opportunity to make a few remarks before I deal with the questions.

I appreciated right from the start that going public with my disclosures on state capture at Eskom would bring both positive and negative feedback. Since making my disclosures I have been maligned and attacked as a disgruntled opportunist seeking some form of redemption.

What is particularly galling is that the parties who
10 have set out to crucify me and paint me as the villain are part of the crew who in fact are beneficiaries of the proceeds of state capture.

What I did not realise is how close being a whistle blower is to being a scapegoat. It would appear from my treatment that unless you are a whistle blower who has made exactly zero mistakes you are likely to become an object of scorn.

Very few whistle blowers are pristine. Very few of us carry a halo and yet we try to do the right thing and
20 expose wrongdoings even when some of the exposure may have affect our own reputations.

When I made my disclosures I admitted to the errors I have made and explained their contents. My admissions are a mark against my name that has served those with far greater culpability in the wrongdoing at

Eskom very well.

There are people with greater power than me. People who unlike me benefitted from their actions. These are people who now use Suzanne Daniels as a scapegoat for their wrongdoing.

I have nothing. I have lost everything. I may not be able to work in my profession again. Financial and professional ruin is often the lot of whistle blowers. Not to speak of death threats and constant fear. My daughter is
10 now abroad because of the threats we received.

When the drivers testified here before the commission Mr Chairperson my blood ran cold when they repeated the messages they received.

I received those same messages verbatim only difference was mine was anonymous. The other threats I mentioned the last time I testified. I watched Mr Koko's testimony here before the commission last week and I was stunned at how matters unfolded. He made a number of spurious allegations that went unchallenged as they did not
20 make their way into his affidavit.

Chairperson Mr Koko has sought in this commission to insinuate and it was I rather than him who was the link between Mr Essa's designs and various nefarious decisions at Eskom.

However smoothly he talked anyone who knows or

has dealt with Mr Koko knows this to be untrue. Listening to him seeking to advance his version with selective anecdotes and unrelated events I could only think of the remark of a prominent former investigative journalist. I will put his remark a little bit more delicately.

He said Mr Koko was Mr Essa's indentured servant. Or maybe pet comes closer to the original remark because they communicated all the time like a boss micromanaging an underling.

10 And those of us lower down the chain of command were all prevailed upon or manipulated or misled in various ways to ensure that Mr Koko's true principles were satisfied.

I have alerted the commission and other institutions to the extent of Mr Koko and Mr Essa's communications which proves the depth of their relationship. I do not have this proof myself in the form of call logs or memory caches or data usage. I do not have the power to obtain those kinds of records.

20 But the commission presumably has the power to obtain these records and thus to readily corroborate what I say about Mr Koko being the true conduit for Mr Essa and Gupta instructions into Eskom.

In addition evidence of emails, overseas trips and meetings at the Saxonwold compound have emerged

through various sources and I wish to make particular reference to Mr Koko's testimony before the Parliamentary Portfolio Committee.

In that testimony Mr Koko confirmed

1. That he knew Mr Essa.
2. That he had visited Mr Essa at his offices at Melrose Arch.
3. That he had actually had a meeting with Mr Essa to discuss the Trillian payments.

10 So other Eskom rollers have – sorry – other Eskom role players have testified here like Dr Ngubane and Ms Klein and I am sure more will appear in the coming days all were in the positions of power far greater than to that which I ever held.

The all had far more to gain than me whether financially or by way of power from the bad decisions made at Eskom. By virtue of my role these decisions flowed through – flowed past or through me and for this reason I am a handy scapegoat for some of them.

20 What also unites these people is the treatment at this commission. While their testimony with all due respect Chairperson attracted mainly geniality and chuckles and questions that provided a platform for their version to credibly emerge my own prior experience here is different.

My testimony plainly provoked incredulity in you

very pointed cross-examination and even statements that indicated free judgments. These are obviously my subjective views Chairperson and I do not want to play the victim.

I welcome the interrogation and I accept that you may descend into the arena however when my accusers or higher social and political rank than me do not also get the same hard ball questions this leaves a bitter taste in my mouth.

10 Their stories plainly provided the same openings for interrogation and an impeachment and yet none who faced insistent requests that they concede that their versions conflicted with their duties or common sense. You have an extremely difficult job Chairperson and I ascribe no ill-tent or personal biased to you at all but we cannot have a situation where witnesses on different scales of the same dispute of facts receives such a disparate treatment from the bench which is my impression of my situation.

20 To conclude my own evidence about Mr Koko's role and the suspected role of other people in facilitating Mr Essa and the Gupta interests of Eskom here at Eskom can be corroborated by me.

But I hope that just as much as the commission has quite inter-harshly interrogated my version of events it will also energetically use its powers to corroborate my version

also.

Thank you for listening.

CHAIRPERSON: Well Ms Daniels we both the evidence leaders and myself want to be fair to everybody but we accept that people will have their views about whether we are fair or we are not fair and as for me while I care that people see that we are fair I am not going to try and make sure that it is their kind of fairness that I use. It is fairness as I understand it that I will use – that I have
10 always understood that I will use.

You and other people might think differently both in regard to the evidence leaders and in regard to me but we will always – I certainly will always follow fairness as I understand it which might differ from your fairness as you expect it – to understand it and somebody else that will stick to the fairness as we understand it.

When it comes to the questioning of witnesses there are various factors that – that count. Today you might be questioned in a certain way which is different from the way
20 you might be questioned three months later. When certain investigations have been completed that were not completed when you appeared for the first time there are various factors that – that come in.

So – but as I say the public and individuals who are implicated or not implicated are free to have their own

understanding of whether we are being fair to witnesses and to implicated persons. But as I say I am not going to change anything just because somebody might think this is fair or not fair. I have a certain understanding of fairness that I am following and that is the fairness that I am going to use.

As I say if you appear today you might be questioned in a certain way because of certain circumstances. Maybe the investigation into certain
10 matters in which you are alleged to have been involved have not – has not been completed.

When you appear later on and that investigation has been completed you might be questioned in a different way. Or certain information might not have been confirmed at a certain time and at a certain time it is confirmed then you are confronted with it.

But we – we are not going to try and follow anybody's program. We will follow only the commission's program of how we do things.

20 But throughout we remain committed to do the best we can to be fair to everybody as we understand fairness. Okay. Alright.

MS DANIELS: Thank you Mr Chairman as I said thank you for allowing me to speak.

CHAIRPERSON: Ja. Mr Seleka I do not know if you want

to say anything arising out of Ms Daniels' remarks?

ADV SELEKA SC: Ja Chair I might add that to – what the Chairperson is saying Ms Suzanne Daniels – Ms Daniels it also depends on the level of a person's involvement in what we find in the investigation. As the Chairperson says the manner of pursuing questions against an individual witness tends on what the evidence is and what it points in regard to the individual witness.

So I concur with the Chairperson on that point.

10 **MS DANIELS:** It is not intended to be a debate Mr Chairman I – sorry I – it was not intended to be a debate or anything I was just expressing my subjective view.

CHAIRPERSON: For some reason I struggle to hear you; I do not know why in terms of what you are saying. Just try again.

MS DANIELS: Okay. I was not intending it to be a debate Mr Chairperson it was just my subjective view.

CHAIRPERSON: No, no, no, no, nobody wants...

MS DANIELS: I do not concede...

20 **CHAIRPERSON:** Nobody wants it to be a debate.

MS DANIELS: Yes.

CHAIRPERSON: You said something and I said something so that you know what my position is and the evidence leader said what he had to say and we move on.

MS DANIELS: Okay thank you.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you Chairperson. Ms Daniels the bundle in front of you contains an affidavit on page 236 – now you follow the page numbering on the top left hand corner – page 236. Between tramlines is affidavit on transactions.

MS DANIELS: Yes I am there.

ADV SELEKA SC: You see that. This affidavit runs up to page 267.

10 **MS DANIELS:** Yes I am there.

ADV SELEKA SC: Yes. There is a signature there by the deponent do you confirm that to be your signature?

MS DANIELS: Yes I confirm that is my signature.

ADV SELEKA SC: On 30 November 2020.

MS DANIELS: Yes that is the correct date.

ADV SELEKA SC: And you confirm the affidavit to be your affidavit then?

MS DANIELS: Yes that is my affidavit.

20 **ADV SELEKA SC:** Thank you Chair. Chairperson it is part of the Reference Bundle.

CHAIRPERSON: You – you refer to a Reference Bundle but the bundle I have with me is Eskom Bundle 18. I do not know what Reference Bundle is supposed to mean.

ADV SELEKA SC: Oh yes Eskom Bundle.

CHAIRPERSON: Reference Bundle is normally used for

documents other than affidavits.

ADV SELEKA SC: Yes.

CHAIRPERSON: As well as legislation and things like that.

So I am not sure.

ADV SELEKA SC: Sorry Chair. Let us go with Eskom Bundle 18.

CHAIRPERSON: Ja.

ADV SELEKA SC: It is Exhibit U34 and we could mark the affidavit of Ms Suzanne Margaret Daniels as Exhibit 34.1.

10 **CHAIRPERSON:** 34 without the U or U34.1?

ADV SELEKA SC: U34.1.

CHAIRPERSON: Ja okay. The affidavit of Ms Suzanne Margaret Daniels starting at page 236 is admitted as Exhibit U34.1.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: You nevertheless might wish to consider whether that writing there that says Reference Bundle is correct or whether it will just cause confusion?

ADV SELEKA SC: Ja.

20 **CHAIRPERSON:** Because a Reference Bundle will normally not ...

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Will not include affidavits and so on.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Ms Daniels a great deal of the evidence on the Tegeta matter was led in phase 1 of the commission and I would like you to tell the Chairperson and as we go along we will indicate what has come before this commission so that it does not have to be traversed.

But we would like you to indicate to the Chairperson in regard to the Tegeta matter in 2015 when do you first
10 become involved or faced with this matter?

MS DANIELS: Mr Chairman I first become involved in the developments that would culminate in the decision by the board say at the 1.68 million to Tegeta.

ADV SELEKA SC: Ja.

MS DANIELS: And that was in and around November 2015.

ADV SELEKA SC: I think I cannot hear you also.

MS DANIELS: Oh.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** You need to adjust your microphone.

CHAIRPERSON: There is a problem.

ADV SELEKA SC: Ja.

CHAIRPERSON: Is it hot – can we switch off the air conditioner? Will it be hot for people?

ADV SELEKA SC: Ja the...

CHAIRPERSON: Or shall we switch it off for the – for a certain time and if there are complaints then we can switch it on.

ADV SELEKA SC: I do not see the Reverend here.

CHAIRPERSON: I think somebody will – or put it down a bit not – because it also makes some noise. Okay alright.

MS DANIELS: Mr Chairman, I became involved in the developments that we had that culminated in a decision by the board to prepay R 1.68 billion to Tegeta in and around
10 November 2015.

CHAIRPERSON: Yes. What was your position in the company at the time? Where you company secretary?

MS DANIELS: Yes, Mr Chairman. At the time, I held the position of Company Secretary to which I had been appointed on the 1st of October 2015.

CHAIRPERSON: In November 2015?

MS DANIELS: [No audible reply]

CHAIRPERSON: In November 2015?

MS DANIELS: October 2015. I had to ...[intervenes]

20 **CHAIRPERSON:** You became Company Secretary in October?

MS DANIELS: Yes.

CHAIRPERSON: But your involvement in the matter was in November. Is that right?

MS DANIELS: That is correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: So what ...[intervenes]

CHAIRPERSON: Well, maybe Mr Seleka because we have got to also assist the public to follow what is happening.

ADV SELEKA SC: Yes.

CHAIRPERSON: It might be necessary to just through Ms Daniels inform the public what this whole transaction was about.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Ja, before we proceed.

ADV SELEKA SC: Yes. Yes, Ms Daniels from the evidence that was led. The Commission understand that the Eskom Board were – was considering the – it took part in discussion that had to do with the acquisition by Tegeta or Oakbay of Optimum.

Optimum was, at the time, providing coal to Eskom in terms of a Coal Supply Agreement that dated back to 1983. The mine had exchange hands over time and at this time and point, the mine was owned by Glencore.

20 Glencore owned Optimum Holdings. Optimum Coal Holdings which was a holding company of Optimum Coal Mine.

Now during this time, these discussions between Optimum and Eskom to renegotiate the agreement, as I did in my opening address, did say.

Oakbay and Tegeta at some point, tendered to buy Optimum. They tendered to purchase Optimum for the price of R 2.1 billion. It would appear from the evidence that Optimum – or rather, Tegeta and Oakbay did not have the funds to procure their position.

As a result of which, we see steps taken within Eskom. They seem to be independent of what is happening in regard to this transaction. There are urgent steps taken in December 2015 to approve a prepayment of R 1.68 billion for
10 Tegeta. And the reasons are given to be an emergency supply of coal.

That prepayment is agreed to by the board but the very next day, it was changed into a guarantee. But the decision for a guarantee, does not go back to the board. It is done by the CFO, on the face of it, in the terms of this evidence.

And it would appear that the guarantee of that R 1.68 billion issued by Eskom in favour of Tegeta was a tool used by Tegeta to show the business rescue practitioner of OCM Optimum Coal Mine that it has the necessary funding to
20 pay for the purchase of the mine.

That is the one transaction. Some four months later, we are now in 2016, April 2016 ...[intervenes]

CHAIRPERSON: If you are going to ask her to confirm, you might need to ...[intervenes]

ADV SELEKA SC: To ask...

CHAIRPERSON: To ask her because by the time you are finished, she may have forgotten.

ADV SELEKA SC: Okay thank you Chair.

CHAIRPERSON: Ja. You might get her to confirm how much of what you have said is in accordance with her understanding.

ADV SELEKA SC: Yes. Oh, Chair now I get – I get the Chairperson's idea.

CHAIRPERSON: H'm.

10 **CHAIRPERSON:** Do you, Ms Daniels, recall those facts.

MS DANIELS: Yes, Mr Chairperson that is in accordance with how I understood happenings to have unfolded.

CHAIRPERSON: Ja. Now could you tell the Chairperson then what role did you play in the build-up to the decision made by the board on the 9th of December 2015 regarding the prepayment of R 1.68 billion?

MS DANIELS: Mr Chairperson, I think the first point of entry for me was a meeting of the 24th of November 2015. Mr Koko asked me to attend a meeting. It was between the
20 Optimum – he said it was between Eskom and the Optimum Business Rescue Practitioners and his specific request was to ask me to take minutes because it was going to be a particularly important meeting. Can you hear me?

ADV SELEKA SC: [No audible reply]

MS DANIELS: Okay. So this meeting took place on about...

In fact, it takes place on the 24th of November. The record shows, 24 November 2015. At this meeting, I played no role.

There were – I, other than to take minutes, and I compared my notes with Ms Nteta, who was the Coal Supply Manager. She was also present.

For me, at this meeting, it was my first encounter with the Oakbay representatives, Mr Nazeem Howa and Ms Ronica Ragavan were present together with Mr Twala. They represented Oakbay.

10 Mr Marsden was there from the Optimum Business Rescue Practitioners and there was also a representative from Glencore but I could not recall his name but it is in the minutes that he was there, and Mr Shaun Blankfield.

For me the meeting was significant in – it was at this meeting that Mr Koko raised expectation on the part of Eskom that for the sale of Optimum Mine as a – that the sale of Optimum as a single entity would not be acceptable to Eskom.

20 In the structure that Mr Seleka explained, there was a holding company and Optimum Mine was actually run as a subsidiary of Optimum Coal Holdings.

So there were other resources in the Optimum stable and Mr Koko mentioned these. He emphasised that, you know, that it would be more acceptable to Eskom that Optimum Coal Holdings become the object of the sale.

Amongst them, was Koornfontein Mine which was also another source of supply to Eskom. They produced high-quality coal at this stage.

At the point of this meeting Mr Chairman, to the best of my knowledge, you know, the matter had not actually served before the board in the manner brought here with the acquisition of Optimum Coal Holdings.

So this was a new event. In fact, it was also new to the Oakbay representatives because they pointed out that they
10 did not have a mandate to discuss that and that they would have to go back to their and they would discuss it with the Business Rescue Practitioners later that day, which I understand...

In the minute it said at 17:30 – I am not sure if that meeting happened in – at that time but they needed a mandate to discuss it.

ADV SELEKA SC: So Ms Daniels, is it correct that prior to that point or up until that point, the sale that had been negotiated was in regard to the acquisition of Optimum Coal
20 Mine (Pty) Ltd?

MS DANIELS: That was my understanding from the meeting Mr Chairman.

ADV SELEKA SC: So what you are saying is, Mr Koko was then expanding the scope of the acquisition to include OCM Coal Holdings, the assets belonging to OCM Optimum Coal

Holdings?

MS DANIELS: Yes, that is correct Mr Chairperson.

ADV SELEKA SC: And what was the response from Mr Howa?

MS DANIELS: [No audible reply]

ADV SELEKA SC: Is it Mr Howa who responded?

MS DANIELS: Mr Howa responded that they did not have a mandate to discuss the purchase of Optimum Coal Holdings and that they needed to reconvene with the Business Rescue
10 Practitioner.

In my notes it said that he would have to get a mandate from his board to discuss it with the Business Rescue Practitioner.

ADV SELEKA SC: Yes. So just take us then to what happened next, after this?

MS DANIELS: The next time I get involved is on about the 4th of December.

ADV SELEKA SC: It is about the 4th...?

MS DANIELS: Of December 2015. My apologies.

20 **ADV SELEKA SC**: 24th of December 2015?

MS DANIELS: Ja.

ADV SELEKA SC: Ja. And what happens there?

MS DANIELS: Mr Koko then requested me – he was Group Executive Generation – he requested me to assist him with the drafting of the correspondence to the Director General of

Mineral Resources and the document should have been titled Optimum Coal Mine (Pty) Ltd, our supply to Hendrina Power Station.

ADV SELEKA SC: And you had worked this time?

MS DANIELS: I cannot recall. I was at the office at that time. I think the 4th of December might have been the Friday afternoon.

ADV SELEKA SC: So Mr Koko is requesting you to do what?

10 **MS DANIELS:** To draft correspondence for him.

ADV SELEKA SC: Okay. Did you do that?

MS DANIELS: Yes, I did.

ADV SELEKA SC: Yes. And it is correspondence to what effect?

MS DANIELS: It was really – set out in broad terms what he wanted to say to the Director General. He wanted to make the Director General aware of the challenges Eskom was facing in respect of the coal supply to Eskom.

20 And the other supply risk that Eskom was facing and he was not clear on the type of assistance that he wanted the DMR to lend to Eskom.

And what I can say is, what initially started out as a reference to Hendrina ultimately included the supply challenges faced at Amot and Komati Power Station as well.

ADV SELEKA SC: Yes. Please turn to page 270 in your

bundle.

CHAIRPERSON: What page?

ADV SELEKA SC: Two, seven, zero Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: 270. Ms Daniels, can you identify the document?

MS DANIELS: Yes, I can.

ADV SELEKA SC: Yes, what is it?

MS DANIELS: This is the letter addressed to Dr Thibedi
10 Ramontja, the Director General of the Department of Mineral
Resources and it was signed by Mr Koko on the
6th of December 2015 and this was the final version of the
letter that I had prepared.

ADV SELEKA SC: That you what?

MS DANIELS: That I had prepared.

ADV SELEKA SC: That you had prepared for Mr Koko.

MS DANIELS: For Mr Koko, yes.

ADV SELEKA SC: Yes. So Dr Ramontja has testified
before the Commission. So the letter is common course.
20 Did you understand what Mr Koko sought to achieve by this
letter?

MS DANIELS: It was not clear at the time Mr Chairman
what he sought to achieve. It was – ja, he just – end of the
letter was: I request your assistance in this regard.

ADV SELEKA SC: Did he – did you ask him what

assistance he sought you to obtain from the DMR?

MS DANIELS: At the time, he did not really answer the question. I did ask him but he did not answer the question.

CHAIRPERSON:

ADV SELEKA SC:

He just wanted the put the information before the DMR.

ADV SELEKA SC: Chair, should I read certain salient ...[intervenes]

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** ...points of the letter into the record?

CHAIRPERSON: Ja, ja. H'm.

ADV SELEKA SC: Thank you, Chair. So the letter reads – it is addressed to Dr Thibedi Ramontja:

“Dear Dr Ramontja.”

And it is Optimum Coal Mine, is the subject line, Coal Supply to Hendrina Power Station.

“As you may be aware, Eskom has been involved in a legal wrangle with the above supplier from August this year.

20 In rather dramatic fashion, the company was placed under business rescue and Eskom was faced with intermittent veiled threats of liquidation while at the same time, the Business Rescue Practitioners reportedly sought to constructive engagement between the parties.

From Eskom's perspective, it was expected that at Lemko Operation, Optimum Coal Mine would enjoy far more support on the condition of funding for limited time periods that was on offer.

Optimum supplies, one of Eskom's key contributors to the National Power System, as Hendrina Power Station is a stalwart in the Eskom fleet, supplying approximately 200 00 Mega Watts to the National Grid.

10 Lemko was fully aware of the dynamics and history relating to the nature of the Coal Supply Agreement and its structure when it concluded the sale with its previous owner.

At the latest meetings of the parties, the Business Rescue Practitioners together with the Glencore representative, indicated that Optimum is being rescued and that it would honour the contract in its current form with no amendments.

20 They further advised that they will follow the contract to process the Eskom claim of R 2.2 billion.

They made it clear that they are not insisting on the extension of the Koorfontein Coal Supply Contract with Eskom. They insisted that the extension of Koorfontein Coal Supply Contract is at the

discretion of Eskom.

Eskom is perplexed by the turnabout, given the events of the past few months and that the blatant disregard that Optimum displays for the impact that the threats of liquidation has on the precarious balance of electricity security and commercial viability.

As at Lemko Operation, Optimum surely cannot be perceived to be acting in the national interest.”

10 Let me read the next – the second paragraph on the next page. It says:

“While Eskom has issued requests for proposals to the open market, the tender submissions indicate that we will not have sufficient volumes to meet the requirements for Amot.

Based on previous test, Eskom can confirm that the coal qualities at Optimum are suitable for Amot’s burn requirements and will pass the necessary combustion tests.

20 Based on Optimum’s current mine plans, there should be sufficient coal volume to serve both power stations. Therefore, Optimum becomes highly sought after source for Amot as well.”

In the second last paragraph, he says:

“The risk of security supply for Hendrina Power

Station, Komati Power Station and Amot Power Station is of such key national interest that we thought it appropriate to bring it to your attention, this upcoming adversity facing Eskom will require some form of intervention on the part of the Department of Mineral Resources to assist Eskom in leveraging the necessary key-authorities to assist me, assuring resolution to the course of supply situation and certainty going forward.

- 10 I would request your assistance in this regard.
- Should you require any more information, please do not hesitate to contact me.”

So Ms Daniels, you say you then assisted him in drafting this letter?

MS DANIELS: Yes, that is correct Mr Chairman.

ADV SELEKA SC: We know from the evidence presented in Phase 1 that there was a response to this letter from Dr Thibedi Ramontja.

MS DANIELS: Yes, that is correct.

- 20 **ADV SELEKA SC**: Were you aware of that response?

MS DANIELS: Yes.

ADV SELEKA SC: Just briefly. Your recollection of what the DMR’s response was.

MS DANIELS: [No audible reply]

ADV SELEKA SC: Are you looking for that response?

MS DANIELS: Yes, please.

ADV SELEKA SC: Let us see what – on page two, six...
Page 276.

MS DANIELS: [No audible reply]

ADV SELEKA SC: Page 276.

MS DANIELS: My apologies.

ADV SELEKA SC: Just briefly what the response was.

MS DANIELS: Yes, he spoke about the transfer of the
mineral(?) on an urgent basis. It also spoke about a
10 financial provision due to the historical liabilities and its
holding levels for Optimum Coal Holdings, and it then spoke
about driving transformation. I think I just need to read the
whole sentence.

“In return for the new owners honouring the current
contract up to 2018 and for driving transformation,
we would like to propose that consideration be made
for some prepayment to be made for up to one year
of coal supply, understanding the upfront capital
injections to be made, ...[indistinct] to meet coal
20 prior requirements from these mines.”

[Speaker not clear.]

ADV SELEKA SC: Ja. In a nutshell, what has become
apparent is that this letter has been used as a basis for the
board decision in regard to the prepayment.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: H'm. We can see from your affidavit that you took part in the drafting of a submission that was given to the board in regard to that prepayment request for a prepayment decision.

MS DANIELS: Yes, that I confirm in my affidavit.

ADV SELEKA SC: Can you tell the Chairperson how did your involvement come about?

MS DANIELS: Mr Chair, roundabout the – I think it was the 7th of December 2015, I received a call from Dr Ngubane, 10 who was the chairman of the board at the time, with an instruction to convene a meeting and this was the executives, Mr Koko and Mr Singh in preparing the necessary documentation for circulation of the board.

At that stage, he was not specific as to what the contents of the submission was going to be about but he told me to speak to the executives. The correspondence between the DMR would eventually become part of that board submission pack.

After the call with Dr Ngubane, Mr Koko did request me 20 to prepare the necessary paperwork for the board's submission and consideration, and it was headed... I am just trying to...

I am just trying to find the copy on the... It was the – the title of the submission was: Pre-purchase of Coal from Optimum Coal Mine (Pty) Ltd.

So in this, I started interacting with Mr Koko and Mr Singh to get the necessary information. And there were a couple of drafts of the submission. And so, as the Head of Generation, Mr Koko needed to provide the coal supply implications while Mr Singh provided the financial arguments, et cetera.

So that is the information I then used. And while we were drafting, the changes were communicated, either I sent it by email or telephonically to Mr Koko and Mr Singh
10 respectively.

ADV SELEKA SC: Yes, in regard to the email, we have asked whether you could provide us with those emails.

MS DANIELS: I did not ...[intervenes]

ADV SELEKA SC: Could you obtain the emails?

MS DANIELS: I did not have all the emails Mr Chairman. What I did have, I think, we compared what the Commission has and what I have. So it shows the various drafts. Where there are not replies, that is when I say, you know, there were telephone exchanges.

20 **ADV SELEKA SC:** Yes. I just missed what you said about Dr Ngubane. I could not hear you properly there. He gave you a call...?

MS DANIELS: He gave me a call roundabout the 7th of December.

ADV SELEKA SC: Yes?

MS DANIELS: And he asked me to convene a meeting of the board.

ADV SELEKA SC: Okay. Because this is what I want to tell you. In his affidavit, Dr Ngubane says in regard to this meeting you are about to go in to:

“The Company Secretary, Ms Daniels requested an urgent meeting on the basis of the letter Mr Matshela Koko had written to the DG of the Department of Mineral Resources.”

10 **MS DANIELS:** No, Mr Chairman I would not call the meeting. The meeting would be... I mean, as the Company Secretary, the meeting would be the prerogative of the board, the chairperson.

So I would – Dr Ngubane definitely called me to say that: Please, assist the executives and convene this meeting. They will provide the information.

ADV SELEKA SC: So convening this meeting, was not your initiative.

MS DANIELS: No, it was not my initiative.

20 **ADV SELEKA SC:** Okay. So a submission is prepared. You prepare the submission. Assist with information, you say you obtained from Mr Koko and Mr Anoj Singh. And where does it get to be submitted?

CHAIRPERSON: Just one second Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: Just go back to the two versions. Your version and Dr Ngubane's version about who said there should be a meeting of the board should be called. You say that he instructed you to convene a meeting of the board. And according to Mr Seleka, he says ...[intervenes]

ADV SELEKA SC: Requested an urgent meeting.

CHAIRPERSON: ...requested an urgent meeting of the board. And you say you did not request a meeting of the board. And as I understand you, you say you did not request
10 because it would not be up to you whether there should be a meeting of the board. Is that right?

MS DANIELS: That is correct Mr Chair.

CHAIRPERSON: Could it be that you suggested as Company Secretary that there was a need for a board meeting and you left it up to him whether he went along with the suggestion because I guess it is a suggestion you could make.

MS DANIELS: Under normal circumstances, yes Mr Chairman, I may have been able to do that but at this
20 stage, I did not have enough information. You know, when he called me, all that he said is that, I would need to convene a board meeting and that I would get the information from the executives.

CHAIRPERSON: H'm, h'm.

MS DANIELS: And you know, given the time of the year, it

would have been very difficult to do unscheduled meetings.

CHAIRPERSON: H'm. Yes. Continue Mr Seleka.

ADV SELEKA SC: Thank you Chair. You see, he carries on further and just listen to the picture of things ought to be painted here.

10 “So Ms Daniels request an urgent meeting on the basis of the letter Mr Matshela Koko had written to the DG of the Department of Mineral Resources on 6 December 2015 and the undated response of the DG and the copies are attached.

 The Company Secretary (he goes on to say) presented the memorandum dated 8 December 2015, dealing with the urgency of the matter.”

 And he attaches a copy as well. So the impression created – and maybe he will clarify when he is here – is that you called the meeting, you then presented the memorandum in regard to that.

20 Well, I suppose this memorandum is the submission that we are referring to here but it seems to be something that, on his version would have come from you, in your initiative, calling a meeting in submitting this memorandum.

 Did you sign the memorandum?

MS DANIELS: No, I did not sign the memorandum Mr Chairman. It was signed by Mr Singh in his capacity as

Chief Financial Officer and it was signed by Mr Koko as the Group Executive for Generation.

ADV SELEKA SC: Yes. So what did ...[intervenes]

CHAIRPERSON: I am sorry. The Chief Executive of – the Group Chief Executive of Eskom and financial officer or financial director. They were *ex-officio* members of the board, is that correct?

MS DANIELS: That is correct, Mr Chair.

CHAIRPERSON: What about the company secretary, is
10 the company secretary also an *ex-officio* member of the board or does he or she simply attend to – facilitate recordkeeping and so on?

MS DANIELS: Mr Chairman, I think that is one conception that one needs to debunk, the company secretary is a not a member of the board, has no voting powers. My function was to ensure the smooth – so it is a very high level technical clerical role in one aspect and it would ensure that the meeting is run sufficiently, that they run smoothly, that the minutes are taken and that meetings are convened
20 at the request of the Chairman particularly.

CHAIRPERSON: The company secretary would provide basically a resource to the board.

MS DANIELS: Yes, that is correct.

CHAIRPERSON: To make the work of the board easier, to make sure that records are kept properly and also advise

the board on some legislative matters?

MS DANIELS: Yes, I had been asked, you know, in the course of my – in my duties to get – obviously either advise on governance issues or obtain legal opinion, etcetera, which came later.

CHAIRPERSON: Ja, okay, Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Just for completeness on that your statutory duties in Section 88 of the Companies Act, I am sure you will recall them, Ms
10 Daniels, some of them is to ensure that the minutes of all shareholders' meetings, board meetings and the meetings of any committee of the directors of a company or of the company audit committee are properly recorded in accordance with this Act. Now they are found in Section 88(2) of the Companies Act 71 of 2008. Ja, it is a list of five, six, seven duties including you to avoid – I mean, to provide the directors collectively and individually of guidance on their duties, responsibilities and powers, making them aware of the law and matters affecting the
20 company.

So here is a submission prepared by you with – well, with information from the CFO and Mr Matshela Koko. What is the purpose of the submission?

MS DANIELS: Can I refer to the submission?

ADV SELEKA SC: Well, you can tell us from your

recollection. I will assist in regard to the – where you find the submission, if it is, page 281.

MS DANIELS: I think, in just high level terms, Mr Chairman, it was to negotiate and conclude the pre-purchase of coal from Optimum Coal Mine.

ADV SELEKA SC: It was to...?

MS DANIELS: What the submission says, it was to negotiate and conclude a pre-purchase of coal agreement for the proposed owners of Optimum Coal Mine.

10 **ADV SELEKA SC:** Ja, I think your mic is again not right and ...[intervenes]

MS DANIELS: Did you hear me?

CHAIRPERSON: Just continue, I am looking at the beginning of the submission.

ADV SELEKA SC: Yes.

MS DANIELS: Mr Seleka, just continue?

ADV SELEKA SC: Thank you, Chair. Now that submission is on page 281, you confirm that is the submission?

20 **MS DANIELS:** Yes, that is correct.

CHAIRPERSON: That is where I am looking.

ADV SELEKA SC: Yes, it is:

“Executive summary round robin submission to board of directors.”

Title of the submission:

“Pre-purchase of coal from Optimum Coal Mine
(Pty) Ltd.”

Do you see that, Ms Daniels?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Can you explain that to the
Chairperson? It is a pre-purchase of coal from Optimum.

MS DANIELS: So in essence it was to prepay for coal.

ADV SELEKA SC: So who – so the intention here is to
make a submission to the board motivating for the board to
10 prepay for coal from Optimum.

MS DANIELS: That is correct, Mr Chair.

ADV SELEKA SC: Not from Tegeta.

MS DANIELS: Not from Tegeta.

ADV SELEKA SC: Now paragraph 2 says:

“Resolution required It is hereby resolved that the
request from the Department of Mineral Resources
is hereby noted.”

And what request are they referring to?

MS DANIELS: This was the request to consider payment
20 of R1.7 billion upfront, as you would have seen in the letter

ADV SELEKA SC: You mean the letter on page 276?

MS DANIELS: The letter on page 276, it says:

“Propose for consideration be made for some
prepayment to be made up to one year of coal
supply.”

ADV SELEKA SC: Ja, let us go to page 276 please. The last paragraph in that letter, which is undated, it says:

“Financial provision due to historical liabilities at OCH level is estimated at R1.7 billion. The amount still has to be confirmed through a process which will involve the parties concerned.”

I do not know whether anybody at Eskom or board level, yourself, did you understand what that statement meant about financial provision due to historical liabilities,
10 estimated at R1.7 billion.

MS DANIELS: From my understanding and experience, Mr Chairman, of coal contracts, this was the provision that needed to be made for environmental rehabilitation. So, you know, as miners progress in the mining they have to make provision for rehabilitation at the end of the mine and as concurrent. So that was my understanding of this sentence.

ADV SELEKA SC: But does it bear any relevance to the proposal to do a pre-purchase or prepayment?

20 **MS DANIELS:** I think ...[intervenes]

CHAIRPERSON: Also, there seems to be no reference to any rehabilitation, is it not?

MS DANIELS: No, there is no reference but, you know, having looked at the documents now, with the benefit of hindsight, that was the hook that was used to motivate for

the prepayment because you would then see ...[intervenes]

CHAIRPERSON: What, the rehabilitation? What was the hook?

MS DANIELS: Well, it talks about R1.7 billion and then it talks about providing support for the project to succeed and then it talks about:

10 “In return for the new owners honouring the current contract and for driving transformation, we would like to propose that consideration be made for some prepayment.”

So in a convoluted way, Mr Chairman, what it was saying is that they have got this liability, they need some help with operations, so please help them, if I can just put it in colloquial terms. Or please give consideration to helping them.

CHAIRPERSON: Yes, Mr Seleka?

ADV SELEKA SC: Thank you, Chairperson. That file you have has Dr Ramontja affidavit, but I will read to you what he says in regard to this 1.7 and maybe that is where the
20 rehabilitation come from. He says:

 “The letter further addressed itself to the historical liabilities of Optimum which were estimated R1.7 billion. The department would be privy to certain of the liabilities. Any company or entity which embarks on mining is supposed to provide financial

guarantees to the department to make provision for finances to rehabilitate the environmental degradation which may be caused by mining.”

Now I should add that Dr Ramontja testified before the Commission that he did not write this letter. In the affidavit he explains a paragraph which he did not write and he refers to finances – make provision for finances to rehabilitate the environmental degradation. But it still begs the question, what does that have to do with a
10 prepayment or a pre-purchase that was being motivated in the submission?

MS DANIELS: In my submission this had nothing to do with the prepayment.

ADV SELEKA SC: Did you apply your mind to it at the time and maybe enquire as to why the board should be made to rely on this letter, because that is the first part of the submission under paragraph 2.

MS DANIELS: Mr Chairman, at the time I really did not interrogate the letter to that degree. I have had the benefit
20 of hindsight and you will see it in my affidavit of sitting down and, you know, actually looking at the – also at the request of the Commission and the questions, looking at the submissions and releasing that it actually did not make any sense.

ADV SELEKA SC: So we go back to that submission

under Resolution Required. They require...

“It is hereby resolved that a request from the
Department of Mineral Resources is hereby noted.”

CHAIRPERSON: What page is the resolution, where is
the submission again?

ADV SELEKA SC: 281, Chairperson.

CHAIRPERSON: 281.

ADV SELEKA SC: 281.

CHAIRPERSON: Yes, okay.

10 **ADV SELEKA SC:** And paragraph 2.1.2:

“The Group Chief Executive...”

Is that Mr Anoj Singh?

MS DANIELS: Yes at the time the Group Chief Executive,
Mr Singh was acting, Mr Molefe was off sick.

ADV SELEKA SC: “The Group Chief Executive together
with the Group Executive for Generation...”

Who is that?

MS DANIELS: That was Matshela Koko.

ADV SELEKA SC: “...and Chief Financial Officer...”

20 **MS DANIELS:** That was Anoj Singh.

ADV SELEKA SC: Mr Anoj...

“...are hereby authorised to negotiate and conclude
a pre-purchase of coal agreement with the proposed
owners of OCM (Coal Supply)”

Now what ...[intervenes]

CHAIRPERSON: That is Tegeta.

MS DANIELS: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: So is that consistent with what is said under the title of the submitted because the title says:

“Pre-purchase of coal from Optimum Coal Mine (Pty) Ltd.”

From the entity.”

MS DANIELS: No, that is not consistent.

10 **ADV SELEKA SC:** Yes, but say more, is it conflicting, is it the same entity or what is going on here?

MS DANIELS: Sorry, Mr Seleka, I did not ...[intervenes]

CHAIRPERSON: Well, by the way, did you prepare the submission? Who prepared the submission?

MS DANIELS: I drafted versions 1 and 2 and - well, each version would be sent to Mr Koko and Mr Singh. They would come back additions. This final version that was signed, there were additions that I did not make but it was already signed off by them. So there was no opportunity
20 to change things. You will see that one it is signed by the executives I do not second-guess them.

CHAIRPERSON: Yes, Mr Seleka?

ADV SELEKA SC: Ja, thank you, Chair. Okay, so there is that – it is a confusion or inconsistency and it goes on. Let us see, paragraph 2.2:

“Executive Summary and Conclusion”

CHAIRPERSON: Maybe before you move on, Mr Seleka.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ms Daniels, your earlier versions of the draft, was there any different between it – or those drafts and the ultimate paragraph 2.1.2?

MS DANIELS: I do not – I do not have that ...[intervenes]

CHAIRPERSON: Ja, you can have a look if there is something that will refresh your memory.

10 **MS DANIELS:** I am not sure we have ...[intervenes]

ADV SELEKA SC: I do not think we have your draft versions.

MS DANIELS: In the bundle.

ADV SELEKA SC: In your affidavit.

MS DANIELS: Ja.

ADV SELEKA SC: Because this is ...[intervenes]

CHAIRPERSON: You have got them or you do not have them?

20 **MS DANIELS:** I do have them but they are not in the bundle.

CHAIRPERSON: Are they in another bundle, Mr Seleka?

ADV SELEKA SC: No, Chair, we do not have them, the Commission does not have.

CHAIRPERSON: Oh, have you got them somewhere?

MS DANIELS: Yes, I do have them somewhere.

CHAIRPERSON: Oh, does the investigator have them?

ADV SELEKA SC: The [indistinct]16:38

MS DANIELS: No, I think we did have it in our consultation, Mr Chairman.

CHAIRPERSON: Ja, okay, we can proceed while somebody is looking for them. But what is your recollection or you cannot remember?

MS DANIELS: I would not remember the minutiae of the detail. I think it would be, you know, unfair to put them
10 before you.

CHAIRPERSON: Okay, we will wait until we have got the drafts. Proceed, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. So, Ms Daniel, I wanted to go to the paragraphs under 2.2:

“Executive Summary and Conclusion”

Says:

“Eskom faces a supply risk of coal to the Hendrina Power Station of 5.5 NTPA by OCM as a result of business rescue proceedings.”

20 Was that correct at the time?

MS DANIELS: No, it was not correct.

ADV SELEKA SC: “:There is a potential proposal from the business rescue practitioner supported by the Department of Mineral Resources.”

Can you explain that to the Chairperson? So the business

rescue practitioner had made a proposal and that proposal was supported by the Department of Mineral Resources. Do you see that statement, 2.2.2?

MS DANIELS: Yes, I see that but that – that was not reflected in the correspondence in that way.

ADV SELEKA SC: Yes, so if one takes this paragraph, on the fact of it, it means that there is a proposal on the table by the business rescue practitioners of OCM and that proposal is supported by the DMR. So that means what
10 follows should be Eskom accepts that proposal.

MS DANIELS: Yes.

ADV SELEKA SC: And the end result should be that the transaction that is motivated here would be concluded with the business rescue practitioners because they are the ones who made the proposal which the DMR supports.

MS DANIELS: That is correct.

ADV SELEKA SC: Looking at 2.2.2.

MS DANIELS: Just looking at 2.2.2.

ADV SELEKA SC: Ja. Which then is still a puzzlement
20 why 2.1.2 is worded the way it is worded because it envisages a pre-purchase from a different entity.

MS DANIELS: But – ja, that is correct.

ADV SELEKA SC: Ja. And 2.2.3 says:

“The solution relates to a pre-purchase of coal to the value of R1.68 billion which mitigates supply

risk.”

So you read that with 2.1.1. Says we are facing supply risk, therefore this is the solution and it seems to be the solution based on the proposal in 2.2.2, let us pre-purchase coal to the value of R1.6 billion which mitigates supply risk. Counterparty risk is mitigated by a session of the coal to Eskom. The funding of the – a pre-purchase will be made by an inventory working capital, reduction of 54 days for approximately 40 days. I do not understand
10 that, that statement.

MS DANIELS: Mr Chairman, I am having the same problem hearing, I cannot hear Mr Seleka.

ADV SELEKA SC: Oh, you cannot hear me.

CHAIRPERSON: Well maybe go closer to the microphone maybe, Mr Seleka.

MS DANIELS: Sorry, you fade in and out.

ADV SELEKA SC: Did I fade in and out?

MS DANIELS: Apologies.

ADV SELEKA SC: So which – where would you like me to
20 repeat? 2.2.4, I was saying I do not understand that paragraph, I do not know whether it should detain us. We can move on.

MS DANIELS: I think the executive summary is explained in sort of Section 3 and then I also analysed in my affidavit. So I think if your questions are does this make

sense, as I said in my affidavit, it does not make sense.

ADV SELEKA SC: It what?

MS DANIELS: It does not make sense.

ADV SELEKA SC: In what way? In what respect? Well, you know, let us do this first.

MS DANIELS: Okay.

ADV SELEKA SC: If you, just in a nutshell, explain to the Chairperson, this submission is about, as they say, a pre-purchase of coal from Optimum and it seems to be based
10 on what they say, it is a proposal by the business rescue practitioner which proposal is supported by DMR in respect of, what they say, is a risk to the supply of coal to the Hendrina Power Station. What is the solution to that risk? Let us do a pre-purchase or – ja, they call it a pre-purchase of coal to the value of R1.6 billion.

Now on the fact of it – well, on the one hand it is relevant so the submission looks at Optimum (Pty) Ltd, the business rescue practitioners, and he talks to that.

On the other hand, and tell me if I am correct
20 because I am explaining this so that we understand it, on the other hand, that paragraph, which is 2.1.2 says it is a pre-purchase.

“To negotiate and conclude a pre-purchase of coal agreement for the proposed owners of OCM.”

Now that is a different entity. That will be Tegeta.

MS DANIELS: Yes.

ADV SELEKA SC: Is that explanation correct?

MS DANIELS: Yes, that is a succinct way of looking at it, Mr Chair.

ADV SELEKA SC: Then am I correct that one then is left with a confusion. Is it correct that one then is left with a confusion?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: This is - says to the identity of the
10 party with whom this transaction is meant to be concluded.

MS DANIELS: Yes because OCM, Optimum Coal Mine business rescue practitioner is used quite loosely.

CHAIRPERSON: We are at one o'clock. Those drafts, have they been found? Do they have 2.1.2?

ADV SELEKA SC: Page 443.

CHAIRPERSON: Do they appear at 443? Oh yes, I can see 2.2 seems to be same as 2.1.2 but maybe not exactly.

ADV SELEKA SC: Chair, we are looking at 2.2.1.

CHAIRPERSON: Well, if you compare 2.2 at page 444
20 and 2.1.2 up to a certain point they seem to be the same but what appears at 2.2 at page 444, there seems to be something else that has been cut off, excised, but it would appear, Ms Daniels, that even in your own draft you had written that the Chief Financial Officer – oh, you did not put in the Group Chief Executive but you said:

“The Chief Financial Officer together with the Group Chief Executive for Generation are hereby authorised to negotiate and conclude an agreement with the new owners of Optimum Coal Mine (Pty) Ltd.”

That is where they stopped. You continue and said:

“In regard to the prepayment to secure the [indistinct] 26.43 price for a period of 12 months or up to a limit of 1.68 billion whichever is the lesser.”

10 Can you see that?

MS DANIELS: Yes, I can.

CHAIRPERSON: So it would seem that whoever settled that submission might not have initiated that wording and that that wording may have come from you. Is that right?

MS DANIELS: No, I think ...[intervenes]

CHAIRPERSON: The wording I am referring to...

MS DANIELS: Yes.

CHAIRPERSON: Is:

20 “...to negotiate and conclude an agreement with the new owners of Optimum Coal Mine.”

That is the part I am talking about which Mr Seleka had drawn attention to in regard to the document at page 281.

MS DANIELS: Yes, that is correct, Mr Chair, but I do want to point out that I actually explain in more detail and it is a bit clearer that it is the new owners of Optimum Coal Mine.

CHAIRPERSON: Yes but I thought that was precisely Mr Seleka's concern, that when you look at the – it was to be a pre-purchase of coal from Optimum Coal Mine and I think Mr Seleka's point and Mr Seleka must tell me if I misunderstood.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka's point I thought was one would expect that the negotiations were going to be with Optimum Coal Mine and not with the proposed owners of
10 Optimum Coal. He was saying it is strange that 2.2 and 2.1.2 on the final submission says that these officials of Eskom mentioned there were being authorised to negotiate with the proposed owners instead of saying they must negotiate with OCM. That is the point he was making.

MS DANIELS: Yes.

CHAIRPERSON: Ja. What do you say – why did you write that, what was the rationale behind...?

MS DANIELS: Those were my instructions at the time, Mr Chairman, and the manner in which I phrased it here
20 ...[intervenes]

CHAIRPERSON: H'm?

MS DANIELS: I said those were my instructions at the time.

CHAIRPERSON: From whom?

MS DANIELS: From Mr Koko and Mr Singh. And

...[intervenes]

CHAIRPERSON: And why – did you ask him why the submission should talk about the officials of Eskom being authorised to negotiate with the proposed owners of OCM instead of negotiating with OCM itself, did you raise that issue with him ...[intervenes]

MS DANIELS: I don't ...[intervenes]

CHAIRPERSON: Because it wouldn't have made sense to you.

10 **MS DANIELS:** Ja I don't think I raised the issue at the time Mr Chairman.

CHAIRPERSON: Ja, but why wouldn't you have raised it, it doesn't make sense.

MS DANIELS: Ja, it is against the backdrop of the meeting of the 24th of November.

CHAIRPERSON: Yes, so what was in that meeting that could make one understand this.

MS DANIELS: There was mention, or the premise of the meeting at the time was the purchase of OCM.

20 **CHAIRPERSON:** Yes?

MS DANIELS: So that was the only link at this time in the process of drafting, because there was discussions about buying OCM.

CHAIRPERSON: I mean well it may well be that if you have an agreement with somebody and somebody else is

likely to take that entity over there might be cause to talk to the proposed owners with regard to the future, it may be that that is it, but one would normally have expected that since the proposed owners were not owners as yet that the negotiations would be with the supplier, you understand that?

MS DANIELS: I understand that, and you know in retrospect one would say you now that should have been the position. I think because of the meeting of the 24th of
10 November, you know just the letter of DMR aside, if you look at it, the discussion at that meeting was the parties were already undertaking a due diligence, they wanted to complete this by a particular date in the future but as it progressed you now those documents were not – these documents then don't support that, and that's why I am saying with the benefit of hindsight when you look at the documentation provided to support his position they don't really tie up, and that's what I say?

CHAIRPERSON: Okay Mr Seleka I think we must take the
20 lunch adjournment.

ADV SELEKA SC: Yes indeed Chair.

CHAIRPERSON: It is about eight minutes or nine minutes past one we will adjourn and resume at ten past two.

We adjourn.

ADV SELEKA SC: Thank you chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let's continue.

ADV SELEKA SC: Thank you, thank you DCJ. Ms Daniels we were dealing with the submission that was prepared. Now we are at a stage of the preparation of the submission, the contents of the submission. This submission is prepared in order to be submitted. Now we
10 need to know from you is it to be submitted to the Board for discussion and decision making?

MS DANIELS: It was because it was a Round Robin it was decision making.

ADV SELEKA SC: So, there was not going to be a meeting of the Board?

MS DANIELS: No, it subsequently became a Round Robin discussion, I mean a Round Robin approval because members of the Board were not available to meet.

ADV SELEKA SC: Now, this submission – I'll come back
20 to it, is being prepared on the 7th of December 2015.

MS DANIELS: That is correct.

ADV SELEKA SC: That Round Robin decision took place when?

MS DANIELS: I sent out the documents on the 8th of December.

ADV SELEKA SC: To the Board members?

MS DANIELS: To the Board members.

ADV SELEKA SC: And the Round Robin decision was made?

MS DANIELS: On the 9th of December.

ADV SELEKA SC: So, the Board members had one day notice?

MS DANIELS: Yes.

ADV SELEKA SC: Or one day opportunity to consider
10 what was being submitted to them?

MS DANIELS: Yes, that is correct, Mr Chairman.

CHAIRPERSON: Can I request that – I'm sorry Mr Seleka, there is first that the – in the submission contemplated the Board would note from the Department of Mineral Resources was the request from Dr Ramontja's letter – in Dr Ramontja's letter that Eskom should play an active role in providing support for the project to proceed?

MS DANIELS: Yes, that is correct, Mr Chairman.

CHAIRPERSON: What did that mean, do you know?

20 **MS DANIELS:** No, not at that stage, it just looked like consideration for the pre-payment.

CHAIRPERSON: Which of these paragraphs did Dr Ramontja say he did not put in his letter, Mr Seleka?

ADV SELEKA SC: He didn't draft the letter, Chairperson.

CHAIRPERSON: At all?

ADV SELEKA SC: Yes, so the letter was given to him, he found it on his desk, and he said he read it, it made sense to him, he says because the DMR would sometimes intervene to help, especially where jobs are at risk and he signed the letter.

CHAIRPERSON: There's a letter that he received from Eskom and I think it must have been Mr Koko as well, where he did not authorise a response, I think but somebody else in DMR, if I recall correctly, prepared a
10 response that was supposed to be sent off only after him authorising it, so it must be another letter because this one has got his signature.

ADV SELEKA SC: His signature yes.

CHAIRPERSON: Ja, okay, alright continue.

ADV SELEKA SC: Thank you, so Ms Daniels we were just trying to plot the timeline from the drafting to the submission or circulating of the submission to the Board members and to the decision making by the Board members. So, they get the submission from you on the
20 8th?

MS DANIELS: Yes, that is correct, Mr Chair.

ADV SELEKA SC: And when you send a submission to them what do you indicate in terms of when the decision should be made?

MS DANIELS: I think it was the next day by midday if

possible.

ADV SELEKA SC: And can you recall on the 8th, when do you – time wise, when do you send the submission to them?

MS DANIELS: It was in the afternoon.

ADV SELEKA SC: So, they would have had to have considered it overnight?

MS DANIELS: Yes.

ADV SELEKA SC: Make a decision.

10 **MS DANIELS:** Yes.

ADV SELEKA SC: By Round Robin on an R1.6billion?

MS DANIELS: Yes, that is correct, Mr Chairman.

ADV SELEKA SC: Pre-payment?

MS DANIELS: Yes.

ADV SELEKA SC: Did any one of them raise concerns?

MS DANIELS: There were two Board members that sent questions, Mr Chairman.

ADV SELEKA SC: And what were – who are those?

20 **MS DANIELS:** That was Ms Viroshini Naidoo and Ms Mariam Cassim.

ADV SELEKA SC: And what were their concerns?

MS DANIELS: I think in Ms Viroshini Naidoo's case she approved the submission, the first line of the email said I approve but please ensure that this goes to the IFC, which is the Investment and Finance Committee, is it within – you

know make sure that we adhere to the PFMA approvals and does this need DPE approval, which is The Department of Public Enterprises. Ms Cassim had issues – her questions were around the financial construction which I sent to – and the coal pricing which I then sent to Mr Koko and Mr Singh for reply.

ADV SELEKA SC: Did they reply?

MS DANIELS: They did reply, and I sent the replies that I received to Ms Cassim on the morning of the 9th of
10 December.

ADV SELEKA SC: I see that in his affidavit Mr Koko says, in regard to the drafting of the – oh no that's the letter, I think he confirms, asking you to draft the letter on the 4th of December 2015, that's the letter you draft, and it goes to the DMR.

MS DANIELS: Yes, that's correct.

ADV SELEKA SC: The drafting of the submission itself, you say is on the 7th. So, let's – we were going through the contents of this submission and what we see, on the
20 face of it, is the convolution and confusion in regard to the identity of the entity with whom to do this transaction. If you recall, and I would like you to explain this to the Chairperson, what was in the mind of – or what was explained to the Board when this submission is presented, what is explained, is the purpose for which this submission

was made?

MS DANIELS: I think the covering note just said, this is for the pre-purchase of coal – pre-payment of coal in cash for the amount of R1.68billion from Optimum to Optimum Coal Mine and the supporting documents would have been the submission and the letters between Mr Koko and Dr Ramontja.

ADV SELEKA SC: Yes, now that explanation, where does one find it, is it in an email or is it in this submission?

10 **MS DANIELS:** It's in this submission and ...[intervenes].

ADV SELEKA SC: About the pre-payment to Tegeta?

MS DANIELS: No, I think it was the pre-payment to Optimum Coal Mine that I said not Tegeta.

ADV SELEKA SC: To Optimum Coal Mine?

MS DANIELS: Yes.

ADV SELEKA SC: You're saying it's in this submission?

MS DANIELS: Well, it says Optimum Coal Mine.

ADV SELEKA SC: Yes, well there's two things here, I've said the entities are seemingly confused – well not
20 confused but it's confusing in regard to the identity of the entities to conclude the transaction with. What I want to understand, is your explanation to the Chairperson, what was explained to the Board, is the purpose of this submission, what is the Board told and I appreciate that the Board is receiving this, is it by email?

MS DANIELS: Yes.

ADV SELEKA SC: The Board is going to decide by way of a Round Robin, correct?

MS DANIELS: Yes.

ADV SELEKA SC: So, the Board is not going to have a meeting to discuss this documentation submitted for it?

MS DANIELS: No, not at all...[intervenes].

ADV SELEKA SC: So, they're going to, individually send you, in their approval of this documentation without having
10 sat together to discuss it?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: So, what is explained to the Board, when this document is submitted to it?

MS DANIELS: This is the submission for decision, it concerns the pre-purchase of coal from Optimum Coal Mine.

CHAIRPERSON: So, in other words, there is nothing else of any consequence that the Board was told other than the contents of the submission?

20 **MS DANIELS:** That is correct, Mr Chair.

CHAIRPERSON: Ja, so if anyone wants to know, what was the Board told, it's what's in the submission?

MS DANIELS: It was in the documents that I sent out.

CHAIRPERSON: Ja, there was no discussion outside of the document?

MS DANIELS: No.

CHAIRPERSON: Hmm, okay. Why was it not necessary to let a matter involving such big amounts – such a big amount be decided by way of a Round Robin without the benefit of a proper discussion among Board members?

MS DANIELS: I think, Mr Chairman, at the time, given the time of year, it was practicality you know ostensibly but there was a rush to get a decision, so the instruction was, send out the documents.

10 **CHAIRPERSON:** And whose instruction was that?

MS DANIELS: There was a request from the office of Mr Singh, the Chief Financial Officer, to send it out by Round Robin and, you know, that's also when I also prepared the documents on that basis, I also sent it out.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Now, what was explained as the reason for the urgency?

MS DANIELS: There actually was no explanation for the urgency other than, there's a threat to security of supply.

20 **ADV SELEKA SC:** Was there documentation relied upon to validate that claim of the risk of coal supply?

MS DANIELS: No, not at this submission.

ADV SELEKA SC: I see that the only kind of factor relied upon is that OCM has gone into business rescue?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: But does business rescue – a company being in business rescue prevent it from trading?

MS DANIELS: No, it does not and more particularly if you bear in mind that there had been a commitment at the meeting of the 24th of November that the supply would continue.

ADV SELEKA SC: Yes, and isn't it that, regarding what I've just asked you, that Tegeta itself was acquiring coal from OCM or Optimum Coal Mine in order to supply to
10 Eskom.

MS DANIELS: Yes, that appeared from the documents, I did not have direct knowledge of that at the time.

ADV SELEKA SC: You didn't have direct knowledge of that?

MS DANIELS: No but it does – that was the contractual arrangement if you look at the documentation.

ADV SELEKA SC: Yes, so what I'm saying is, if Tegeta could buy from this mine, Optimum Coal Mine, no doubt Eskom could continue doing so, directly from the mine?

20 **MS DANIELS:** That is correct, I mean, it had a contract.

ADV SELEKA SC: So, the reason that it was under business rescue was no reason at all for the purposes of this pre-payment?

MS DANIELS: That is correct, Mr Chairman.

ADV SELEKA SC: Now, you know, we have seen, and I

want you to just explain to the Chairperson, the evolution of this document with the amendments that get to be done to it, were you aware whether this document went outside of Eskom for commentary by some third party and, that is during the drafting process and then came back to be finalised with the changes that were made and given to you to submit to the Board?

MS DANIELS: Yes, Mr Chairman, during the consultation with the Commission's investigation team, I was presented
10 with emails between Mr Eric Wood and The Businessman email and I think it was Mr Koko and Mr Singh. My version, two of the documentations actually went outside of Eskom, it came back signed -well when I received it, it was signed. If you look at the discussion that happened between the parties it was changed from a submission to the Investment and Finance Committee, there was information added, the financial constructions were added and it then came back to me signed, both by Mr Koko and Mr Singh.

20 **ADV SELEKA SC:** Yes, Chair, if I may, in regard to this particular aspect I'd like Ms Suzanne Daniels to turn to page 443, that's where we were relative to the first and the second version of the draft but now, I wanted to view it for a different purpose, 443, are you there Ms Daniels?

MS DANIELS: Yes, I am there.

ADV SELEKA SC: Something catches my eye on page 444, I see that – is that what you refer to as your first draft?

MS DANIELS: Yes, this is the first draft on the 7th of December.

ADV SELEKA SC: Yes, the heading under Executive Summary is Round Robin submission to the Investment and Finance Committee, IFC?

MS DANIELS: Yes, that is correct.

10 **ADV SELEKA SC:** So why is that I thought this was a submission to the Board?

MS DANIELS: Mr Chairman, when I received the instruction it was my view, at the time, that this was – the Investment and Finance Committee is the Committee of the Board which deals with financial matters and it needed – and a decision of this nature, I thought it go to the Investment and Finance Committee before it goes to the Board and that is why I started out preparing the document to the Investment and Finance Committee.

20 **ADV SELEKA SC:** Did you...[intervenes].

CHAIRPERSON: Was that your decision as opposed to an instruction to you from somebody else?

MS DANIELS: Yes, at that time.

CHAIRPERSON: Was it your decision?

MS DANIELS: Yes.

CHAIRPERSON: Had you been instructed as to – to whom you were supposed to address the submission?

MS DANIELS: No, not at that stage, I was just given the content. You know when – in Eskom, the terms Board was used very loosely you know, so we're going to do a submission to Board, and they wouldn't specify in detail. So, my assumption, in the first instance was that this would go through the Investment and Finance Committee.

CHAIRPERSON: Yes, the reference to the Board, what do
10 you say about it?

MS DANIELS: I said it – you know, in Eskom it was quite a loose term when we had discussions, like you'd hear, it was decided by the Board when it was actually a sub-committee of the Board. So, when I started out with the draft, I started out on the assumption that it would first go to the Investment and Finance Committee.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Thank you Chair. Now, how did that get to be changed?

20 **MS DANIELS:** When it came back in version – I think it was version three, it was already, the signed, the final version it came back and to the Board.

ADV SELEKA SC: Okay, that's the version one is your page 444, is that correct?

MS DANIELS: That's correct.

ADV SELEKA SC: So, the email – your email to Mr Koko is on page 443. So, you say to him,

“For your review and sign-off”,

That’s Monday 7 December 2015 at 15h16.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: So, the document you’re sending to him is on page 444.

MS DANIELS: Yes.

ADV SELEKA SC: So, the heading, it reflects to be
10 submitted to the IFC and it requires, on page 447
paragraph 4,

“Other approvals required, Public Finance
Management Act obtained from National Treasury
and Department of Public Enterprise due to tenure
and contract value”.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Then on page 448 there’s an email
again from you to Mr Matshela Koko, it says:

“Version 2 – V2”.

20 **MS DANIELS:** Yes, that is correct, this is still addressed
to the Investment and Finance Committee.

ADV SELEKA SC: That’s at 15h58, so you turn the page,
the document is still addressed to IFC and it still has a
requirement of Public Finance Management Act on page
452, paragraph 4.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: It's sent off to him, then you turn the page to 453, again still on the 7th of December 2015 at 16h40. Now, please explain to the Chairperson, identify to the Chairperson what you see there?

MS DANIELS: There's an email from Businessman to Eric Wood who says:

10 "I want the PFMA approval part removed, I also think it should be full Board not IFC because over R1.5billion".

ADV SELEKA SC: What exactly is he saying?

MS DANIELS: What he...[intervenes].

CHAIRPERSON: Well, let's start with this, has he seen your summary or your document, the submission?

MS DANIELS: It appears that version 2 was attached to that email, Mr Chairman, if you look at what it says in the attachments.

CHAIRPERSON: Yes, no, no I accept that, I want you to confirm.

20 **MS DANIELS:** Yes, I confirm.

CHAIRPERSON: That he has seen that he has seen it?

MS DANIELS: Well, I can only confirm from what he writes.

CHAIRPERSON: No, I accept that, based on...[intervenes].

MS DANIELS: Based on what he said, he must have seen what I had written.

CHAIRPERSON: And is he making submissions – is he making suggestions of what to be removed and what to be amended?

MS DANIELS: Well, that – I wouldn't say those are suggestions I think those are more like instructions.

CHAIRPERSON: Yes, but he says he has identified a part that he says should be removed?

10 **MS DANIELS:** Yes.

CHAIRPERSON: And he says that it should not be addressed to the Investment and Finance Committee it should be addressed to the full Board?

MS DANIELS: Yes, that is correct.

CHAIRPERSON: Yes, yes continue.

ADV SELEKA SC: Thank you Chair. Did you – do you know how the draft submission would have landed with Mr Eric Wood and Businessman?

20 **MS DANIELS:** I only know that from the emails that I've been shown.

ADV SELEKA SC: You only know from?

MS DANIELS: From the emails that I've been shown from the investigating team.

ADV SELEKA SC: Yes, my question is, do you know it would have gone to them, this document?

MS DANIELS: Okay, it was either forwarded from Mr Koko or Mr Singh.

CHAIRPERSON: Why do you say that?

ADV SELEKA SC: The investigator doesn't have an email to that effect.

MS DANIELS: Oh.

ADV SELEKA SC: That's why I'm asking whether, do you know?

MS DANIELS: Oh okay, no I don't know then how it got to
10 them but that's my assumption.

ADV SELEKA SC: So, so far what we see from the emails is that it is you and Mr Koko exchanging the draft.

MS DANIELS: Yes.

ADV SELEKA SC: So, either you or he could have sent it out?

MS DANIELS: Yes.

ADV SELEKA SC: Did you send it out?

MS DANIELS: No, I did not.

ADV SELEKA SC: Were you aware of this email at the
20 time?

MS DANIELS: No, I was not aware of the emails at the time.

ADV SELEKA SC: Okay, so I want to...[intervenes].

CHAIRPERSON: Is that the Businessman email?

ADV SELEKA SC: Correct, Chairperson, infoportal1.

CHAIRPERSON: Oh, infoportal1, were you not aware of it at that time?

MS DANIELS: I'm talking about the email exchange, Mr Chairman.

CHAIRPERSON: Oh, but the email address you were?

MS DANIELS: Yes.

CHAIRPERSON: Ja, okay. When did you become aware of the email exchange?

ADV SELEKA SC: The investigators showed
10 me...[intervenes].

CHAIRPERSON: Oh, the Commission.

MS DANIELS: Of the Commission and in 2018 as well, Amu Bongani sent me some questions, I think that was the first time I became aware.

CHAIRPERSON: In?

MS DANIELS: 2018.

CHAIRPERSON: 2018, okay, Mr Seleka.

ADV SELEKA SC: Ms Daniels, then – well on the draft on page 454 I see still there's IFC, so IFC hasn't been
20 removed and on page 457 under paragraph 5 it still has a PFMA, National Treasury required, approval required. So, it seems by this time, it hasn't come back to you?

MS DANIELS: No, it hasn't.

ADV SELEKA SC: Did you, in fact, do the changes from IFC to Board, did you, ultimately, do those changes?

MS DANIELS: No, I did not.

ADV SELEKA SC: Does your final draft – well who made the final draft?

MS DANIELS: The final draft came back signed from – first from Mr Koko and then from Mr Singh.

ADV SELEKA SC: Signed?

MS DANIELS: Yes.

ADV SELEKA SC: So that came to you, turn to page 486.

MS DANIELS: Yes, I'm there.

10 **ADV SELEKA SC:** Are you there, yes please identify the document?

MS DANIELS: It's an email from Matshela Koko to me.

ADV SELEKA SC: But this is now on Tuesday 8 December 2015?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: At 16h40.

MS DANIELS: At 16h40, that's correct

ADV SELEKA SC: So, by this time, this document has not been submitted to the Board?

20 **MS DANIELS:** No.

ADV SELEKA SC: Its forwarding to you, the email below.

MS DANIELS: Yes.

ADV SELEKA SC: So, the email below is also from Mr Matshela Koko, Tuesday December 8, 2015 at 3h57pm it sent to – or addressed to Mr Anoj Singh and the subject is

the 2015/12/08 RRR Optimum Coal Mine Pty Ltd final and then he says,

“Boss please receive the attached, signed documents, best regards”,

There at the top then it gets forwarded to you.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Is that the document on the next page?

MS DANIELS: That is the document, yes.

ADV SELEKA SC: So, the last one then is a Round Robin
10 submission to Board of Directors.

MS DANIELS: To the Board of Directors, yes.

ADV SELEKA SC: No longer to IFC?

MS DANIELS: No longer to IFC, that is correct, Mr Chair.

ADV SELEKA SC: And that paragraph 4 of PFMA requirement?

MS DANIELS: Has now been removed.

ADV SELEKA SC: And the document is signed by Mr Koko on 8 December 2015?

MS DANIELS: Yes.

20 **ADV SELEKA SC:** Is that the document or submission you finally circulated to Board members?

MS DANIELS: Yes.

ADV SELEKA SC: I see...[intervenes].

CHAIRPERSON: Do you know whether Mr Singh also signed it, I see he didn't sign on this one, is there another

copy that is signed?

MS DANIELS: The next copy is the one that I used because it contained Mr Singh's signature. If you look at page 492, Mr Chairman.

CHAIRPERSON: Oh yes.

MS DANIELS: And then you'll see that...[intervenes].

CHAIRPERSON: I'm looking at 497.

MS DANIELS: Yes, that's the document, I then, used.

CHAIRPERSON: Okay.

10 **ADV SELEKA SC:** Yes, I want to go slightly back – a little back, I see on...[intervenes].

CHAIRPERSON: I'm sorry, just for my understanding what was the ranking between the CFO and Group Executive Generation?

MS DANIELS: The CFO was the Executive Director on the Board, the Chief Officer – Group Executive Generation was a member Exec – of the Executive Committee.

CHAIRPERSON: Of the?

MS DANIELS: Executive Committee.

20 **CHAIRPERSON:** Yes – was the CFO not part of the Executive Committee?

MS DANIELS: As well but in terms of – when you think rank the CFO would rank.

CHAIRPERSON: Well it is confusing me because you have – we looked at an email a few minutes ago where I think Mr

Koko addressed an email – ja at page 486 to Mr Singh and addressed him as Boss.

MS DANIELS: Okay.

CHAIRPERSON: And now at 497 Mr Koko appears to be the last one to sign in terms of what I take it to be hierarchy?

MS DANIELS: Yes. I think just to put it in context Mr Chairman at this point in time Mr Singh was acting Chief Executive Officer.

CHAIRPERSON: Oh that Mr Koko.

10 **MS DANIELS**: Mr Singh because Matshela Koko is writing to Anoj Singh and calling him Boss.

CHAIRPERSON: Who – you say Mr Singh was acting as Group CEO?

MS DANIELS: Ja Mr Molefe was off sick at that time.

CHAIRPERSON: Yes but on this document he did not sign in that capacity at 497?

MS DANIELS: No, no he signed as Chief Financial Officer.

CHAIRPERSON: Yes.

MS DANIELS: Yes.

20 **CHAIRPERSON**: But as Chief Financial Officer when you compare to Group Executive Generation that is what I am asking what is the hierarchy?

MS DANIELS: Yes.

CHAIRPERSON: Between the two of them?

MS DANIELS: There would have been a hierarchy. The

Chief Financial Officer is actually a bit higher than the Group Executive Generation.

CHAIRPERSON: Ja well it is does not make the sense that one has got over the time. One has seen that usually the highest ranking official would be the last to sign after everybody has made recommendations and then the last – the highest ranking official then makes the decision.

MS DANIELS: Yes.

CHAIRPERSON: Whereas here – ja you have the Chief
10 Financial Officer before Mr Koko. Okay so I guess you – there is nothing you can – you can say about it?

MS DANIELS: Well you know at this stage I think if you just look at the emails Mr Koko signed first.

CHAIRPERSON: Hm.

MS DANIELS: If you look at the emails in terms of the time Mr Koko signed the document first.

CHAIRPERSON: Were they – were they on the same level or were they not on the same level or is that something you would not know?

20 **MS DANIELS:** It is difficult.

CHAIRPERSON: The Chief Financial Officer and Group Executive Generation.

MS DANIELS: It is ..

CHAIRPERSON: Or was one of them higher than the other in terms of the company hierarchy?

MS DANIELS: In terms of the – in terms of the company hierarchy the Chief Financial Officer would be higher.

CHAIRPERSON: Hm.

MS DANIELS: Slightly higher.

CHAIRPERSON: Okay.

MS DANIELS: Than the Group Executive Generation.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Thank you. Ja Ms Daniels because even the draft is in that order. Mr Singh is first and then Mr
10 Matshela Koko is last which is what the Chairperson is saying. Normally the – the junior people will sign first and pass it on to the most senior person who will be the last to sign. After the document is submitted to him and it is explained this is what it means and he is satisfied then he signs. That is the point he made. But you would have known who is senior – more senior than the others surely. Ms Daniels seeing as the Chief Financial Officer would have been more senior?

MS DANIELS: Yes that is what I am saying the Chief
20 Financial Officer is more senior but I – I did not actually – if I look at this now Chairman I did not really take notice of the manner in which the document – the signatories were.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Let us go slightly back to page 459?

MS DANIELS: Please say the page again for me?

ADV SELEKA SC: Page 459. So it is after that email from Businessman is I want – I want – now this man wants it. It is not may I suggest – I want the PFMA approval. Part removed.

CHAIRPERSON: I am sorry I thought you said 459?

ADV SELEKA SC: Yes Chair I was saying it after that email. Let us go to 459. Let us go to 459? 459 it is on the 8 December at 7:43 it is an email from Mr Koko to Mr Anoj.

10 **ADV SELEKA SC:** Now there we see Ms Daniels is the third version – version 3. Do you see that?

MS DANIELS: Yes I do.

ADV SELEKA SC: And he writes:

“FD please receive the soft copy as discussed. Warm regards.”

MS DANIELS: Yes.

ADV SELEKA SC: Well you are not copied there so you – would you have had knowledge of this exchange?

MS DANIELS: No not that I can see.

20 **ADV SELEKA SC:** Then there is the – I am not sure whether this is version 3 on page 468 because he still has IFC and he still has paragraph 4. But it did not come to you? Well you are not copied in that email.

MS DANIELS: No.

ADV SELEKA SC: And go to page 464. There are emails

there and the bottom one is the one we have read between Mr – the one of Mr Koko to Mr Anoj Singh where he says:

“FD please receive the soft copy.”

That is at the bottom.

MS DANIELS: Yes I see that.

ADV SELEKA SC: Then we go up and the middle of the page there is another email from – it is Polly.

MS DANIELS: Yes.

ADV SELEKA SC: Now I cannot pronounce that name
10 Visenet.

MS DANIELS: No really the Mr.

ADV SELEKA SC:

“On behalf of Anoj Singh.”

MS DANIELS: Yes.

ADV SELEKA SC: The 8 December 2015 11:03 am and it is addressed to Boitumelo Mapasa now at Regiments – [00:07:08] at Regiments. Subject it is the same subject Optimum Coal Mine Pty Ltd V3 and it says:

“FYI – for your interest.”

20 So what is happening here?

MS DANIELS: This is going from the office Polly is the Executive or was the Executive assistant to Mr Singh and this looks like it is going from Polly to someone at Regiments.

ADV SELEKA SC: So Polly is an employee at Eskom?

MS DANIELS: Yes.

ADV SELEKA SC: This time – is a PA – well I do not know
is he a PA – is she?

MS DANIELS: Yes she was as you can see it says here
Executive Assistant.

ADV SELEKA SC: Executive Assistant.

MS DANIELS: Office of the Chief Financial Officer Mr Anoj
Singh.

ADV SELEKA SC: Oh I see. So sending the document to
10 Regiments.

MS DANIELS: Yes.

ADV SELEKA SC: Now does Regiments have anything to do
with this document?

MS DANIELS: Not at this stage but you will see later when
it comes back from – when it comes back signed the – the
financial verifications section Regiments is included as the
party who did the financial verification.

ADV SELEKA SC: Financial certification.

MS DANIELS: Verification.

20 **ADV SELEKA SC:** Verification.

MS DANIELS: By – by independent parties.

ADV SELEKA SC: Give us the page number?

MS DANIELS: You will find it on page 491.

ADV SELEKA SC: Oh under paragraph 3.7?

MS DANIELS: 3.7. My apologies you will see Regiments

Capital Propriety Limited added in there.

ADV SELEKA SC: Now let us go back to page 64...

CHAIRPERSON: What is the point you were making about page 497?

ADV SELEKA SC: It is 491 – 497 yes. He is saying under paragraph 3.7

“Regiments Capital Propriety Limited is indicated there as verification by independent party.”

10 **CHAIRPERSON:** Yes okay.

ADV SELEKA SC: Yes. Ms Daniels let us go back to page 464. And now did you know about Regiments as you go back to page 464?

MS DANIELS: Not in this context Mr Singh because I – Mr Chairman because they did not have any input into the document to my knowledge.

ADV SELEKA SC: Ja. Ah because I see on page 463 under the paragraph 3.7 verification by independent party they say not applicable there.

20 **MS DANIELS:** Yes.

ADV SELEKA SC: But what was to be verified if there was anything to be verified? What does that entail?

MS DANIELS: Usually if – usually if in submissions if there had been an external evaluation whether it be financial, due diligence you know where an external party say for instance

a Deloitte or somebody was consulted we would then in submissions indicate who had been provided – who had done the verification. And that is why it says if applicable.

ADV SELEKA SC: Was it applicable here?

MS DANIELS: Not to my knowledge.

ADV SELEKA SC: Okay but just think about it.

MS DANIELS: Yes.

ADV SELEKA SC: Here is a submission for a pre-payment to be made. Eskom wants to make a pre-payment R1.6
10 billion. What need – what – how does verification come to play – come into play there?

MS DANIELS: Not – not really.

ADV SELEKA SC: I want you to help us understand.

MS DANIELS: Ja. Not really Mr Chairman because the basis for the – the basis for the submission was there is a supply issue and that Eskom would be the only qualified entity to say there is a supply issue.

ADV SELEKA SC: Ja. So this document is sent to Regiments on the 8th remember you said you would have
20 sent the document to the board members on that day for a Round Robin resolution the next day. I do not know how much of verification – how much is required in the verification process?

MS DANIELS: Well given the time came near Mr Chairman there would have been not much that they could do.

ADV SELEKA SC: Yes. So let us – let us move on. I see on page 469 this – at the top of the page – at the bottom is the same emails we have read – at the top you get Boitumelo Mapasa which is the one at Regiments on the 8 December 2015 and she sends the email to Eric Wood and cc'd Mohammed Bobat. Did you know these persons and – sorry just before you answer it seems to be forwarding version 3 of the document received from Polly. You see that?

MS DANIELS: Yes I see that.

10 **ADV SELEKA SC:** Did you know Mr Eric Wood and Mohammed Bobat?

MS DANIELS: No I did not.

ADV SELEKA SC: Did you know them after this transaction?

MS DANIELS: I met Mr Eric Wood as I testified the last time Mr Chairman at Mr Essa's offices where he introduced himself. Mohammed Bobat I think I met at one of the COCTA Round Tables that we had with them.

ADV SELEKA SC: Turn to page 474. There is another email there. 474 you see that?

20 **MS DANIELS:** Yes I see that.

ADV SELEKA SC: From Mr Mohammed Bobat Tuesday 8 December 2015 at 12:28 and it is sent to Fahima Badat that is the version 3 on the face of it. As it appears did you know Fahima Badat?

MS DANIELS: No I did not.

ADV SELEKA SC: Anytime thereafter?

MS DANIELS: No I did not meet her.

ADV SELEKA SC: So you do not know this person at all?

MS DANIELS: No.

ADV SELEKA SC: You would not know in which company she is?

MS DANIELS: No I do not, not from here.

ADV SELEKA SC: You turn that page then there is an executive summary which on the face of it would have been
10 what was being exchanged and it has some track changes from track changes and one of which is on page 478 and there is a comment there against paragraph 4. The comment says:

“Looks like he wants this out”

Paragraph 4 which says

“Other approvals require the Public Finance Management Act.”

MS DANIELS: Yes I can see that.

ADV SELEKA SC: You see that. So whoever included this
20 comment here seems to have known what Businessman wanted.

MS DANIELS: Yes that is what it looks like.

ADV SELEKA SC: And on page 480 please identify the document?

MS DANIELS: It is an email from Fahima Badat to Anoj

Singh and copying Eric Wood and Mohammed Bobat and here it says:

“Subject 2015 RRR Optimum Coal Mine Pty Limited final.”

And it reads:

“Dear Anoj, please find the Optimum Coal Mine board memo. Thank you, Regards Fahima Badat.”

And this looks like a Regiments signature – Regiments
10 Capital signature.

ADV SELEKA SC: So that 15:28 – twenty eight minutes past three and it was sent to them from Polly the Executive Assistant of Mr Anoj Singh on the same date at 11:03 am – three minutes past eleven. Just before half past three they send back the document and they say it is final. You then get it from Mr Koko signed by him – well he first sends it to Mr Singh.

MS DANIELS: Yes he does.

ADV SELEKA SC: On page 486. Just shortly after that 3:57
20 pm. Then the board makes a decision on this.

MS DANIELS: Yes.

ADV SELEKA SC: Well it has...

MS DANIELS: The next day.

ADV SELEKA SC: Sorry ...

CHAIRPERSON: I am sorry I may have lost you Mr Seleka.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: At what page are you now with the board – whether the board made a decision – what page?

ADV SELEKA SC: Oh the page for the board decision. I have not reached there yet Chair.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay I thought maybe you were at that page ja.

10 **ADV SELEKA SC:** No.

CHAIRPERSON: Okay.

ADV SELEKA SC: No you are – you are on track Chair. Ms Singh – Ms Daniels – I beg your pardon. You then – do we have your email to the board? But anyway you send this submission to the board. It seems to be in the evening of the 8 December because only at 16:44 – oh sorry at 16:41 when does it come to you? It comes to you...

MS DANIELS: It comes to me at

ADV SELEKA SC: At 16::40.

20 **MS DANIELS:** 16:40.

ADV SELEKA SC: From Mr Koko.

CHAIRPERSON: And that 486?

MS DANIELS: And then 16:

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Is that at 486?

ADV SELEKA SC: At 486 yes.

CHAIRPERSON: The email from Mr Koko.

ADV SELEKA SC: That is correct Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: It comes to you and then at 492 – at 492 you get the one signed. What are you – what is this – what is that email at page 492?

MS DANIELS: 492 is the signed document by Mr Singh with
10 the covering email by Ms Barnard from his office which says:

“Hello Suzanne can you please assist with
the Round Robin to the board? Kind Regards
Maya.”

ADV SELEKA SC: Well is this not the first time you are getting a request for a Round Robin by the board?

MS DANIELS: Yes that is correct. For the board not the ..

ADV SELEKA SC: Not for the IFC.

MS DANIELS: Yes.

MS DANIELS: Oh I see the difference.

20 **MS DANIELS:** Yes.

ADV SELEKA SC: Because the document has now changed from IFC to the board.

MS DANIELS: Yes.

ADV SELEKA SC: Because Businessman said I want it to be submitted to the board.

MS DANIELS: Yes.

ADV SELEKA SC: Not IFC.

MS DANIELS: Yes.

ADV SELEKA SC: It comes from Maya Barnard. Please tell the Chairperson who is she?

MS DANIELS: Maya Barnard was the General Manager in the office of the Chief Financial Officer.

ADV SELEKA SC: Of Mr Anoj Singh.

MS DANIELS: Of Mr Anoj Singh yes.

10 **ADV SELEKA SC:** And this is now the final signed document?

MS DANIELS: Yes.

ADV SELEKA SC: And you are being asked to assist with a Round Robin to the board.

MS DANIELS: To the board that is correct.

ADV SELEKA SC: Now on page 498 we see that same email from Ms Barnard – Maya Barnard but then at the top of the page is your email. On the 8 December 16:44 you write the email to Ms Maya Barnard to Mr Anoj Singh but I think you
20 just replied to all of them because they are all in her email.

MS DANIELS: Yes I replied to all and asked if the Chairman has been notified or do I have to request him to allow.

ADV SELEKA SC: Oh. Now explain this because I thought the Chairperson had asked you to convene – to assist in the drafting and to convene a board meeting on the 7th the day

before?

MS DANIELS: But – yes he did ask for a meeting. This is different because it is Round Robin so I just wanted to make it sure and all along we had been doing a Round Robin to the IFC now we doing a board submission. A full board submission rather than a board sub-committee submission.

ADV SELEKA SC: So was there a response to your email? I see you have turned the page to 499.

MS DANIELS: I think...

10 **ADV SELEKA SC:** Yes.

MS DANIELS: I think Ms Barnard and I spoke Mr Chairman rather than emailed given the time of the day and then I see Mr Singh did respond:

“Please ensure that attachments referred to in the memo are also circulated.”

ADV SELEKA SC: Yes but he is not answering your question?

MS DANIELS: No, no that is why I am saying I think that Ms Barnard and I spoke.

20 **ADV SELEKA SC:** You think you would have had a telephone.

MS DANIELS: Yes.

ADV SELEKA SC: Talk with her. So thereafter you have sent that to the board?

MS DANIELS: Yes I did. I am just not sure of the time. But

if you – ah here it is. If you go to page 524 Mr Chairman.

ADV SELEKA SC: 524.

MS DANIELS: I sent it out at – on Tuesday evening at 17:52.

ADV SELEKA SC: Yes that is an email Tuesday 8 December 2015 at 17:52 well that is eight minutes before six. And it is sent to board members. Subject is Urgent Request to approve the pre-purchase of coal from Optimum Coal Pty Ltd.

10 “Good evening board members, the Chairman of the board hereby requests that you consider the attached submission together with the attachments included in this email for your approval [00:24:09] non-approval. Kindly forward your signed resolutions by 12:00 tomorrow 9 December 2015 to the office of the Company Secretary.”

So we are on the 7th today – the 7 December 2020. This is the anniversary of these exchanges here five years later.

20 And did you get the approval from the board members?

MS DANIELS: Yes I did Mr Chairman.

ADV SELEKA SC: But you did say Ms Verushni Naidoo raised a concern – well not a concern said: I am approving but wanted the matter to be referred to IFC.

MS DANIELS: Yes she did.

ADV SELEKA SC: Was that done?

MS DANIELS: Yes I did so. I then convened a meeting for 8:30 on the 9 December.

ADV SELEKA SC: On the 9 December you convened an IFC meeting?

MS DANIELS: Yes.

ADV SELEKA SC: So when would they have been notified that there should be a meeting?

MS DANIELS: I called them immediately after Ms Verushni Naidoo's email because I think it was on the same – it was in the same time period. Later in the evening.

ADV SELEKA SC: On the 8th?

MS DANIELS: On the 8th.

ADV SELEKA SC: I see there are emails on page 537.

MS DANIELS: Yes Mr Chairman if you look at 5 – actually 545 Mr Verushni Naidoo responded at 6:30 in the evening. Oh no sorry I have got [00:26:10].

ADV SELEKA SC: Did you say 545?

ADV SELEKA SC: No my apologies I got the sequence incorrect.

ADV SELEKA SC: Yes I have referred you to 537 – 537.

CHAIRPERSON: I think she has mentioned quite a few pages. 545 was one of them is it not?

MS DANIELS: Yes okay. Mr Seleka is referring me to 537 which is much easier.

CHAIRPERSON: So should we go to 537?

MS DANIELS: Yes. I think it is a duplication of the documentation later on.

ADV SELEKA SC: Is it a duplication? Ja you can pick up the sequence – let us see – okay are you looking for the email where you notifying the IFC members?

MS DANIELS: No your question was about Mr Verushni Naidoo.

ADV SELEKA SC: Yes.

10 **MS DANIELS:** Questioning so she sent an email that evening.

ADV SELEKA SC: Yes, no I think it was the page you had referred the Chairperson to.

MS DANIELS: Oh was I correct?

ADV SELEKA SC: Yes.

MS DANIELS: My apologies – my apologies Mr Chair it is just a lot of documents.

ADV SELEKA SC: Yes so that was page – well I see it on page 4 – I mean 549.

20 **MS DANIELS:** Yes.

ADV SELEKA SC: Page 549 where she writes to you 8 December at 19:30 it says:

“Hi I confirm my support the Round Robin kindly ensure

1.All governance issues are complied with in

the PFMA and other statutory regulations as they will require consent from DPE that IFC committee has approved the purchase. Session contracts are in place for the coal.”

2. So two is the one that IFC committee has approved the purchase. Do you still need me to sign the document? I do not have access to a printer just now. Regards Verushni”

10 Is that the email you were looking for?

MS DANIELS: That is the email I referred to Mr Chairman and this is what I then used to convene the meeting the next morning at 8:30. I called the – the board members.

ADV SELEKA SC: Just one point before I move on. Was it your email where you asked is the Chairperson aware of this to Mr Singh and Mr Koko and Boitumelo. But then you when you send an email to the board members you say:

“It is the Chairperson’s request.”

Is it because you knew the Chairperson had now agreed that
20 that is the route to follow?

MS DANIELS: Yes I would have phoned him in between.

ADV SELEKA SC: Ja. The reason I am asking you that is because you saw in his affidavit.

MS DANIELS: Yes.

ADV SELEKA SC: This morning he says you convened that

meeting.

MS DANIELS: No I would not have convened the meeting out of my own volition. But because it was a Round Robin Mr Chair I would have phoned him and said this is now a Round Robin you had asked for the meeting may I go ahead?

ADV SELEKA SC: So on page 550 Kassiem or Kasim. I think you have referred to this earlier.

MS DANIELS: Yes, I did.

ADV SELEKA SC: And it was also on the
10 8th of December 2015 at 21:28.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Twenty-eight minutes past nine. And she is writing to you and Mr Anoj, asking questions there. You say these questions were answered?

MS DANIELS: Yes, they were answered. I see we do have the emails with the ...[intervenes]

ADV SELEKA SC: Page 552.

MS DANIELS: [No audible reply]

ADV SELEKA SC: 552.

20 **MS DANIELS**: Yes, that is where I am. They came the next morning and I then forwarded this to Ms Kasim.

ADV SELEKA SC: Oh, is this – is this email – because you need to identify it first – is this email an answer to Ms Kasim?

MS DANIELS: Yes, this is the answer. On 552, this would

be the answer to Ms Kasim's questions.

ADV SELEKA SC: But it comes on the 9th of December at nine minutes past nine.

MS DANIELS: Yes.

ADV SELEKA SC: When did IFC meet?

MS DANIELS: At 08:30 the morning on the 9th of December.

ADV SELEKA SC: And for how long did they meet?

MS DANIELS: I think that meeting was about half an hour.

ADV SELEKA SC: And how did the meeting take place?

10 **MS DANIELS:** It was a telephonic meeting.

ADV SELEKA SC: So the meeting was no in person?

MS DANIELS: No, it was not in person. It was a telephone conference.

ADV SELEKA SC: Did anyone of them complain about the short notice, extremely short notice given?

MS DANIELS: No, there were no complaints.

ADV SELEKA SC: Who are the members of IFC?

MS DANIELS: The members were Mark Pamensky who recused himself because he was the Director of Oakbay.

20 Mr Pat Naidoo, Ms Venete Klein and I think Mr Khosa. Mr Zethemba Khosa.

ADV SELEKA SC: Ja. Did you arrange the telephone conference?

MS DANIELS: Yes, I did arrange the telephone conference.

ADV SELEKA SC: Now the outcome – just give me the time

again. Date?

MS DANIELS: I think it was at 08:30.

ADV SELEKA SC: Okay. So this – if you took about 30-minutes, these answers would have come after the fact.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: The outcome of IFC, what was it?

MS DANIELS: The outcome of the IFC meeting was recommend approval to the board, to approve the pre-purchase of Optimum Coal. I mean, the pre-purchase
10 payment to Optimum Coal Mine. My apologies for...

ADV SELEKA SC: Yes. Did you keep the minutes of IFC?

MS DANIELS: Yes, I did.

ADV SELEKA SC: Let us see. Turn to page 584. Or 582. It seems to be the same thing. Let us see. You will tell me. Page 582 has a watermark Draft on it and then there is 584.

MS DANIELS: [No audible reply]

ADV SELEKA SC: Are you there?

MS DANIELS: Yes.

ADV SELEKA SC: Did you look at the two – the documents
20 on those two pages?

MS DANIELS: Yes, the one is the draft minute that I sent out and then the... My apologies. Page 582 is the draft that I sent out and 584 would be the minutes approved as signed off by the chairperson of that meeting.

ADV SELEKA SC: Yes. So I see that then... Ja, the

meeting, 9 December 2015 and at 08:30. And it ended, page 586, closure.

“There will be no further issues. The chairman thanked all for attendance”

And the proceedings ended at 09:00.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: So they have approved... Anything more on this IFC outcome?

MS DANIELS: There was only that motivation that I include
10 in my – the salient points in my affidavit about Mr Naidoo who is the chairman of the meeting, setting out the reasons for the motivation for approving the recommendation to the board.

ADV SELEKA SC: Yes, you say it is in your affidavit?

MS DANIELS: Yes, it is.

ADV SELEKA SC: Let us see. Chairperson, it is on page 286. Page 286.

CHAIRPERSON: Yes.

ADV SELEKA SC: You found it Ms Daniels?

20 **MS DANIELS**: Yes, I did.

ADV SELEKA SC: You say the salient points. Anything of significance here you wish to draw to Chairperson's attention? Sorry, the document, just for purposes of identification is dated 9 December 2015. Eskom Board of Directors, IFC proceedings, December 2015.

MS DANIELS: Yes.

ADV SELEKA SC: The title is: Round-Robin Resolution.

Title of submission: Pre-purchase of coal from OCM. At the bottom end is: Thank you. And the name appears there: Chad Naidoo.

MS DANIELS: Yes.

ADV SELEKA SC: Yes.

MS DANIELS: Mr Chairman, I think the most salient point for me the business case for pre-purchase of coal which is
10 paragraph 3 on page 286 where it says:

“The business case for pre-purchase of coal for both Hendrina and Amot to be robust and strong, the cash flows are managed and absorbed by good industry management of stockpiles, to reduce holding days so there is no risk to electricity production and the profitability of the proposal is noted. The actual gain should be ring fenced and reported when it is realised.”

ADV SELEKA SC: Which paragraph number were you
20 reading from?

MS DANIELS: I was reading from paragraph number three.

ADV SELEKA SC: Number three. Well, let me read this document Chair very quickly. The document says:

“Resolution as submitted is supported and approved. Salient points from noting and highlighted in yellow

on the attached submission document:

1. OCM and the Companies Act, the BOD...”

Well, I suppose that is the Board of Directors?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Yes.

“...approved and will support and allow OCM to migrate from the status of business rescue to that of a growing concern.”

Now OCM here cannot be Tegeta.

10 **MS DANIELS**: That is correct.

ADV SELEKA SC: Because Tegeta is under business rescue.

MS DANIELS: [No audible reply]

ADV SELEKA SC: Yes?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Yes.

“...to migrate on the status of business rescue to that of a growing concern.

20 Their full rights, responsibilities and accountabilities will be as per the Companies Act.

They plan to use the pre-purchase proceeds to address their now liability and liquidity challenges.

This will be a positive development, both for OCM and for Eskom, which will address the present day contractual obligations and create a platform for the

future sustainability of mutual trade, business and job continuity for fellow South Africans.

2. Despite of the proposed solution, OCM undertakes to increase their transformation accountability and responsibility from 30% to 51% ownership. This is a positive development. It is noted and acknowledged.”

And I will leave three which I have read. Paragraph 4 says:

10 “4. The positive outcome from the joint management solution of Eskom and OCM is noted and acknowledged as a national achievement.

It allows for business continuity and security of jobs, the security of electricity production and two national key-point power stations, Hendrina and Amot. I am sure South Africa and customers will send their appreciation and all our customers.

20 5. A further recommendation is that the chairman of Eskom and chairman of Glencore jointly communicate its achievement to South Africa and the international community.

Thank you. Pat Naidoo.”

Now Glencore is not Tegeta?

MS DANIELS: No.

ADV SELEKA SC: Glencore was the owner of Optimum

Coal Holdings.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Which was a holding company of Optimum Coal Mine.

MS DANIELS: Yes, that is correct Mr Chair.

ADV SELEKA SC: Did you see this note?

MS DANIELS: Yes, I did.

ADV SELEKA SC: So this note related to Glencore?

MS DANIELS: Yes.

10 **ADV SELEKA SC**: And Optimum?

MS DANIELS: Yes.

ADV SELEKA SC: So in the mind of IFC, this resolution for the prepayment of coal was in relation to Optimum?

MS DANIELS: To Optimum Coal Mines, yes.

ADV SELEKA SC: And not Tegeta?

MS DANIELS: Not Tegeta.

ADV SELEKA SC: Did the board see this?

MS DANIELS: Yes, I did send it to the board subsequently.

ADV SELEKA SC: Because I have seen the Parliamentary
20 Portfolio Committee, Ms Viroshini Naidoo says she never received the IFC outcome from you.

MS DANIELS: No, I would have sent it out because she specifically asked for it.

ADV SELEKA SC: She specifically asked for it?

MS DANIELS: I mean, she specifically asked for the

meeting. So I would have sent the minutes of the meeting.

ADV SELEKA SC: Now Ms Daniels, this meeting of IFC ends at nine ...[intervenes]

MS DANIELS: Nine o'clock.

ADV SELEKA SC: 09:00. When do you receive... Well, there are two questions in my mind. One is, when did you send to the board? You had sent to the board... Ja, on the 8th.

MS DANIELS: On the 8th in the... On the 8th in the evening
10 Mr Chairman.

ADV SELEKA SC: Yes. Then there was Ms Naidoo saying: Let IFC look at this.

MS DANIELS: Let IFC look at this. I convened that meeting. The documents had already gone out.

ADV SELEKA SC: Yes.

MS DANIELS: So ...[intervenes]

ADV SELEKA SC: So when... Or you want to answer first? Let me give you a chance to answer.

MS DANIELS: So I sent out the draft minutes immediately
20 because I was typing as we were talking and I sent – it would have probably would have been within the hour of the 9th.

ADV SELEKA SC: Ja. Now, can you recall? When do you receive a response from the board members in regard to this particular submission? And I am now talking now the date

and the time.

MS DANIELS: Well, effectively, Mr Chairman, the approval started arriving on the evening of the 8th.

ADV SELEKA SC: Sorry, I am missing there?

MS DANIELS: I said, effectively, the approval started arriving on the evening of the 8th because the first approval was actually from Ms Naidoo.

ADV SELEKA SC: Oh, the one where she approves herself?

10 **MS DANIELS**: Yes.

ADV SELEKA SC: Yes. That is on the 8th?

MS DANIELS: On the 8th, in the evening. And then, I think, Dr Ngubane on the morning ...[intervenes]

ADV SELEKA SC: Page 571.

MS DANIELS: [No audible reply]

ADV SELEKA SC: But then if she approved and she asked that it be considered by IFC, it would have been a formality for her to receive if the outcome from IFC?

MS DANIELS: Yes, but ...[intervenes]

20 **ADV SELEKA SC**: Because she has already registered their approval.

MS DANIELS: She has already registered the approval. I see that Dr Ngubane sent his approval at 08:34.

ADV SELEKA SC: On the 9th?

MS DANIELS: On the 9th, yes.

ADV SELEKA SC: That is the day thereafter, after the 8th.

MS DANIELS: And actually, Dr Naidoo also approved the resolution on the 8th of December at 22:56.

ADV SELEKA SC: Chairperson, that is page 569.

MS DANIELS: Yes.

ADV SELEKA SC: So he approves four minutes before eleven at night.

MS DANIELS: [No audible reply]

ADV SELEKA SC: Dr Ngubane sends his approval at 08:34
10 the next morning.

MS DANIELS: That ...[intervenes]

ADV SELEKA SC: IFC is in session.

CHAIRPERSON: I am sorry. Did you say his approval is at 569?

ADV SELEKA SC: His is at page 571.

CHAIRPERSON: Oh, okay. Thanks. H'm.

ADV SELEKA SC: Yes. The one at 569 is Dr Pat Naidoo's.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes. And then the one of Mr Romeo
20 Khumalo.

MS DANIELS: That is at 572 Mr Chairman and that is approved at 09:05.

ADV SELEKA SC: On page 572. Did Ms Pat Naidoo also approved this?

MS DANIELS: Yes, that is what I said to you, Dr

Naidoo...[intervenes]

ADV SELEKA SC: No, no. Sorry. Mr Mark Pamensky.

MS DANIELS: No, Mr Mark Pamensky recused himself because he was a director of Oakbay at the time.

ADV SELEKA SC: So even at board level, he did not take part in the voting?

MS DANIELS: No, he did not take part in the voting.

ADV SELEKA SC: In the approval.

MS DANIELS: [No audible reply]

10 **ADV SELEKA SC:** So then by the time IFC is... Well, I do not know whether they deliberated on this. They are busy in a tender conference and the chairperson is Mr Pat Naidoo because Mr Mark Pamensky has excused himself. Mr Pat Naidoo has already sent you his approval the night before. He is chairing IFC the next morning but the decision is already made.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Ja. So what happens to this R 1.68 billion?

20 **MS DANIELS:** It then becomes... It was approved in the first... It first was approved by all the members and it then... I am not sure how it happened Mr Chairman but it then became a guarantee discussion. The approval was for prepayment of cash payment to OCM. And then the discussions on the 10th, started around converting this into a

guarantee.

ADV SELEKA SC: Ja. Just before that conversion. What did the board decide on the execution of its decision to prepay OCM and Dr Pat Naidoo suggesting, let us do a joint statement. Chairman of Eskom and chairman of Glencore. How is that – or was that executed?

MS DANIELS: No, the joint statement was not executed Mr Chairman.

ADV SELEKA SC: And what did the board decide on the
10 execution of the prepayment?

MS DANIELS: The prepayment was approved.

ADV SELEKA SC: Was...?

MS DANIELS: Approved.

ADV SELEKA SC: Yes. How did they execute it now?

MS DANIELS: Well, that was left up to the Chief Financial Officer, the delegation.

ADV SELEKA SC: Well, what was the board resolution? Maybe I should ask you that.

MS DANIELS: It was approval of... I just need to get it. So
20 it was...

“The Group Chief Executive together with the Group Executive for Generation and Chief Financial Officer are hereby authorised to negotiate and conclude the pre-purchase of coal agreement with the proposed owners of Optimum Coal, OCM.”

ADV SELEKA SC: Give us the page number, please?

MS DANIELS: This is... I am reading from page 577.

ADV SELEKA SC: 577. Thank you.

MS DANIELS: Yes.

“The agreement shall be subject to the necessary regulatory approval having been obtained by Eskom and the supplier, respectively, as and when necessary.

10 The Chief Financial Officer is hereby authorised to take all the necessary steps to give effect to the above including the signing of any consents or any other documentation necessary or related thereto.”

ADV SELEKA SC: Yes. So was that done?

MS DANIELS: Yes, that was done.

ADV SELEKA SC: This is to execute on the prepayment?

MS DANIELS: [No audible reply]

ADV SELEKA SC: Does this not execute on the prepayment?

MS DANIELS: Yes.

20 **ADV SELEKA SC:** Yes, I am asking whether that execution was done? Was the prepayment made?

MS DANIELS: No, the prepayment in cash was not made.

ADV SELEKA SC: Yes, what happened?

MS DANIELS: Then the cash payment was converted to the issuing of a guarantee, the performance guarantee in favour

of Tegeta.

ADV SELEKA SC: Did you know who did that?

MS DANIELS: That was at the instruction of Mr Singh.

CHAIRPERSON: At the instruction of...?

MS DANIELS: Mr Singh. Anoj Singh.

CHAIRPERSON: Mr Singh, ja.

ADV SELEKA SC: Did he instruct you?

MS DANIELS: No, this was via the Group Treasury Department in Eskom. There was a memorandum prepared.

10 I am not sure how the conversation went Mr Chair.

But there was – I was copied in on subsequent emails and you now started having to monitor what was happening.

There was a memo in which Ms Henry motivated, that it was safer to do a guarantee than a cash payment. And this was approved by Mr Singh on the 10th of December.

ADV SELEKA SC: So that is exactly the next day?

MS DANIELS: The very next day.

ADV SELEKA SC: Did that, what do you call it, conversion for a lack of a better word, from a cash to a guarantee go

20 back to the board?

MS DANIELS: It all went back to the board in ...[intervenes]

ADV SELEKA SC: No, did it go back to the board on the 9th?

MS DANIELS: No, it did not.

ADV SELEKA SC: Yes, you wanted to say, it went to the

board, when?

MS DANIELS: In 2016.

CHAIRPERSON: What was the significance of converting it from – converting from cash to guarantee as you understood it, if you do understand it?

MS DANIELS: In my understanding, it was better risk management for Eskom to – effectively, it would have been giving cash to a supplier. So from a risk management perspective and from a cost perspective, this was a better
10 option.

CHAIRPERSON: But was it not interesting that that conversion was thought of at the level of execution as oppose to the level of the decision being taken by the board? Nobody in the board thought: Let us rather a guarantee rather than cash. This came out later on, on the instance of Mr Singh.

MS DANIELS: Yes, there was very little question at board level Mr Chairman. I mean, other than the two ladies who asked questions about, you know, the coal pricing and the
20 financial constructions, there was really no discussion.

CHAIRPERSON: And this was the board that was appointed at the same here, is that right? In March ...[intervenes]

MS DANIELS: This is the ...[intervenes]

CHAIRPERSON: The same board that suspended executives?

MS DANIELS: That is correct.

CHAIRPERSON: And the chair had been appointed...
What, December?

ADV SELEKA SC: December ...[intervenes]

MS DANIELS: [Indistinct]

[Parties intervening each other – unclear.]

CHAIRPERSON: December 2014.

MS DANIELS: 27...

CHAIRPERSON: Ja.

10 **MS DANIELS:** I refer to this, the Ngubane Board in my...

CHAIRPERSON: H'm?

MS DANIELS: I referred to it as the Ngubane Board in my
affidavit.

CHAIRPERSON: H'm. Yes, okay.

ADV SELEKA SC: Ms Daniels, the guarantee – the cash is
converted into a guarantee. And I hear you venture an
answer about the safety relative to that but the question is.
In whose favour was the guarantee issued?

MS DANIELS: As I said, the guarantee was issued in favour
20 of Tegeta Exploration in 2015 and not Optimum Coal Mines.

CHAIRPERSON: But also, is the position not that once the
guarantee has been put in place, has been secured? You
cannot undo it or can you undo it?

In other words, if you discover something and say: No,
no, no. We should not have agreed to this, or whatever. It

is too late.

In other words, is your earlier answer actually correct? If you give cash or give a guarantee, can you stop the bank after you issued the guarantee from actually paying out?

MS DANIELS: Mr Chairman, there was an underlying clause by agreement that was put in place, that had to be – there were suspensive conditions in that agreement. But from the guarantee perspective.

So those – there were performance – the guarantee is in
10 the bundle of documents – but there were certain performance related, terms and conditions in that guarantee.

You will hear that it was, you know, that it expired on the 31st of March. So there was a measure of...[intervenes]

CHAIRPERSON: It was subject to some conditions?

MS DANIELS: Yes.

CHAIRPERSON: H'm. So it would be paid if certain conditions ...[intervenes]

MS DANIELS: Conditions were met. But those conditions were not met.

20 **CHAIRPERSON:** H'm. Mr Seleka.

ADV SELEKA SC: Yes. Ms Daniels, which underlying agreement is that? Which are the parties to the agreement?

MS DANIELS: That is Tegeta and Eskom.

ADV SELEKA SC: Okay. But does it matter? Because the approval of the prepayment is made in relation to Glencore

and OCM.

MS DANIELS: [No audible reply]

ADV SELEKA SC: The guarantee which piggy backs on the approval is suddenly made in favour of Tegeta.

MS DANIELS: Ja.

ADV SELEKA SC: Now go back to the first resolution which relates to the prepayment before OCM.

MS DANIELS: H'm.

ADV SELEKA SC: There is the underlying agreement
10 between Tegeta and Eskom matter for that decision.

MS DANIELS: No, not for the purposes of the decision.

ADV SELEKA SC: So that is why... You want to carry on?

MS DANIELS: I just want to say, not for the purpose of the decision. You know, it was really ...[intervenes]

ADV SELEKA SC: Yes.

MS DANIELS: It did not matter.

ADV SELEKA SC: Yes. So if it does not matter, it makes everything about the guarantee irrelevant. Irrelevant to the decision made by IFC and the by the board on the
20 9th of December 2015.

MS DANIELS: Yes, that is correct Mr Chairman.

ADV SELEKA SC: That guarantee is irrelevant.

MS DANIELS: Yes.

ADV SELEKA SC: It is not made by the board. It not made by Eskom. It is made by Mr Anoj Singh.

MS DANIELS: Yes.

ADV SELEKA SC: And he is making it in favour of a completely different entity.

MS DANIELS: Yes.

ADV SELEKA SC: Chairperson, that guarantee is on page 599.

CHAIRPERSON: Is the entity in favour of whom the guarantee was made if from the entity which was going to get cash before the guarantee was introduced?

10 **MS DANIELS:** Yes, it was Mr Chairman because the guarantee is in favour of Tegeta.

CHAIRPERSON: H'm?

MS DANIELS: And the prepayment of cash was to Optimum Coal Mines.

CHAIRPERSON: Yes. So it is a completely different thing.

MS DANIELS: Completely different.

CHAIRPERSON: And not mandated by the board?

MS DANIELS: No.

CHAIRPERSON: H'm.

20 **ADV SELEKA SC:** So then this guarantee would have been given for an ulterior motive or purpose.

MS DANIELS: That is the only conclusion that one can draw, yes.

ADV SELEKA SC: Well, we have learnt from the evidence that the Parliamentary Portfolio Committee, that it would

have been issued to assist Tegeta to show that it has the money to pay for the price, by the purchase price of OCM.

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: It... Did you know ...[intervenes]

CHAIRPERSON: This is a few months after Mr Anoj Singh has joined Eskom?

MS DANIELS: Yes, that is correct Mr Chairman.

CHAIRPERSON: Yes.

MS DANIELS: The...[intervenes]

10 **CHAIRPERSON**: He has not even finished the year.

MS DANIELS: His appointment, his permanent appointment was only confirmed in October 2015.

CHAIRPERSON: Yes.

ADV SELEKA SC: Is he not effective 1 August 2015? I think it is effective 1 August 2015. I am not sure.

MS DANIELS: I just remember ...[intervenes]

CHAIRPERSON: He acted first.

MS DANIELS: Yes.

CHAIRPERSON: He acted for some time.

20 **MS DANIELS**: Yes.

CHAIRPERSON: And he was appointed.

MS DANIELS: Yes, I just remember ...[intervenes]

CHAIRPERSON: When Brian Molefe started, joined in April 2015 and acted as Group CEO. Mr Singh came about, what, three months after that, two months, three

months to act.

ADV SELEKA SC: He is seconded to act effective 1 August 2015.

CHAIRPERSON: 1 August, okay.

ADV SELEKA SC: So this is August. September, October, November, in December this is what is happening.

CHAIRPERSON: Ja.

ADV SELEKA SC: In that six – that's three months, ja, a little over three months now.

10 **CHAIRPERSON:** And before he arrives who was acting as Financial Director, was it Ms Dlamini?

ADV SELEKA SC: Ms Nonkululeko Veleti.

CHAIRPERSON: Veleti?.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: That is right, Chair. Is that correct, Ms Daniels?

MS DANIELS: Yes, I am just not sure if she resigned at some point, but...

20 **ADV SELEKA SC:** Ja, I cannot recall exactly when.

MS DANIELS: I cannot recall exactly when she resigned, Mr Chairman.

CHAIRPERSON: Ja.

MS DANIELS: But she resigned in that year.

ADV SELEKA SC: Yes.

MS DANIELS: But I remember that I completed the appointment of directorship forms and things like that in October of 2015.

ADV SELEKA SC: Yes, that is [indistinct] 01.52 because we have done – the 1.6 billion prepayment approval which is taken on short notice, the next day is converted into a guarantee by the CFO, all on his own, and in favour of a different entity than the one contemplated in the previous board decision. Then there is the prepayment of 659
10 million, I believe that is the next thing you deal with in your affidavit.

MS DANIELS: Yes, that is correct, Mr Chair.

ADV SELEKA SC: And it is common cause the board made that decision, Ms Daniels, I think you have – your part is relating to the Chairperson, to the Commission, the role played in the build-up to the making of that decision because it also starts with the submission and now we are on – we are now in April 2016 and you can tell the Chairperson briefly what happens.

20 **CHAIRPERSON:** From which page in her affidavit does she deal with that topic?

ADV SELEKA SC: That is from page 255, through the whole file. Chair, while Ms Daniels goes there ...[intervenes]

CHAIRPERSON: Okay, I have got it.

ADV SELEKA SC: Yes. There is an affidavit recently submitted to the Commission by Mr Pierce Marsden who was ...[intervenes]

CHAIRPERSON: Before we do that, go there, we deal with that, Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: On the guarantee...

ADV SELEKA SC: Yes.

CHAIRPERSON: Have we reached the end of that part?

10 **ADV SELEKA SC:** I have, I have.

CHAIRPERSON: Okay, alright. Okay.

ADV SELEKA SC: I just wanted to read a portion from his affidavit which relates to the statement made in Dr Ramontja's letter about the rehabilitation – well, it is actually made in his affidavit about rehabilitation.

MS DANIELS: Yes. And he says:

20 “The business rescue practitioners were never engaged by Tegeta by the prepayment or about the guarantee that Eskom issued in favour of Tegeta for R1.68 billion for purposes of supplying coal. I do not know what the 1.7 billion contained in the DMR letter is reference to. The reference is not a reference to the amount owing to the creditors of OCH and/or OCM nor to the funds held for rehabilitation purposes and nor for any capital

expenditure.”

That is just what wanted to place on record.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ms Daniels, yes, I had asked a question, we are going now into the prepayment of the 560 – no, 659 million.

MS DANIELS: 659 million.

ADV SELEKA SC: Beg your pardon. Again you were asked to do a submission.

10 **MS DANIELS:** Yes, Mr Chairman, I was approached by Ms
Nteta who was the Acting General Manager Field Sourcing
and she asked for assistance – she needed to get a
submission to the board tender committee. So this was
around about the 8 April, it was the – I think it was a
Friday and I said to her, the board tender committee is
sitting on the 13 April and if you needed to get a
submission in, you know, you need to get it very quickly. I
had just done a pack of late submissions so I was saying
to her listen, please hurry up if you want to get to that
20 meeting.

We – she asked for my assistance and we worked together. By the Monday she had - you know, we had this skeleton of a submission. Mr Mabelane then also asked for assistance to get it done.

The understanding at that point was that this is

going to the meeting of the 13 April, which was the Wednesday and this was about – there was a coal shortage at Arnot and that they needed to – the procurement processes were not getting done in time and they needed to secure coal. So that was the basis on which we worked.

Late the Monday afternoon I had left the office and I still did not have the submission so I was a bit nervous because having such late submissions to the board tender committee I would always bear the brunt no matter if it was
10 the executive's fault, the company secretary also got the tongue lashing in the meeting.

It was then only later that Mr Khoza, who was the board tender committee Chairperson, phoned me, that was around 7.30 in the evening and he said to me that we needed to convene a meeting that evening and I asked him what was this about because, you know, we have a meeting 48 hours, can it not wait until then? He said it was about ...[intervenes]

CHAIRPERSON: Sorry, the meeting was meant to be
20 when?

MS DANIELS: The 13 April.

CHAIRPERSON: The 13th?

MS DANIELS: 13th.

CHAIRPERSON: Three zero.

MS DANIELS: One three.

CHAIRPERSON: One three, yes. And Mr Khoza was phoning you on what date?

MS DANIELS: On the 11 April.

CHAIRPERSON: On the 11th.

MS DANIELS: And this is in the evening of the 11th.

CHAIRPERSON: Yes. The meeting on the 13th was going to be a meeting of the board tender committee.

MS DANIELS: Yes, that is correct, Mr Chair. So this was not ...[intervenes]

10 **CHAIRPERSON:** And now he wanted you to convene a meeting of the same committee on the evening of the same day on which he called you.

MS DANIELS: Yes.

CHAIRPERSON: Namely the 11th.

MS DANIELS: The 11th and it is already 7.30 p.m. in the evening.

CHAIRPERSON: Yes. And this meeting that he wanted you to call, was it going to take the place of the meeting on the 13th or was it going to be an additional meeting? So
20 there were going to be two meeting, in other words or not?

MS DANIELS: This was an additional meeting, a special meeting, as we called them.

CHAIRPERSON: Okay.

MS DANIELS: And this would be to just consider one particular topic.

CHAIRPERSON: Yes.

MS DANIELS: He said to me that there was an emergency - you know, that there was an emergency at Arnot Power Station and that this is why this meeting was now urgent. When I said we have 48 hours to the next meeting, it can wait.

CHAIRPERSON: Oh, so he wanted the meeting of the 11th to deal with what?

MS DANIELS: There was emergency supplies at Arnot
10 Power Station, once again a security of supply issue.

CHAIRPERSON: Yes.

MS DANIELS: And he said the operational people told him that it was urgent. At the time I did not have any document yet and I then called Mr Mabelane, who was the official responsible and I received a submission and it was closer to 8 p.m. in the evening when I got that and with the request because I asked him to give me a reason to convene a meeting. So it was to discuss the emergency supply at Arnot Power Station.

20 So when I called all the board members – the BTC members. These were Mr Khoza, Ms Naidoo, Ms Carrim and Ms Mabude and they all indicated that they were available, full meeting. I sent out the documentation and I convened the meeting – I think it was nine o'clock that evening. Ms Mabude was the only one who indicated that

she will be a bit late for the meeting but she attended. I sent.

I sent out the submission documents once received from Mr Mabelane. There were once again questions from Ms Naidoo, Viroshee Naidoo, which I sent to the executives and said look, these are the questions that you are going to need to answer. The meeting went ahead at nine o'clock ...[intervenes]

CHAIRPERSON: Okay, one second. Mr Seleka, we are at
10 three minutes past four. Let us take an adjournment, we can continue, and if that is fine with everybody, maybe until about quarter to five or thereabouts and then I will be ready to start the evening session.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: With – for another witness. So let us take a short adjournment now of ten minutes. Let us resume at quarter past.

ADV SELEKA SC: That is in order, Chairperson.

CHAIRPERSON: Okay, we adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let's continue.

ADV SELEKA SC: Thank you Chair. Ms Daniels there's a question which I recall I needed to ask you and that is in regard to the guarantee. Remember the guarantee is made

on the 10th of December 2015. Do you know how
...[intervenes]

MS DANIELS: Positively Mr Chair I do remember, I nodded my head, my apologies.

CHAIRPERSON: Oh yes.

ADV SELEKA SC: Was there any agreement in writing between Eskom and Tegeta relative to the guarantee?

MS DANIELS: As I said Mr Chairperson the underlying agreement that we were working on was a co-supply
10 agreement, which was supposed to be between the three batches of coal from Optimum Coal, so that was the agreement that we were attempting to put in place at the time.

ADV SELEKA SC: Okay when you say underlying you mean the guarantee would have been issued in contemplation of that agreement.

CHAIRPERSON: Or on the strength of that agreement.

ADV SELEKA SC: Or on the strength of it.

MS DANIELS: I think on the strength of that agreement is
20 a better way to put it.

ADV SELEKA SC: Now did you take part in the drafting of that agreement?

MS DANIELS: We – yes I did, I engaged the services of Cliff Dekker Hofmeyr to assist, I think we received a suggested two-pagers from the Primary Energy

Department, I am not quite sure how it happened, but there was a two pager agreement in place that we went through.

ADV SELEKA SC: Who, who asked you to draft the agreement?

MS DANIELS: As I said Mr Chairman I can't remember how exactly that came about.

ADV SELEKA SC: Yes, on page 7, 73, page 7, 73.

MS DANIELS: Yes I am there.

ADV SELEKA SC: There are emails there, can you just
10 quickly identify them to the Chairperson. From bottom up.

MS DANIELS: There is an email Mr Chairman from myself to Mr Anoj Singh and it says letter agreement to get an Eskom execution copy, and then I say:

“Hi Anoj,

Herewith the agreement as amended.

Regards,

Suzanne”

ADV SELEKA SC: Yes, well is that the agreement on page 774.

20 **MS DANIELS:** Yes, this is the agreement on 774.

ADV SELEKA SC: It runs up to page 776, it is unsigned so that is a draft.

MS DANIELS: It is a draft yes.

ADV SELEKA SC: And Mr Anoj, the email above yours?

MS DANIELS: The email above mine is from Mr Anoj

Singh to Mr Eric Wood, and he forwards the agreement as is to Mr Wood.

ADV SELEKA SC: That is on 10 December 2015 at 4:26, twenty six minutes past four.

MS DANIELS: That is correct.

ADV SELEKA SC: Then there is an email above?

MS DANIELS: There is an email there in reply from Mr Eric Wood to Mr Singh which says:

“Any luck with the guarantee draft.

10 Regards”

ADV SELEKA SC: So that email is on the 10th December as well at 16:42, and the subject line is letter, agreement Tegeta Eskom execution copy.

MS DANIELS: Yes that is correct.

ADV SELEKA SC: Now what was the time, I said 16:42, it's twenty to five, late afternoon, then please turn to page 724.

MS DANIELS: Can I have it again Mr Seleka please, I didn't hear it.

20 **ADV SELEKA SC:** 724. Are you there?

MS DANIELS: Yes I am there.

ADV SELEKA SC: Please identify the document.

MS DANIELS: It is an email from Businessman to Matshela2010 and there's a two pager between, the subject is two pager, the body of the email says:

“Two pager between Tegeta and Eskom salient points. Eskom will provide bank guarantee for 1.68billion. CP for release and Section 11 approval from DMR Competitions Commission approval. Tegeta will supply from OCM as the contract but for the 12 months prepayment January 2016 to January 2017 will give a 5% discount off the 154. Tegeta will supply from Koornfontein as per contract for the same period at the original 380, not the requested increased tariff. At the end of each month starting end February 2016 Eskom shall deduct 140million from amounts due to recoup the 1.68billion. Tegeta receiving prepayment for two months supply but Eskom can use monies owed from all three mines, Brakfontein to recoup the 140million a month. Therefore if Tegeta does not deliver full volume from OCM to Kroon the payments due for Brakfontein can be clawed. Any amounts due over the R140million for each month shall be payable to Tegeta. Two pager almost as addendum to the supply contracts.”

ADV SELEKA SC: Yes this email is on the 10th of December 2015, and it is at fifteen minutes past twelve, after midnight, is that correct?

MS DANIELS: That’s what it looks like and then it is sent

to me at 7.31.

ADV SELEKA SC: Yes, that is what is confusing me because it is 10 December 2015 at just after half past seven sent to you, that will be 10 December in the morning.

MS DANIELS: But I think this is – if you look at the time it is GMT+2, so it might be different time zones, that could be the explanation I think.

ADV SELEKA SC: Yes, so this is an email from
10 Businessman to Matshela email address 2010,
Matshela2010.

CHAIRPERSON: And that is not his Eskom email address
hey?

MS DANIELS: No that is not his Eskom email address Mr
Chairman but that is his personal yahoo address.

CHAIRPERSON: Email address. Yes but did you know it
to be his personal email address or you are just saying
because it has got his name?

ADV SELEKA SC: No, I know that it is his personal email
20 address.

CHAIRPERSON: Okay.

ADV SELEKA SC: There is an email above from
Matshela2010@yahoo.com sent to you, Suzanne Daniels,
forwarding the two pager.

MS DANIELS: Yes.

ADV SELEKA SC: So you know that you know that you received this from Mr Koko?

MS DANIELS: I don't recall the email specifically Mr Chairman but yes it has my name on it so I accept that it was sent to me.

ADV SELEKA SC: Yes. So would this have preceded the drafting of the coal supply agreement, what you have referred to as the underlying agreement?

MS DANIELS: I am not sure about the timing, this seems
10 to be at 7.31 in the morning, I do recall that I had instructed Mr – Cliff Dekker Hofmeyr on that day.

ADV SELEKA SC: Just turn the page to 725, see whether that doesn't relate to what you are talking about.

MS DANIELS: Yes it does because it is the 10th December 8.42, I speak to Rochelle Moodley about the Optimum Eskom fee purchase.

ADV SELEKA SC: Yes. So what were you asking there?

MS DANIELS: Here I ask please call me, I need your assistance in drafting this agreement, urgent time
20 pressure, I need the draft by twelve o'clock.

ADV SELEKA SC: Yes, I see that the attachments is instruction two pager between Tegeta and Eskom, which seems to be similar to the emails on the previous page which also is the subject of a two-pager.

MS DANIELS: Yes.

ADV SELEKA SC: So does it mean that Businessman would have attached a document to his email address, which is two-pager, forwarded to your by Mr Matshela Koko, which then gets forwarded further to CDH, Mr Rishaban Moodley of CDH. Is that what is happening here?

MS DANIELS: I think that is what it would mean Mr Chairman, I can't remember precisely, it is five years ago, but I did send if these attachments were there then I did
10 send them.

ADV SELEKA SC: And if one looks at the body of the email – well I don't, maybe he didn't attach anything, Businessman on page 724, if you look at the body of his email he says two-pager between Tegeta and Eskom salient points, Eskom will provide bank guarantee for R1.68billion. This is Businessman and then he writes CP – what does CP stand for, CP for release is?

MS DANIELS: Condition Precedent.

ADV SELEKA SC: Okay condition precedent for release
20 is one, Section 11 approval from DMR, two Competition Commission approval. Now let's pause there for a moment, let's go to page 726. Could that have been the document annexed to your email to Mr Moodley of CDH?

MS DANIELS: That could be Mr Chairman.

ADV SELEKA SC: So it says ...[intervenes]

CHAIRPERSON: But it looks like Businessman instructs Mr Matshela Koko and Mr Matshela Koko instructs you?

MS DANIELS: Yes.

ADV SELEKA SC: So you send it to the attorneys, I need your assistance in drafting this agreement, so page 726 says two-pager between Tegeta and Eskom, salient points. That's exactly what Businessman wrote, two pager between Tegeta and Eskom salient points. Eskom will issue bank guarantee in favour of Tegeta for R1.6billion on signature, 10 so that is the same bullet point as his except on signature is there, a faction effective date, and then CP for release is which is also how he wrote it. The first bullet point under there is Section 11 approval from DMR which is exactly the same as his. Next bullet point is Competition Commission approval which is also the same as his, and there are other aspects added to the draft, notarial bond on future coal company secretary to issue letter of comfort that that shares have been transferred and issued to new owner, and lawyers letter of comfort that the CP's have 20 been fulfilled, do you see that?

MS DANIELS: Yes I see that.

ADV SELEKA SC: Are the rest of the bullet points the same as the one in Businessman, ja it seems to be the same.

MS DANIELS: It seems to be the same.

ADV SELEKA SC: If you look at the last bullet point Chairperson any amount due over R130million for each month shall be payable to Tegeta. The one above that, therefore if Tegeta does not deliver full volume from OCM or Kroon the payments due for Brakfontein can be clawed, exactly the same. Go to the one above, Tegeta receiving prepayment for two mines supply but Eskom can use monies owed from three mines, Brakfontein also to recoup the R140million a month. Exactly the same. So somebody
10 else was drafting his own terms for Eskom, for you guys.

MS DANIELS: Yes he was.

ADV SELEKA SC: Did you see this email which was forwarded to you by Mr Matshela Koko on page 724? Is this email being forwarded to you?

MS DANIELS: Yes it has been forwarded to me.

ADV SELEKA SC: Thank you. Did you express any view, not view but was this of any – did it raise any concern to you that it is an email from Businessman that is assuming you don't know who is Businessman, does it raise any
20 concerns for you, questions, queries, where does this come from?

MS DANIELS: Not at the time Mr Chairman.

CHAIRPERSON: Why not?

MS DANIELS: I really just took it and looked at the top and went and did the agreement.

CHAIRPERSON: Well would Mr Matshela Koko have sent you this type of documents or instructions without any discussion with you first as to what they really related to and why they – it was necessary to include them in an agreement or guarantee?

MS DANIELS: He probably would have called me.

CHAIRPERSON: And discussed with you?

MS DANIELS: And discussed with me.

CHAIRPERSON: Ja, but this time did he?

10 **MS DANIELS:** I really don't remember, you know just given the way that it happened there he may have but I can't [audio cuts out]

CHAIRPERSON: Because you see if he didn't discuss them with you before he sent them to you my intimation is to think that you would have been surprised where is he getting all of these things without discussing them with you and that you would have wanted to discuss with him before even sending to Mr ...[indistinct] or whoever, but did you discuss with him these terms, these issues before you
20 instructed attorneys to assist you.

MS DANIELS: I really can't remember the specific phone call of that day.

CHAIRPERSON: And Mr Koko says that the two of you were very close and 2015 is all within the years that he says that the two of you were very close, he said when he

was giving evidence last week that in township lingo you were tight.

MS DANIELS: [laughing] that is correct Mr Chair.

CHAIRPERSON: You confirm you were very close?

MS DANIELS: We were close at that time.

CHAIRPERSON: Yes at that time, so one would have expected that he would have discussed these things with you and if he didn't you would find that strange and maybe ...[intervenes]

10 **MS DANIELS:** I would have probably found it you know.

CHAIRPERSON: And say where does this come from, you haven't discussed this with me.

MS DANIELS: H'm that's correct Mr Chair but as I sit here today I cannot remember that, you know those particular phone calls, there were lots of phone calls between us.

CHAIRPERSON: Mmm.

MS DANIELS: The fact that I acted on the email I can say there must have been a conversation, but because I
20 don't have an independent recollection as I sit here today, but judged on what I did there must have been a conversation.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you Chair. Ms Daniels this is in December 2015 did you have an idea in December 2015 as

to who Businessman was or could be in December 2015?

MS DANIELS: I am just trying to place, Mr Chairman I think I had my suspicion.

ADV SELEKA SC: You had your suspicion?

MS DANIELS: Yes.

ADV SELEKA SC: What was your suspicion?

MS DANIELS: That given you know the nature of what was being discussed that this could be Mr Essa.

CHAIRPERSON: Why wouldn't you have sought to confirm
10 whether that was so?

MS DANIELS: Mr Chair I think if I look at the – what I witnessed in that year ...[intervenes]

CHAIRPERSON: You look?

MS DANIELS: What I had witnessed in that year, 2015 and knowing what Mr Essa was capable of I would have, you know I was quite careful.

CHAIRPERSON: But you were Company Secretary at the time, you were a lawyer, you had an opinion, you advised on contracts isn't it? Or that was your previous position
20 or you still did that when you were Company Secretary in terms of contracts, you were no longer involved in advising on contracts but you had the knowledge.

MS DANIELS: No, I had the knowledge.

CHAIRPERSON: Yes, and what this was about was connected with contracts?

MS DANIELS: Yes.

CHAIRPERSON: And you realised that there is this Businessman who is effectively instructing Mr Koko to do certain things about contracts or guarantees and Mr Koko in turn instructs you to give effect to that. Surely that should have concerned you to say well who is this person that I don't know within Eskom who is giving instructions and I am supposed to carry out the instructions.

MS DANIELS: I think Mr Chairman I sort of
10 compartmentalised it in terms of this is coming from Matshela Koko.

CHAIRPERSON: But you would have seen from the emails isn't it that originally it comes from Mr Businessman?

MS DANIELS: Yes.

CHAIRPERSON: So I am – and you didn't know anybody within Eskom whose email address was Businessman?

MS DANIELS: No.

CHAIRPERSON: So you would have thought it must be
20 somebody from outside.

MS DANIELS: Yes.

CHAIRPERSON: And that should have worried you.

MS DANIELS: Yes it did.

CHAIRPERSON: And you would have been, you would have been concerned whether the affairs of Eskom were

now being dictated to by forces outside of Eskom and you would not have wanted to be part of that isn't it?

MS DANIELS: That is correct Mr Chairman but at that ...[intervenes]

CHAIRPERSON: And therefore once that was the thinking you would have – one would expect that you would confront Mr Koko, more so he was close to you at the time so you would have no reason to fear that maybe he wouldn't take it positively. You would have – you should
10 have raised the issue with him to say but where are you getting these ideas from, because you are not getting them from within Eskom.

MS DANIELS: I should have Mr Chairman but at that stage I did not. I really did not.

CHAIRPERSON: But do you accept that it would be strange if you didn't raise the issue and yet being aware that it seemed that forces outside of Eskom were giving instructions as to what Eskom officials should do?

MS DANIELS: Yes, that I accept you know, it is just that I
20 want you to take into consideration the mood at the time, you know. Yes it may be so that Mr Koko and I were close, but the fact that we had experienced what we did, that closeness was already waning, it wasn't at that point, remember this is now December 2015, it is not at this stage where I can say hey what is going on here.

CHAIRPERSON: Well he said your relationship soured between the two of you, the relationship between the two of you only soured in 2017 if I recall correctly.

MS DANIELS: No that is why I am saying that is incorrect you know because you will remember last time I said to you that's incorrect, he is conflating the dates.

CHAIRPERSON: On your version when did it sour?

MS DANIELS: It started late 2016. I had already you know started trying to be mindful of what I witnessed and
10 mindful of you now the rush – witnessing what the Board had done, that there definitely was outside influence. You know I cannot sit here and tell you there wasn't. You know that would be just nonsense.

Mindful of that I started putting the distance and I think it was late 2016 when we started having, we started getting all these questions from about the first quarter of March, I mean the first quarter of 2016, about you know the Gupta affiliations, the connections and all of those things, and in that process the distance, I tried to keep the
20 distance but it also maintained the professional relationship, so I think when Mr Koko uses a particular incident which is really, it started way before then.

CHAIRPERSON: Of course earlier than December, I think at the latest if I am not mistaken from your previous evidence here, in September of 20 – I think 15 I don't know

if it was 14 but I think 15 or it must be 15 because Dr Ngubane only joined 2015 was the first calendar year that he was a member of the Board, from your previous evidence you recall that there were emails that came in from – if it was not Businessman it was Infoportal, and there is a dispute between yourself and Dr Ngubane, you said in effect – I am putting it in my own words, this person sought to communicate with him and you were just given instructions by Dr Ngubane, I think he says he pushes the
10 blame to you that you were the – you would be the person who knew about this person but that email address Mr Seleka was either Businessman or Infoportal isn't it?

ADV SELEKA SC: It was Businessman.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chairperson so where the name – it is essentially the same, so where you see the email address it is Infoportal, but then sometimes you see the name.

CHAIRPERSON: Ja.

ADV SELEKA SC: Other times you see both.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Businessman then infoportal.

CHAIRPERSON: Oh it is the same email address?

ADV SELEKA SC: Yes the same Chair.

MS DANIELS: It is the same.

CHAIRPERSON: So – so the point Ms Daniels is how – how

can you in December when you see this Businessman, this email address that sends email to Matshela Koko and he is saying – sends instructions to you. So how can you still not raise the issue when that is not just the first time you had another occasion or other occasions about the same email address? Unless of course the other scenario is if you knew then obviously you did not raise anything?

MS DANIELS: Mr Chairman I suspected at the time – I did not have concrete evidence and that ...

10 **CHAIRPERSON:** But that suspicion is the one that should have driven you to ask. That is part of the point.

MS DANIELS: Yes I – I.

CHAIRPERSON: Why did it not drive you to ask?

MS DANIELS: You know asking the...

CHAIRPERSON: Mr Matshela Koko. Mr Matshela Koko who is this person that is sending us this – sending you instructions and you send them to me because obviously this is somebody outside of Eskom? Who is this – what is happening? Why did you not ask that?

20 **MS DANIELS:** Well I think I – I really did not want to – to cause any trouble for myself.

CHAIRPERSON: You would not cause any trouble for yourself with Mr Koko he was – the two of you were tight.

MS DANIELS: No, no.

CHAIRPERSON: So if it is..

MS DANIELS: Just remember I mean.

CHAIRPERSON: You were close.

MS DANIELS: I want to just – I want to dispel that.

CHAIRPERSON: hm.

MS DANIELS: Because – I want to dispel that ...

CHAIRPERSON: But you agreed earlier on.

MS DANIELS: Yes.

CHAIRPERSON: Five minutes ago.

MS DANIELS: We were but not that close but I would now
10 be able to be in a position to say to him – hey?

CHAIRPERSON: No but Ms – you cannot say if there was
not something that you suspected to be something wrong.
You cannot say that you would not have been in a position to
raise it with Mr Koko?

MS DANIELS: Yoh Mr Chairman I mean – I think you would
have to – you would have to understand the mood of Eskom
at that time.

CHAIRPERSON: Yes but at least at the level of wanting to
understand. You say I do not understand who is this
20 Businessman? So it cannot victimise you for that. He
cannot. You are just enquiring. Who is this person? I see
that you pass on to me instructions that are given to you by
somebody that seems to be outside of Eskom.

MS DANIELS: Ja look at the time I just did not want to
upset the applecart and you know what now when you look

back at it I should have done so.

CHAIRPERSON: But you accept it or do you not accept that the other possibility of course is for somebody in your position not to raise the issue was if they knew who – exactly what was going on?

MS DANIELS: No I accept that proposition.

CHAIRPERSON: You accept that proposition.

MS DANIELS: Yes I am not going – I am not going to argue with you.

10 **CHAIRPERSON:** Yes.

MS DANIELS: You know but I just wanted to please understand that the mood was very, very different to the ordinary corporate environment.

CHAIRPERSON: Hm.

MS DANIELS: And especially if you know you want to give the appearance of being friendly. Because I had witnessed – remember I had now sat in on a number of sort of purportedly closed meetings and I had seen how these people operate. And it was not – I mean Mr Koko was the
20 only one who came back. And here we have Mr Singh, we have Mr Molefe, we have Mr – Dr Ngubane and they all seem to be in the same circle you know. And the limited – at that stage the limited exposure that I had had to the board members you know they had acted quite ruthlessly when someone questioned things. You know. So for me it was

just – I would ask you – yes I accept I should have done more. There is no way I can say to you you know I should not. With the benefit of hindsight if I were a co-sec today I would certainly do things differently.

CHAIRPERSON: Mr Seleka I see we have gone beyond quarter to?

ADV SELEKA SC: Ja.

CHAIRPERSON: But if you want one or two questions to.

ADV SELEKA SC: Please yes.

10 **CHAIRPERSON:** To finish for the day that is fine.

ADV SELEKA SC: Thank you Chair because relative to Dr Ngubane Ms Daniels he was saying you told him he is Richard Seleke and you said he was the one who told you that is Richard Seleke. I am wondering what is Mr Matshela's version going to be? I understand he says you gave him the email.

MS DANIELS: Yes I think that – I think you would find that even in his – I am not sure which version of his

ADV SELEKA SC: Affidavit.

20 **MS DANIELS:** Affidavit or you know – he says that I told him that is that is the chairman's address. I mean the records clearly show it came from him you know. So I would really dispute that. I did not at any time say to him that this was the Chairman's address.

ADV SELEKA SC: Yes. Quickly you know the email

exchanges ultimately also goes to explicit Mr salimessa@gmail.com page 752 as well as page – well let us deal look at 752. There is Mr Anoj Singh on 10 December 2015 3:14. That is fourteen minutes past three.

MS DANIELS: Yes Mr Chair.

ADV SELEKA SC:

“Please find above attached.”

And that email seems to have been forwarded – oh it goes to Eric Wood of Regiments and Eric Wood at the top of the
10 page forwards it to salimessa@gmail.com. And you turn to page – and that is the last one 768 at 14:13 you – 10 December there was a lot of activity on the 10 December. You send to Mr Anoj

“Hi Anoj herewith the agreement as amended.”

At the top the email above yours he forwards it to Eric Wood of Regiments at 4:26 pm. Eric Wood on the same day he forwards it to salimessa@gmail.com at 16:36. So this is how third parties outside of Eskom kept in the loop of what is happening. But more than that in fact they start their thing
20 and they are kept in the loop – the develop – internal development in Eskom. Is that a fair assessment?

MS DANIELS: That is a fair assessment I mean we cannot argue with this Mr Chairman.

ADV SELEKA SC: Ja. If you did not stand up based on your duties I suppose you knew them very well as a

Company Secretary. This board who was going to advise it if you were silence who was going to advise this board?

MS DANIELS: Mr Chairman I did get a bit bolder as time went on. So when – when I was asked to advise I did so.

CHAIRPERSON: Did you wait until you were asked to advise or did you advise as you saw the need?

MS DANIELS: When I saw the need and both Mr Chair when I was asked to advise we put in place a program of director training etcetera you know so I continued to do the – the
10 duties that I was engaged for. So it was a combination.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes. Ms Daniels I want to conclude with this. I saw another email there where you tell Mr Anoj Singh that you have not put the expiry date for the fulfilment of conditions of the CP's. That expiry date was ultimately 31 March 2016. Who placed that date?

MS DANIELS: I think it was...

ADV SELEKA SC: For the fulfilment of the...

MS DANIELS: I think I got those – I think I got those dates
20 from him Mr Chairperson because the – we did not have them in the – in the agreements we drafted.

ADV SELEKA SC: Were you aware that at the same time as this was happening that Tegeta had signed an agreement with – in fact it signed on that day the 10 December 2015 signed an agreement with Optimum or Glenco for the

purchase of Optimum Coal Holdings and that that agreement was subject to [00:10:40] conditions.

MS DANIELS: I was not aware of that at the time Mr Chairman. I later became aware when that came out in the media.

ADV SELEKA SC: Do you know what was the date for the fulfilment of those conditions?

MS DANIELS: I think it was...

ADV SELEKA SC: Well when you became aware?

10 **MS DANIELS:** I think it was March – it was the end of March.

ADV SELEKA SC: It coincided with the same date.

MS DANIELS: Yes.

ADV SELEKA SC: 31 March 2016.

MS DANIELS: It did – yes it did.

ADV SELEKA SC: Ja that will lead us to the pre-payment on your return.

MS DANIELS: Okay.

ADV SELEKA SC: Thank you Chair.

20 **CHAIRPERSON:** Okay thank you Ms Daniels you will come back – another date will be arranged.

MS DANIELS: Thank you.

CHAIRPERSON: For now you are excused thank you.

MS DANIELS: Thank you.

CHAIRPERSON: Okay. I have not seen the next evidence

leader but I am sure.

ADV SELEKA SC: Well I understand that..

CHAIRPERSON: Oh he is here I can...

ADV SELEKA SC: Yes.

CHAIRPERSON: I can see him. Ja okay. I will take a short adjournment to enable them to set up and then we will go into the evening shift. Okay we adjourn.

ADV SELEKA SC: Thank you Chair.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Chaskalson. Good afternoon everybody.

ADV CHASKALSON SC: Good afternoon Chair.

CHAIRPERSON: Yes, are we ready?

ADV CHASKALSON SC: We are Chair. It is Mr Holden.

CHAIRPERSON: Yes, he is continuing with his evidence. Good afternoon Mr Holden.

MR HOLDEN: Good afternoon Chair.

20 **CHAIRPERSON:** Yes. The oath that was applicable Friday, it continues to apply, oath or affirmation. Okay, alright.

PAUL EDWARD HOLDEN: (s.u.o.)

ADV CHASKALSON SC: Thank you Chair. Mr Holden, today we are going to be talking about the kickback payments made in respect of the locomotive contracts from

Transnet and we are going to be talking about payments to Tequesta and Regiments, Asia.

Before we get there, I wonder if we could just go through the cast of characters so the Chair has a sense of who we will be referring to in due course?

CHAIRPERSON: Oh, just for the record. Mr Chaskalson, if you could confirm again what bundle we are still using?

ADV CHASKALSON SC: We are using FOS-6 Chair.

CHAIRPERSON: Ja. Flow of Funds, Bundle 6. Thank you.

10 **ADV CHASKALSON SC**: That is correct Chair.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: And Chair, to give you a sense of where we are to be going. The locomotive's contract were paid in two different stages. They started out being paid through entities called JJ Trading and Century General Trading which were part of the World Windows Group and those payments were made generally in the UAE.

And then at a certain point, they shifted to Tequesta and Regiments, Asia which were more directly integrated into the
20 Gupta enterprise as opposed to the World Windows Group that was just laundering for them.

And Tequesta and Regiments, Asia payments were made initially in Hong Kong and then we can see that they moved back into the UAE at a later stage.

Although sequentially, the JJT and CGT payment started

first, we are going to just do it in reverse order. So we will talk today about the Hong Kong payments to Tequesta and Regiments, Asia and then tomorrow we will go back to the World Windows Group and JJT and CGT.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Just to introduce some of the characters and companies we will be referring to today. Mr Holden, can I ask you to go to your report at page 175 of the bundle?

10 **MR HOLDEN**: Is that the bundle there?

ADV CHASKALSON SC: Yes.

CHAIRPERSON: Somebody will bring it to you Mr Holden.

MR HOLDEN: Can I just have the page number again, please?

ADV CHASKALSON SC: 175.

MR HOLDEN: I am there, yes.

ADV CHASKALSON SC: And there you list the people to whom you are referring in your report. Under A, Individuals Gupta Family, most of the names are familiar but can you tell
20 the Chair who you have under Paragraph V, Kamal Singhala?

MR HOLDEN: Certainly. I would actually like to cross-reference it against the person, if I can?

ADV CHASKALSON SC: Sure.

MR HOLDEN: If I can just locate that?

ADV CHASKALSON SC: [No audible reply]

MR HOLDEN: Chair, Kamal Singhala which I described at FOS-6 290 which the ...[indistinct] person [speaker not clear]. He was AJ Gupta's son and he was also a director of VR Laser alongside Salim Essa.

ADV CHASKALSON SC: And have you seen reports of his wedding?

MR HOLDEN: Yes, I have.

ADV CHASKALSON SC: Can you tell the Chair what you read in the reports of that wedding?

10 **MR HOLDEN:** We see that a certain amount – well, a particular individual was hired for that wedding who will be – who were identified receiving funds from Regiments, Asia at a certain point.

ADV CHASKALSON SC: And can you date that wedding and place it or...?

MR HOLDEN: Yes, the wedding took place in Turkey. I just need to double check the article again. I think it is in 2015.

ADV CHASKALSON SC: That is correct. Then the next person I would ask you to explain to the Chair is Aashika
20 Singh.

MR HOLDEN: Certainly, Chair. Aashika Singh was an Indian National. She was an employee of Infinity Media which was a Gupta enterprise company or at least we can track one payment to her which is recorded as a salary payment.

The relevance of Ms Singh in this regard is that at a certain point at Tequesta and Regiments, Asia which acted as the primary conduit through which being paid, Salim Essa stepped down as the sole director and he was also replaced – he was then replaced by Aashika Singh.

And I am sure as we will get throughout the testimony, there is also an indication that she was present at a particularly notable gathering in Dubai.

ADV CHASKALSON SC: And you just mentioned Tequesta
10 and Regiments, Asia, I think, talking about them a lot. Can you briefly tell the Chair who they were?

MR HOLDEN: Certainly, Chair. Tequesta and Regiments, Asia were two companies that were formed in Hong Kong. They were from – what we can gather from the company information records in Hong Kong, they were registered by an online company formation agent who specialises in the creation of companies in offshore tax havens. They were initially registered with Salim Essa, the sole director, a position they held until 2016.

20 **ADV CHASKALSON SC:** And we have come backwards and forwards to the World Windows Group. Can you just again tell the Chair briefly what the World Windows Group was and what its relationship to the Gupta enterprise was?

MR HOLDEN: Certainly, Chair. The World Windows Group is conglomerate companies, headquartered in India. At the

time of the matters under consideration here, the World Windows Group head by a man by the name of Piyoosh Goyal.

The Gupta Leaks shows that from at least early 2010 onwards until at least mid-2015, there was quite an intense and a lucrative business relationship between the World Windows Group and the Gupta enterprise and that included the World Windows Group operating two companies by name of JJ Trading and Central General Trading, both of which
 10 were acted as money laundering vehicles from which kickbacks from suppliers in relation to Transnet contracts were received and dissipated to Gupta enterprise companies.

ADV CHASKALSON SC: And you mentioned Piyoosh Goyal. Chair, you might remember, he was the man whose name was on the email with – to which the Transnet Cranes Tender Report was forwarded. We discussed that last week.

The other World Windows Group individual we will come across today is Rupesh Bansal. Can you tell the Chair who he is or what we know about him?

20 **MR HOLDEN:** Certainly, Chair. He is a bit of a mystery figure. What we do know about it – the extent what we know about it is included in a very limited amount of information appearing in companies house filings in ...[indistinct] [speaker not clear] companies of houses, the UK version of CIPC here.

There is a company by the name of WW Ventures in which Mr Bansal appears as a co-director with Mr Goyal. That ...[intervenes]

ADV CHASKALSON SC: Can I just stop you at that point? Can you go to page 869.63?

MR HOLDEN: I do not have an 869.63 in the bundle I am afraid.

ADV CHASKALSON SC: Chair, do you have an 869.63?

CHAIRPERSON: It does not look like I have got 869 and
10 after that, it is 870.

ADV CHASKALSON SC: Chair, this is a... Let's make into a... I think the documents are ...[intervenes]

CHAIRPERSON: Coming my way?

ADV CHASKALSON SC: Coming down in a second.

CHAIRPERSON: Okay. [laughs]

ADV CHASKALSON SC: Chair, I must apologise. Could we ask for a five minute adjournment, just that we can sort out your files and the witness's files?

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** Thank you Chair.

CHAIRPERSON: We will take a five minute adjournment.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV CHASKALSON SC: Sorry about that Chair.

CHAIRPERSON: No problem. Yes, let us continue.

ADV CHASKALSON SC: We were talking about Rupesh Bansal and you had mentioned a company called WW Ventures Limited and I had asked you to go to Annexure DD which is at page 869.63. And sorry Chair...[intervenes]

CHAIRPERSON: You are now using a different bundle, hey?

ADV CHASKALSON SC: Your bundle has now been split between two files.

CHAIRPERSON: Yes.

10 **ADV CHASKALSON SC:** So it would be bundle FOS-6A and FOS-6B. This is at the start of FOS-6B.

CHAIRPERSON: Oh, okay. I am just trying to think of what we are saying to the record to make sure that somebody who keeps on following Bundle 6 does not get confused.

ADV CHASKALSON SC: I will have to refer to A and B each time I mention a document.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But for record purposes Chair.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** Any number in FOS-6 that is above 869 ...[intervenes]

CHAIRPERSON: Yes.

ADV CHASKALSON SC: ...will be in Bundle B.

CHAIRPERSON: Bundle B, ja.

ADV CHASKALSON SC: 869 and below is Bundle A.

CHAIRPERSON: Yes. Ja, so basically, Bundle 6 has now been split into two bundles, 6A and 6B.

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Yes, okay alright. So going forward, there will no reference to just Bundle 6. It will either be Bundle 6A or Bundle 6B.

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Ja, okay alright. Thank you. Okay.

ADV CHASKALSON SC: Chair, so this is now Bundle 6B,
10 869.33. It is point 63. Can you identify that document to the Chair?

MR HOLDEN: Certainly, Chair. This the Companies House filing for WW Ventures Limited which is a company with registration number 07629898 which is registered in the UK with a specific address, Settler Floor, Heathrow, Cube 9, Arkwright Road, Collin Brook, Slow, Middlesex, England, SL30HJ.

ADV CHASKALSON SC: And can you direct the Chair to Mr Bansal's role in that company?

20 **MR HOLDEN:** Certainly, Chair. He appears at the following page, which is Bundle 6A, FOS-06-869.64. It indicates the company director one is one Mr Rupesh Bansal with a service address of 29 Woodcraft Crescent, Axe Bridge, Middlesex, England, UB10 9JB.

It provides certain information about him below which

indicates that he was – he is usually a resident in England. He is a British citizen and his date of birth is the 18th of October 1974.

ADV CHASKALSON SC: And then if you go over the page, can you tell the Chair who the second director is?

MR HOLDEN: Certainly, Chair. The second director is Mr Piyoosh Goyal. His service address is 9 ...[intervenes]

ADV CHASKALSON SC: We do not need his details. Just his name.

10 **MR HOLDEN:** [laughs]

ADV CHASKALSON SC: And Chair, that will be at page 869.65 of Bundle 6B.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Now, Mr Bansal is going to appear in connection with a very important email. Can I ask you to go to page 419 of Bundle 6A and explain to the Chair what that email is?

CHAIRPERSON: What is the page number?

ADV CHASKALSON SC: 419, Bundle A Chair.

20 **CHAIRPERSON:** Okay.

ADV CHASKALSON SC: 6A.

CHAIRPERSON: It is 419, *né*?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Okay. Yes, I have got it.

ADV CHASKALSON SC: Thank you Chair. Mr Holden, can

you start at the bottom of the page which is where the stream starts and explain what this email is?

MR HOLDEN: Certainly, Chair. At the bottom, you can see that the original email is sent from Rupesh Bansal at the email address replyrb@googlemail.com.

It is sent to a Yang(?) Minu(?) which his address is yangminu54642@qq.com.

It is sent on the 6th of January 2015. And as we can see ...[intervenes]

10 **ADV CHASKALSON SC:** Sorry, before you go further Mr Holden. Chair, can I just ask you to make a note of that email address of Mr Yang Minu because we will find it again.

CHAIRPERSON: Thank you, thank you. But it includes 546.42, hey?

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: Ja, ja. That is what will make it easy to get clarity.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: Yes, yes. The date you give for this email
20 Mr Holden, is it because you are able to read that language?
[laughs] Or that writing there because I cannot see. I can see the year. I do not see the month. Ja, I think you said February.

MR HOLDEN: It is January.

CHAIRPERSON: Oh, January. Oh, that is the one?

MR HOLDEN: Correct, Chair.

CHAIRPERSON: Oh.

MR HOLDEN: And there is a six after the address.

CHAIRPERSON: Oh, is it 6 January?

MR HOLDEN: That is correct Chair.

CHAIRPERSON: Oh, okay, okay.

ADV CHASKALSON SC: And going up the stream, what happens to that email?

MR HOLDEN: What we see is Yang Minu from that address,
10 which we have just identified, sends an email to an address
called Businessman of which infoportal1@zovo.com. He is
forwarding the message on the 7th of January 2015 and the
body of the message just reads: "Dear sir. For your
interest. Regards."

ADV CHASKALSON SC: And are you able to identify who
Businessman is?

MR HOLDEN: Certainly. I understand from the
Commission's investigations that Businessman refers to
Mr Salim Essa.

20 **CHAIRPERSON**: H'm, h'm.

ADV CHASKALSON SC: And to whom – and going up to
the top of the trial.

MR HOLDEN: Certainly. Finally we have an email from
Businessman sent on Sunday, the 22nd of March 2015 to
Ashu Chawla and it provides a subject forwarded which has

two Chinese photos and then thereafter, it indicates there is an attachment, attached by email with the name of finalcsr2015workings.xlfx.

ADV CHASKALSON SC: Can I then ask you to turn to the following page, which is Bundle 6A, page 420? And is that the attachment... Oh, sorry. Where did you find that email?

MR HOLDEN: Chair, the email was located within the Gupta leak profile.

ADV CHASKALSON SC: And the document that we see on
10 page 420 of Bundle 6A, what is that?

MR HOLDEN: Certainly. That was the document in an Excel spreadsheet that was attached to the trials of emails we have just seen.

Effectively, what this Excel spreadsheet works out is the number of or the value of kickbacks to be paid on certain Transnet contracts, in particular, what they refer to as the 359 Project, the 100 Project and the 95 Project which refer to the 95 Locomotive Project, the 100 Locomotive Project and the 359 Locomotive Projects.

20 And it indicates the total amount that have already been paid to various individuals, to various companies, in particular JJT and CJT, under the terms of those kickback arrangements and what remains to be paid.

ADV CHASKALSON SC: We were going to go through it in some detail but while we are here, why do we not just go

through it now? If you can explain to the Chair how that spreadsheet works?

MR HOLDEN: Certainly, Chair. What you have at the very top line of the spreadsheet is a heading providing an indication of what project is being referred to. So 359, 100 refers to the 359 Project and 100 Project and then 95 Project and then the total.

Underneath that, it provides a particular Rand value for each locomotive within that project. So each loco value for
10 the 359 Project is R 50.48 million, and for the 100 Project it is R 44 million and for the 95 Project it is R 28.28 million.

And underneath ...[intervenes]

CHAIRPERSON: What does R 50.48 million represent?

MR HOLDEN: Apologies Chair?

CHAIRPERSON: What does R 50.48 million represent in respect of 359 Project?

MR HOLDEN: Certainly. So the 359 Project was the supply of 359 locomotives and each – the R 50.48 million refers to the contract price of each locomotive within that contract.

20 **CHAIRPERSON**: Oh, okay. I would have thought it was much more than that but... Okay.

ADV CHASKALSON SC: That is per locomotive Chair.

CHAIRPERSON: Oh, per locomotive.

ADV CHASKALSON SC: That is correct.

CHAIRPERSON: Oh, okay. Ja, I think that is important to –

per locomotive.

ADV CHASKALSON SC: Can you just explain to the Chair how each one of these projects seemed to, what we have been calling the 1064 Purchase?

CHAIRPERSON: Maybe before you say that. So I guess, strictly speaking Mr Chaskalson, because it was one contract for an X number of locomotives. It is not accurate to say R 50.48 million is the contract price because the contract price includes all the 359 Locomotives or whatever, is it not?

10 **MR HOLDEN:** That is correct Chair.

CHAIRPERSON: Yes, okay. No, I just want that for myself to...

MR HOLDEN: Yes.

CHAIRPERSON: Okay alright. So that is – the R 50.48 million is one locomotive?

MR HOLDEN: That is correct.

CHAIRPERSON: Ja.

MR HOLDEN: And then the line below that, you can see it indicates Chair project value.

20 **CHAIRPERSON:** Yes.

MR HOLDEN: Which then gives a total value of that particular contract.

CHAIRPERSON: Of that contract. Okay.

MR HOLDEN: And that is the value of the contract as signed between the particular Chinese manufacturer and

Transnet.

CHAIRPERSON: Yes, okay. No, that is fine.

MR HOLDEN: So ...[intervenes]

CHAIRPERSON: I think Mr Chaskalson wanted you to explain something and I interrupted him.

ADV CHASKALSON SC: Yes. We talked a lot about the 1064 Project but these are component parts of that project. Can you explain to the Chair what... Well, they are not all component parts in that project. Can you explain to the
10 Chair how these fit in with the 1064 Project and what kind of locomotives there are and who the purchaser is?

MR HOLDEN: Certainly. I will just have to double check my notes and make sure that I get it exactly right. We have a 95 Locomotive Project and I am trying to just remind myself whether that is an electrical or diesel locomotive project which I will reflect very shortly.

Chair, as far as I recall the 95 Locomotive Project reflects a 95 diesel locomotives. They were purchased by Transnet. And they were purchased from China North Rail,
20 CNR, Hong Kong.

The 359 Locomotive Project refers to the purchase of 359 electrical locomotives. That was part of the original larger 1054(sic) Contract and those are purchased from China South Rail, Hong Kong.

I should mention Chair that for the purposes today, that

at a certain point after June 2015, China South Rail and China North Rail merged into a single entity which is referred to as CRRC.

ADV CHASKALSON SC: And I think you referred to the 1054 Project. I presume you meant to say the 1064 Project.

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: The 100 Project?

MR HOLDEN: The 100 Project refer to the provision of a hundred diesel locomotives. And as far as I can see from my
10 notes, I have – that was a contract that was signed with CRRC.

ADV CHASKALSON SC: Sorry, let us come back to that because there will be... I think the Chair may have heard evidence about the decision by Transnet to fast track a pre-purchase of a hundred electrical locomotives.

CHAIRPERSON: Ja, I think so.

ADV CHASKALSON SC: Because – extensively because the 1064 procure was being ...[intervenes]

CHAIRPERSON: Yes, okay. I did, ja.

20 **ADV CHASKALSON SC:** But anyway. Let us go further down the table so that we understand the numbers in it.

MR HOLDEN: Certainly, Chair. At the third line, we have the project value which we have already mentioned. The first value is of the 359 Project. It gives the value as R 18.122 32 00,00. And on the 100 Project it is given as

R 4.4 million.

ADV CHASKALSON SC: Sorry, I think you are confusing millions and billions.

MR HOLDEN: That is correct.

ADV CHASKALSON SC: So if you can start again.

MR HOLDEN: Sure. It is R 18.122 32 000,00 in the first column under 359. And the 100, it is R 4.4 billion. And the 95 Project, it is R 2.686 60 000,00. And then we have a total figure for all of those contracts together which is
10 R 22 152 232 000,00.

CHAIRPERSON: H'm.

MR HOLDEN: Thereafter, we have an entry which says total receivables will be from CSR which stands for China South Rail. For the whole project, it is 20% for 95 and 21% for 359 and 100.

What they propose, it will become a little bit clearer below, is the portion of the total project value that CSR intended to pay over to JJT and CJT of which 15% was to go to CJT.

20 And so CJT and JJT, for their particular fees for money laundering, and the remainder of that was to go to the Gupta enterprise.

So what we have here at that fourth line, is effectively a calculation of the total value of kickbacks to be paid on these three contracts.

The total value under the 359 Project is R 3.805 687 2 000,00. The 100 Project would be a total kickback of R 924 million. And the 95 Project, it would be R 537.32 000,00. And then the total amount would be R 5.267 007 2 000,00.

So that was the total amount that would be paid out to the various recipients of kickbacks in relation to this contract.

The line below indicates the amounts that have already
 10 been paid by the data of this particular working sheet, which at that point, which you can see it is a CSR has paid on the 6th of January 2015, which, if the Chair recalls, was the date on which the email was first sent by Rupesh Bansal.

And it gives a figure of US Dollars for the combined figure for the 359 and the 100 contracts of 107.203 921 million Dollars.

And then under the 95 Project it provides a figure of – it is a little bit difficult to read without the decimal point in place but it is fine but as far as I can see it is
 20 16.699 028 9 million US Dollars.

And then the total figure combined of those two amounts is 123 903 822,89 US Dollars. That was the amount that was already been paid under the terms of these kickback arrangements.

ADV CHASKALSON SC: Can you just read that note in red

that explains how one reaches that figure – how that figure of 123.903 million Dollars was reached?

MR HOLDEN: Certainly. The line reads: Note: CSR paid at different time when it was due. And CSR applied various project rates, ZAR/USD which stands for South African Rand/US Dollar. At the time of the payment, JJT/CJT received all in US Dollars.

What this refers to Chair is that the amounts were to be paid to CJT and JJT and those notes related to Tequesta and
10 Regiments. After certain milestones payments have been made by Transnet. Usually related to a particular number of locomotives.

At that point, there was a Rand figure that was calculated that needed to be paid based on the Rand figure that was paid by Transnet to CSR or CNR and that was then converted to a Dollar amount and the Dollar amount was then transferred to CJT and JJT.

CHAIRPERSON: H'm, h'm.

ADV CHASKALSON SC: Then in the next row, receivables
20 from CSR.

MR HOLDEN: Certainly. This breaks down Chair the way in which the amounts, the kickback have been calculated. What we see here is under the 359 and 100 Projects, it indicates that 21% is total receivables. That is the total amount to be paid to CJT. 2% advanced success fees. That

is 2% of the contract value to be paid as a success fee and 19% receivables on actual basis that is due from CSR.

And there Chair, what that means is 90% of each milestone payment that is made from Transnet to CSR.

Under the 95 Project it is a slightly easier calculation. They just refer to 20% of total receivables. And then it gives a figure to the right which is R 5.267 007 200 000,00.

What this indicates Chair is that, very simple, that for the 359 and the 100 Projects, China South Rail was intended then to pay a total of 21% of the price paid by Transnet to JJT and CJT. And on the 95 Project it was intended to pay 20% to CJT and JJT.

ADV CHASKALSON SC: And the total amount that it would pay?

MR HOLDEN: Again, that is R 5.267 007 200 000,00 Dollars(sic). Apologies. Rand, not Dollars.

ADV CHASKALSON SC: Then the next line, what does that refer to?

MR HOLDEN: Certainly, Chair. What this line indicates is it refers to JJT/CJT and expenditures. The effect of this is to describe the fee that was to be paid to JJT and CJT for carrying out certain – for receiving the funds and then just repeating them.

It says here out of 2%, under 359 Project and 100 Projects indicates, out of 2% success fee, 1% success fee

for JJT and 1% expenditures, which we understand to mean, 1% of the total contract value would be paid on the granting of the contract to JJT and 1% would be paid to the Gupta enterprise.

Out of 19% CSR receivables, which is the 21% total contract value minus 2%, JJT receives 15% and expenditure is 85%. So on this contract, JJT receives 15% of 19% and additional 1% of the total contract and the remainder is paid over to the Gupta enterprise.

10 At the following line it says out of 20% receivables, CJT receives 15% and expenditure is 85%. This again indicates that a part of the total project value, CJT would take a 15% share of 20% share of the contract value, while the remainder of the 20% would be paid over to the Gupta enterprise.

ADV CHASKALSON SC: Next line.

MR HOLDEN: Certainly. So the next line then provides a Rand figure breakdown. The amounts that will be accruing to JJT and then under expenditures, what we understand to
20 be the Gupta enterprise.

Under the 359 and the 100 Projects as a combined figure, we have R 3.862 577 880,00. And for JJT, we have R 867 109 320,00 .

Under the 95 Project, we have an amount of R 456 722 000,00. I just want to make sure that is a

hundred percent correct. That is correct. So it is R 456 722 000,00.

And then of that, then CJT was to receive its own 15% which is equal to R 80 598 00,00. And then the final row gives a total across those three contracts.

It is total expenditures i.e. the total amount that he paid to the Gupta enterprise under these calculations, would be R 3.908 250 008,00. And for JJT and CJT, it will be R 947 747 707 320,00.

10 **ADV CHASKALSON SC:** The next line on expenditures?

MR HOLDEN: Certainly. So expenditures then explains the – it effectively repeats to an extent of – to some of the previous lines. It indicates the specific amounts that will be paid to the Gupta enterprise here.

So under the 359 and the 100 Projects, they were intended to be paid a 1% success fee which is... I must double check I have got the correct decimal places here. It is 21 903 000 Dollars.

20 And it says 85% of remaining receivables would be... I have 554 132...

ADV CHASKALSON SC: I think that is 55 million.

MR HOLDEN: That is correct Chair. If I may, I might just get a pen to mark the decimals to make it slightly easier to read?

CHAIRPERSON: Yes, okay. Somebody should just assist

you with a pen. Oh, you have got one?

MR HOLDEN: [No audible reply]

CHAIRPERSON: Oh, okay he has got it.

MR HOLDEN: Thank you Chair.

CHAIRPERSON: Okay.

MR HOLDEN: That is quality Chair. That is 55 430 2097,75 Dollars under the 359 and 100 Projects. And then under the 95 Project, we have an amount of 40 194 917,45 Dollars which was supposed to be paid to the Gupta enterprise.

10 And then we have a total amount in US Dollars of 90 614 118.20 Dollars. So that is the total figure that was supposed to be paid – remained to be paid to – that was to be paid the Gupta enterprise in relation to these three contracts.

ADV CHASKALSON SC: And then the next line, which I imagine gives the JJT/CJT total payment... Well, payment breakdown. Maybe if you can just tell us what that total figure to go to JJT and CJT would be?

MR HOLDEN: Certainly. So at the far right, we have the
20 total figure and that is 33 289 705,68 Dollars.

ADV CHASKALSON SC: And then the bottom line which is crucial for letting us know what had actually been paid at that stage and what was still to be paid.

MR HOLDEN: Certainly. We have notes in red. And the first note reads: 1. JJT/CJT in total have to receive – and

let me just make the decimal point marks again. It is R 5 267 7200,00.

And it says CSR has made several payments using applicable forex rates to transfer ZAR. That is South African Rand into applicable US Dollars.

ADV CHASKALSON SC: Underneath. Just keep reading through that – until the bottom of the table.

MR HOLDEN: Certainly. It says: Request CSR to inform that in total how many ZAR (South African Rands), CSR
10 (China South Rail) has transferred in applicable exchange rate for which JJT/CJT received in total 123 903 822,89 Dollars until now.

Then at point 6, as the above ZAR amount, which was used to transfer US Dollars, 123 903 822,89 Dollars. This can be deducted from the total receivables ZAR which is R 5.267 billion. This figure will give the balance due as total from CSR.

The above balance X amount in ZAR repaid by CSR in future to JJT/CJT and JJT/CJT have to account the 85%
20 towards expenditures.

ADV CHASKALSON SC: So whatever remained after the deduction of the Rand equivalent of 123.9 million Dollars from the total of R 5.267 billion would still be payable to JJT/CJT but 85% of that, they would have to account to the Guptas for.

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: So let us now turn to the agreements in terms of which all of these payments were made. And while we are it, we may identify one or two – or actually one additional agreement that we will discuss tomorrow. Can I ask you now to turn to Annexure A on FOS, Bundle 6A, page 298?

CHAIRPERSON: Please repeat that page Mr Chaskalson.

ADV CHASKALSON SC: It is Bundle 6 A, page 298. Chair,
10 298.

CHAIRPERSON: 629.

ADV CHASKALSON SC: No, 298 Chair.

CHAIRPERSON: Oh, 298.

ADV CHASKALSON SC: Bundle 6, page 298.

CHAIRPERSON: Ja, okay. Yes, I have got it.

ADV CHASKALSON SC: And this is a contract that we will get to tomorrow but very briefly because we are going through the whole batch of contracts, can you tell the Chair what this contract relates to?

20 **MR HOLDEN**: Certainly, Chair, this is an agent agreement that is dated the 13 June 2011 and signed between party A which has provided Shanghai Zhenghua Heavy Industries Co Limited and we will be referring to them tomorrow in more detail as ZPMC which is the alternate acronym for them and party B is JJ Trading FCE and it relates to a

contract for two ship to shore container cranes including the repositioning of existing Noell Cranes, and additional 5 number ship to shore cranes for Transnet South Africa. The name of the project is – the Transnet internal name for the project is iCLMHQ0762 which then is indicated as design, manufacture, delivery and commissioning of seven hand and lift ship shore cranes for the Durban Container Terminal, Durban, South Africa and relocation of two existing IMPSA ship to shore cranes from Durban to Port
 10 Elizabeth, South Africa. And I should add here, Chair, this is a separate and distinct contract to the contract that was entered into between Transnet Port Terminals and Liebherr which we discussed on Friday.

ADV CHASKALSON SC: So – I mean, we will get to in detail tomorrow but this, to anticipate tomorrow, is kickback contract in relation to the Transnet procurement of cranes from ZPMC.

MR HOLDEN: That is correct, Chair. What the agreement effectively arranges is for – incentivises JJT to
 20 seek to increase the cost of the contract to benefit ZPMC.

ADV CHASKALSON SC: Then the next agreement which is the first agreement that we have dealing with the locomotives contract, that is on page 304 of bundle 6A and it is annexure B. And on page 304 can you briefly describe how the cover page describes this agreement?

MR HOLDEN: Certainly, Chair, it indicates an exclusive agency agreement entered into between CNR Hong Kong, which is China North Rail Hong Kong Corporation Limited, was Tequesta Group Limited.

ADV CHASKALSON SC: And then if you go over the page to page 305 can you further share the date of the agreement?

MR HOLDEN: Certainly, Chair, the date of agreement appears at the very top of that page, it reads:

10 “This agency agreement, this agreement is dated 20
 May 2014 and is made and entered into by between
 the following parties.”

ADV CHASKALSON SC: And the first party named on the agreement?

MR HOLDEN: Is Tequesta Group Limited, hereinafter referred to as TGL, a company duly incorporated and existing under the laws of Jebel Ali Free Zone and having its registered office at P.O. Box 17398, Dubai, UAE, duly authorised and represented by Mr Salim Aziz Essa.

20 **ADV CHASKALSON SC:** Then if you can go down to following page 306 under the definitions. There is a definition of project and product, can you redact those definitions out for the Chair?

MR HOLDEN: Certainly, under product it reads:

 “Means diesel locomotives as awarded by Transnet

Freight Rail for general freight business after being successful in tender.”

And under project, project is defined as:

“Refers to supply of 232 diesel locomotives for the general freight business issued by Transnet Freight Rail in South Africa.”

ADV CHASKALSON SC: Then there is – well, if you go to page 309 the terms of payment are described under clause 7. Can you take the Chair to those?

10 **MR HOLDEN:** Certainly, so in clause 7 we have seven sub-clauses, 7.1 states:

“The agency commission of TGL shall be ascertained on a deal to deal basis.”

TGL being Tequesta Group Limited. 7.2:

“For the project referred here and above, TGL shall ...[intervenes]

ADV CHASKALSON SC: Sorry, can you just pause there, that would be the 232 locomotives, diesel locomotives project according to the definitions.

20 **MR HOLDEN:** That is correct, Chair. Returning to 7.2:

“For the project referred here and above, TGL, Tequesta Group Limited, shall be entitled for a success fee of 2% of the contract value and an agent fee commission of 19% of the contract value which shall invariably include the value of all

supplies made under the project.”

7.3 reads:

“TGL should be entitled to agency commission irrespective of the fact whether supply is of main product or any spare part or ancillary item thereto.”

7.4 reads:

10 “The success fee of 2% on the total value of the project as stated above will be paid by CNR Dalian Locomotive and Rolling Stock Company to Century General Trading FCE hereinafter referred to as RAL which is duly incorporated and existing under the companies ordinance of Hong Kong and having its registered offices at P.O. Box 17398, Hong Kong, UAE, duly authorised and represented by Mr Salim Essa.”

If I may, Chair, what we have here is a slight confusion in the contract between who exactly CNR is contracting with. We know that this is a contract between CNR and Tequesta. However, these typos would indicated that there
20 was a similar contract or similarly worded contract that applied between CNR and Century General Trading and in preparing this particular contract an attempt was made to replace Century General Trading with Tequesta Group Limited but that does not appear to have happened in all cases.

ADV CHASKALSON SC: And then 7.5?

MR HOLDEN: 7.5 reads:

“The agency commission of 19% on total project value shall accrue immediately on receipt of purchase order or on securing of the bid by the company and same shall become due for payment apportionately either when payment when the company is released by the ultimate buyer. However, it is agreed that 19% of the first payment will be paid by company in second payment of 50%, means half of 19% along with 19% of second payment amount and 50% means balance half of 19% in third payment along with 19% of the third payment amount and from the fourth payment onwards 19% in every payment. The amounts are getting due shall be transferred to the account of TGL through a wire transfer within 15 days of receipt of payment by the company.”

And after passing some very difficult to read contractual language, I understand this to mean that on a rolling basis CNR would retain 50% of the success fee that was due at a particular milestone payment and that would release the following 15% on the payment of the next payment milestone, clearly as a means of buffering CNR from adverse costs in relation to this contract.

ADV CHASKALSON SC: And then if you go down to page 313 can you just identify who the individual is who must receive notices on behalf of Tequesta Group Limited?

MR HOLDEN: 313? Yes.

ADV CHASKALSON SC: Clause 12.1.3.

MR HOLDEN: Clause 12.1.3 indicates that for Tequesta Group Limited would be for the kind attention of Mr Salim Aziz Essa, P. O. Box 17398, Dubai, UAE.

ADV CHASKALSON SC: And then to the signature page
10 on 315 and if you can just identify the signatories to the Chair?

MR HOLDEN: Certainly, at page 315 the signatory on behalf of Tequesta Group Limited is Mr Salim Aziz Essa and for and behalf of CNR is Mr Ma Zhan.

ADV CHASKALSON SC: And then if we can go to the next contract, that is on page 316, it is annexure C and again on the title page, the parties?

MR HOLDEN: Certainly. This reads:

“Exclusive agency agreement”

20 And it is a contract between CNR Dalian Locomotive and Rolling Stock Company Limited with Regiments Asia, CNR standing for China North Rail.

ADV CHASKALSON SC: And over the page on 317, the date and individual representing Regiments Asia?

MR HOLDEN: Certainly, the date is provided at the top

line, the date is the 20 May 2014 and under the parties it indicates for Regiments Asia hereinafter referred to RAL. They are duly authorised and represented by Mr Salim Aziz Essa.

ADV CHASKALSON SC: If you can then go down to page 320 and identify the project?

MR HOLDEN: Certainly, under project it refers to the supply of locomotive and [indistinct] .10.26 parts in South Africa.

10 **ADV CHASKALSON SC:** And at 324, the payment terms in clause 7?

MR HOLDEN: Certainly, under clause 7, 7.1 reads:

The agency commission of RAL, Regiments Asia Limited shall be ascertained on deal to deal basis.

7.2 For the project referred here and above Regiments Asia Limited shall be entitled for an agency commission of 18 120 000 US dollars, shall invariably include the value of all supplies made under the project.

20 Regiments Asia Limited shall be entitled to agency commission irrespective of the fact whether supply is of main product or any spare part or ancillary item thereto.”

7.4 The agency commission which works out at US dollars 18 120 000, as stated above,

shall get immediately due and payable in five instalments within a month of the project being signed, validated and upon receiving advance deposit for the first batch from the ultimate buyer by the company.”

ADV CHASKALSON SC: Then down to page 329 to see who gets notices for Regiments Asia.

MR HOLDEN: Certainly under 329 it indicates that the individual who had received notice for Regiments Asia
10 Limited would be Mr Salim Aziz Essa at P.O. Box 17398, Hong Kong.

ADV CHASKALSON SC: And at 332, the signatures?

MR HOLDEN: Page 332, Chair, the signatory on behalf of Regiments Asia Limited is Mr Salim Aziz Essa for and on behalf of CNR Dalian Locomotives and Rolling Stock Company, it is Mr Zhu Zhi Jong(?).

ADV CHASKALSON SC: The next contract is a draft contract, it is annexure D at page 334. It was superseded by annexure at page 346, so because we are going to deal
20 with neither of them today maybe you can skip annexure D and go straight to annexure E and briefly describe to the Chair what annexure E, page 346.

CHAIRPERSON: 346?

ADV CHASKALSON SC: 346, Chair.

CHAIRPERSON: Yes, continue.

MR HOLDEN: Certainly, Chair, this is a business development services agreement entered into between CNR China North Rail Rolling Stock South Africa (Pty) Ltd, so as distant from its Hong Kong entity with Business Expansion, structure Products (Pty) Ltd and it provides a registration number for – what we refer to as BEX 2009/020420/07 and the agreement date is the 25 April 2015.

ADV CHASKALSON SC: Now we are not going to discuss
10 this very briefly just to tell the Chair what it governed.

MR HOLDEN: Certainly, it is the relocation of certain facilities that was requested by Transnet in relation to the production of locomotives and the substance of the contract is that BEX or Business Expansion Products would be incentivised to try and ensure that Transnet increased the amount that it was going to be paying to CNR way above the original stated amount, which was just under R10 million, and that any amount over a certain benchmark price, which is R580 million would be payable to BEX so it
20 is an incentive on behalf of BEX to induce Transnet to pay a much larger amount than had originally been anticipated for relocation costs.

ADV CHASKALSON SC: Can you just repeat those two figures? What was the original anticipated cost? What was the benchmark cost in the contract above which BEX

would get their commission?

MR HOLDEN: Certainly. The original quoted price was slightly under R10 million. It was, as far as I recall, R9.75 million and the benchmark price, which has actually increased on the previous contract is R580 million and thereafter, the amount that was to be earned by BEX, would be the amount over and above R580 million. So if there were able to get Transnet to pay more than R580 million they would receive the additional amount that is
10 paid. That is clearly an adverse or prejudice to Transnet of close to - in terms of the benchmark price R570 million.

ADV CHASKALSON SC: And that benchmark price is at page 357, annexure A.

MR HOLDEN: That is correct, Chair. It appears at annexure A under point 2 which indicates:

“Negotiate and assist to include the project at the minimum benchmark cost of R580 million excluding VAT.”

ADV CHASKALSON SC: Then we come to the contract
20 which is the most famous of all of these contracts, it is annexure F at page 358. Can you take the Chair to that contract and the parties on the cover page?

MR HOLDEN: Certainly, Chair, at 358 we have a business development services agreement between CSR, which China South Rail Hong Kong Limited with Tequesta Group

Limited, or its nominee, with an agreement date of the 18 May 2015.

ADV CHASKALSON SC: At page 362 we see the project to which this refers.

MR HOLDEN: Indeed, Chair, it refers to project 359 and project 359 is defined as:

“Refers to any portion of the tender for the supply of 359 electric locomotives 22E to Transnet SOC Limited South Africa, hereinafter the client.”

10 **ADV CHASKALSON SC:** And then if you can go to page 365, paragraph 3.3 and explain to the Chair what that clause deals with?

MR HOLDEN: Certainly, I will read out the full clause but the summary of the clause is that – summation of the clause is that at a certain point JJT and CJT were no longer used as the main – as the primary agents and they were replaced by in this case Tequesta Limited and that Tequesta would seek under its own powers to resolve any outstanding disputes with JJT arising. Should I read the
20 full paragraph?

ADV CHASKALSON SC: I think do, yes.

MR HOLDEN: Okay. 3.2 reads:

“The company has advised Tequesta that a previous agreement had been signed between CSR Zhuzhou Electric Locomotive Limited and JJ Trading, FZE,

hereinafter referred to as the JJT. However, the company advised Tequesta that in event that JJT disputes or contests the cancellation or non-payment in a court of law and if the court decrees that the agreement with JJT is valid or the [indistinct] 17.51 agreement is reached between Tequesta and JJT then the financial compensation to JJT, which will not exceed the retention amount, that is 15% of the total amount payable to Tequesta under this agreement will be deducted from the amount retained from Tequesta as per clause 6.1.6 and the balance, if there is, will then be paid to Tequesta within 30 days after the company receipt of the last payment and/or return of all bank guarantees released by the client whichever occurs later. Under this circumstance, the invoices with retention to the company shall be not be claimable, [indistinct] 18.25 Tequesta, Tequesta shall resolve the dispute with JJT through amicable consultation and ensure there is no further dispute with the company from either side.”

ADV CHASKALSON SC: Then if you can go to page 367 clause 6.1.1.

MR HOLDEN: Certainly, Chair, at 6.1.1. It reads:

“For the project-related advisory services provided

by Tequesta as detailed in annexure A Tequesta shall be entitled to an advisory fee of 21%.

In brackets it indicates 20% but I am assuming that is supposed to read 21%.

10 "...of the contract value of project 359 awarded to the company based on 2% of the contract value as a success fee and 19% of pro rata to the milestone based payments received by the company from the client. The company has already paid 3.9% of the contract value which is indicated R706 770 480 to JJT up to the agreement. Total payable amount to Tequesta under this agreement is 17.1% of the contract value which is R3 098 916 720.

ADV CHASKALSON SC: So can you explain broadly what that is describing?

20 **MR HOLDEN:** Certainly, it is describing that had already been paid to JJT and TJT up until the date of this particular contract and thereafter, with that amount deducted from the contract value, the amount that remained to be paid to Tequesta under this agreement which meant that by signing this agreement Tequesta was due to receive over R3 billion.

ADV CHASKALSON SC: Then the notices at the foot of page 370.

MR HOLDEN: Certainly, it says under miscellaneous, it

provides for Tequesta, Tequesta Group Limited, it says:

“For the attention of Mr Salim Essa.”

ADV CHASKALSON SC: The signature page, 375?

MR HOLDEN: Certainly, Chair, at page 375 we have Mr Salim Essa signing on behalf of Tequesta Group Limited, this contract was signed at Shenzhen on the 18th day of May 2015.

ADV CHASKALSON SC: Then annexure A, the services that Tequesta and Mr Salim Essa had to provide CSR for in
10 return for these billions of rands are listed. Can you take the Chair through those services and then we will pause and reach the final clause.

MR HOLDEN: Certainly and the annexure A, there are six services that are identified. First is:

1. Advise the company on the regulatory social, cultural and political framework in South Africa ...[intervenes]

CHAIRPERSON: I am sorry, what is the page where the services...?

20 **ADV CHASKALSON SC:** 376, Chair.

CHAIRPERSON: 376. Okay, thank you. I have got it.

MR HOLDEN: Okay, so under 1, let me begin again, Chair.

1. Advise the company on the regulatory social, cultural and political framework in South Africa

with respect to the project.

2. Identify the various opportunities of participation in various government and private projects leading to the short listing and focus on the current project as contemplated in this agreement.
3. Closely coordinate with the designated authorities to comprehend the applicable government policies and advise the company accordingly to ensure smooth execution of the project.
4. Provide consultancy on participating in the tenders and bidding processes related to the project on an ongoing basis.
5. Assist the company in negotiating with the client on pricing levels in relation to the project.
6. Assist the company in increasing their footprint in government and private projects in South Africa.”

20 **ADV CHASKALSON SC:** Can you read the clause after all of this?

MR HOLDEN: Certainly, Chair. The clause thereafter reads:

“It is hereby noted and agreed between the parties that the above services are provided as a pre-

project service and will conclude on the company signing the contract for the project with the client. The company will not require any proof of delivery of the above services since it is understood that the project would not have materialised without the active efforts of Tequesta to provide the services listed above.”

CHAIRPERSON: Well, I found the - apart from this one, this clause, I found that other one, what is it, 3?

10 “Closely coordinate with the designated authorities to comprehend the applicable government policies.”
[Laughs]. Yes.

ADV CHASKALSON SC: Yes. Now, can you – so this is for the 359 electric locomotive project. Do you remember when that tender was awarded?

MR HOLDEN: Chair, I would have to double-check my notes, I do not know the exact date but I know it certainly before this contract was entered into.

ADV CHASKALSON SC: Yes. Well, it was part 1064
20 locomotives so the BADC decision was in March 2014. What is the date of this contract?

MR HOLDEN: The date of this contract is, if I refer backwards, it is the 18 May 2015.

ADV CHASKALSON SC: So we ...[intervenes]

CHAIRPERSON: 2014, 2015 in Eskom and Transnet were

quite busy.

ADV CHASKALSON SC: They were indeed, Chair. As was Mr Essa. Then you have sourced from Hong Kong, from Hong Kong Companies office, details of the Tequesta Group Limited. Can I take you to annexure G on page 377 and can you tell the Chair what that document is?

MR HOLDEN: Certainly, Chair, this is a document that I procured – it is an annual return for Tequesta Group Limited that I purchased from the Companies Registry in
10 Hong Kong.

ADV CHASKALSON SC: And what did it tell you of interest?

MR HOLDEN: The most interesting thing for me appears at – well, there is two potentially interesting things within this document. The first appears at page 380 of bundle 6A and it provides the details of the loan director of the company and the loan director of the company is given as Salim Aziz Essa with the residential address of 2 New Forest Road, Forest Town, Johannesburg, 2193 South
20 Africa.

Referring to the previous page, at page 379, we have the details of the company secretary, so this is the individual - the company that was filing the return on behalf of Mr Salim Aziz Essa and we will return to why this is interesting, I am sure, in a while, but it is worthwhile

noticing the email address there is abbeylie@onlinecompanyregisters.com under the relevant – so that will become clearer a bit later.

ADV CHASKALSON SC: And then ...[intervenes]

CHAIRPERSON: Oh, yes. I was looking for the email address, I have seen it here, okay.

ADV CHASKALSON SC: Then can I take you to another document that you sourced in relation to Tequesta from the Hong Kong Companies office, it is page 385 and can you
10 tell the Chair what that document is?

MR HOLDEN: Certainly, Chair, this is a document again that I acquired from the Hong Kong Companies Registry, it is From ND2A which is a notice of change of company secretary and/or director and the substance of this is that the sole director is identified – whose details will be changed, is identified at the first page and that is given as Salim Aziz Essa and on the following page, page 386, is an indication of the new director of the company and that is given as Aashika Singh with an address 233 Kua
20 Namayigut Road, Dharapara, Solly Gungee Kokuta 70082, West Bengal, India. (all names spelt phonetically)

I should note, Chair, I have neglected to mention that on the previous page they indicated the dates of this form is the 17 November 2016.

ADV CHASKALSON SC: So would I be correct in

assuming that on the 17 November 2016 Aashika Singh replaced Salim Essa as the sole director of Tequesta?

MR HOLDEN: That is correct, Chair.

ADV CHASKALSON SC: Can we then go to our next contract which is annexure H on page 388 and can you tell the Chair what – who the parties to that contract are?

MR HOLDEN: Certainly, Chair, at 388 we have a business development services agreement between CSR, Zhuzhou Electric Locomotive Company Limited with Regiments Asia
10 Limited and the agreement date is provided as the 10 June 2015.

ADV CHASKALSON SC: If you go down to page 392 you see project, can you tell the Chair which project this agreement relates to.

MR HOLDEN: Certainly, Chair, and the project that reads:
“Refers to the long term, expected 12 years, financial budget for the railway spare and maintenance by Transnet SOC Limited South Africa, hereinafter the client.”

20 **ADV CHASKALSON SC:** And then at page 398, the payment terms?

MR HOLDEN: Certainly, we have – at paragraph 6 we have a clause 6.1.1. Should I read the full terms into the record?

ADV CHASKALSON SC: Please do, yes.

MR HOLDEN: At 6.1.1 we have:

“Provided that the contract is awarded to the company for any part of the project the company shall pay an amount equivalent to 21% against the actually participated contract amount of the company including variations and extensions to Regiments which is referred to as the service fee.”

6.1.2: The service fee will be paid to Regiments as follows:

- 10 6.1.2.1 A percentage of the contract amount will be treated as success fees and certain other milestone payments, will become payable after the signing of the contract between the company and the client and the receipt of the advance payment by the company from the client and on reaching the said milestones respectively, these amounts will be determined closer to the time of finalisation of the contract and will be detailed in an addendum to this agreement.
- 20 6.1.2.2 The remaining amount will be paid in proportion to the payment received the parties agree that the proportion on period is subject to cash flow received from the client. The detailed mechanism for this arrangement will be outlined in a separate addendum to this agreement, closer to the time of finalisation.

6.1.2.3 It reads:

Within 30 days after receipt of the payment by the company from the client.”

And at 6.1.2.4.

With the amount in the same currency as the payment received by the company, and a currency to be intimated by Regiments and each invoice they will be submitted by Regiments to the company. The exchange rate, exchange rate will be fixed on the date payment is received by the company from the client.

6.1.2.5 All of the income tax and other types of taxes if any may be levied by and banking charges in Mainland China, related to the payment shall be borne by the company. All other taxes and banking charges outside of Mainland China shall be borne by Regiments.”

And at 6.1.2.6 it reads:

For the sake of clarity, ... (indistinct) otherwise provided in this agreement each party shall bare its own costs and expenses incurred in negotiating and entering into this agreement and pursuing furthering and fulfilling the rights and obligations set forth herein.

And then can you identify the party to whom notices for

Regiments ... (indistinct) dispute rests? It's on page 402?

MR HOLDEN: Certainly. Under clause 10.1.4 it indicates that the person, the contact person for Regiments Asia would be Mr Salim Essa.

ADV CHASKALSON SC: And this contract has for the first time has some banking details attached to it for the Regiments or to quest the party, they are at page 405. Can you take the Chair to that?

MR HOLDEN: Certainly. At page 405, on that paragraph 11,
10 indicates Regiments' banking details. The first entry is name of bank and branch which is given as HSBC Bank Head Office Central, Hong Kong. It provides an account number which is 652353533-838. The currency of the account is indicated as US dollars. The account name is given as Regiments Agency Limited. And then it provides a Swift code of HSBCHK4HOKH.

ADV CHASKALSON SC: And then can you take the Chair to the signatories to that contract at page 406?

MR HOLDEN: Certainly, we have the contract indicated
20 being signed in Sandton on the 10th of June 2015, for and behalf of Regiments Agency Limited. It was Mr Salim Essa. And for and behalf of SCR, is usually Electric Locomotive, it is Mr Zhu Quinn Yi.

ADV CHASKALSON SC: And then briefly to 407 where we see the same addendum that we saw to the previous

agreement talking about services. Can I at this time ask you to just read out the last clause of the addendum?

MR HOLDEN: Certainly. At page 407, the final clause reads:

“It is hereby noted and agreed between the parties that the above services are provided as a pre-project service and will conclude on the company signing the contract for the project with the client. The company will not require any proof of delivery of the above
10 services since it is understood that the project would not have materialised without the active efforts of Regiments to provide the services listed above.”

ADV CHASKALSON SC: And then you had made some inquiries at the Hong Kong company’s office in relation to Regiments? Regiments Asia. Can I ask you to go to page 408?

MR HOLDEN: Certainly.

ADV CHASKALSON SC: Can you tell the Chair what that document at 408 is?

20 **MR HOLDEN:** Certainly Chair. Page 408 is annual return document that I secured from the Hong Kong company’s registry. The annual return is dated the 20th of June 2016 for Regiments Asia.

ADV CHASKALSON SC: At the top of page 409, the email address of Regiments Asia?

MR HOLDEN: The email address as provided again as abbeylie@onlinecompanyregister.com.

ADV CHASKALSON SC: Page 411, where it identifies the Director.

MR HOLDEN: Certainly. The sole Director is identified as Salim Aziz Essa, with an address of 2 New Forest Road, Forest Town, Johannesburg, 2193.

ADV CHASKALSON SC: Then on page 416, there's a second document. I understand you sourced that too from
10 the Hong Kong Company's office. Can you tell the Chair what this is?

MR HOLDEN: Certainly Chair, this is again form ND2A, which is a Notice of Change of Company Secretary and Director, which is dated the 17th of November 2016. And the substance of this form which is then revealed on this page and the following page is to replace Mr Salim Aziz Essa as the sole Director with Ashiq Hussain.

ADV CHASKALSON SC: And if I remember correctly, it is the same date, 17 November 2016 as was the case in
20 relation to Tequesta.

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: Can we then go to the next contract which is Annexure K, page 421? And can you describe to the Chair what this contract or who the parties to this contract are and what it does?

MR HOLDEN: Certainly Chair. This is an addendum to the already existing agreements signed between CRRC Hong Kong Company Limited and Chair if you recall earlier on in the evidence I noted that CRRC is the merge name of CNI and CSR. Regiments, and that's signed ... (indistinct).

CHAIRPERSON: It was after July. You said after July 2015?

MR HOLDEN: That's correct Chair. Regiments Asia Limited and Tequesta Group Limited and it's dated August 2016.

10 **ADV CHASKALSON SC:** And the essence or the purpose of the contract is, is essentially set out in clause 2.1. Can you read that clause to the chair and explain its significance?

MR HOLDEN: Certainly. It reads at clause 2.1:

ADV CHASKALSON SC: That page 422, sorry Chair. 422.

CHAIRPERSON: I was looking at the right page. You must have said it. I was looking at the right page, you must have said it.

ADV CHASKALSON SC: Oh Chair, I must apologise. I think that the replacement pages for this, for this agreement it
20 should have been – no, this agreement has always been in the file. Does you 422 page start with ...

CHAIRPERSON: The parties now hereby agree to restructure? To restructure the payment method as follows? That is 2. – that is 2.1 and then there is 2.1.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: 2.2 Starts with, that within 10 working days.

ADV CHASKALSON SC: Yes. Yes. Chair, Chair no we are on the right page. So it's 2.1. Well the whole of 2, essentially deals with the restructuring of the payment and 2.1 is the, is the critical provision.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Mr Holden?

MR HOLDEN: Certainly. At clause 2.1 reads:

10 "That with the effectiveness of this addendum,
CRRCHK, that is CRRC Hong Kong, will no longer
withhold any amount from the amounts that are due
and payable to Regiments and to Tequesta against
the above agreements. The amounts due to
Regiments and Tequesta will be paid by CRRCHK
without any offset, deduction or adjustment against
invoices supplied by Regiments and Tequesta, except
that one, the contract for the maintenance project
under the business development services agreement
20 number SA2015-2450 between CSRZELC and
Regiments dated 10th June 2015 is signed between
Transnet and CRRCZELC 60 business days after
received LOA as long as CRRC don't cause any
delays. And two, E-maintenance for at least 95
project or 100 project have been affective and

executed before October 2018, under the maintenance project as long as CRRC don't delay any process with the abovementioned two conditions are not achieved, CRRCHK will be entitled to withdrawal of 15 percent of all paid amounts under 100 project agreement and 359 project agreement, by the same amount due and payable under 359 project agreement. Signed between CSR Hong Kong and Tequesta, dated the 18th of May 2015."

10 **ADV CHASKALSON SC:** And then clause 2.2.

MR HOLDEN: It reads:

"That within 10 working days after CRR CZELC receives the letter of award for the maintenance project CRRCHK will release to Regiments the previous accumulated amount of US dollars, 15 144 510,00 dollars being the 15 percent of the amount of held till date on 3rd August 2016 as per details below."

ADV CHASKALSON SC: And, and then what is detailed
20 below? What is that table refer to?

MR HOLDEN: Certainly Chair. It indicates a series of invoice numbers on the left-hand side. And provides for the invoice dates which run between the 12th of January 2015 and the 26th of December 2015.

ADV CHASKALSON SC: I think you need to go down a page

or two, because the table continues much longer.

MR HOLDEN: That's for Regiments. And the following one is for Tequesta.

ADV CHASKALSON SC: Sorry, I apologise. You are absolutely right.

MR HOLDEN: So this is, sorry I should make it entirely clear Chair that the table I am referring to here is in relation to invoices that have be submitted by Regiments Asia. And the following table which we will get to is the first invoices
10 submitted by Tequesta. As I was saying the final invoice here is indicates that it is invoice 127, on the 26th of December 2015. It provides for the amount that had been invoiced by Regiments.

The amount that had been paid by CRRC and the amount that had been withheld by CRRC as surety against any particular, potential future prejudice to the contract. But the, probably the most key amount is that the – at the bottom right-hand corner provides a total amount withheld by CRRC Hong Kong up until that date. And that figure is given as
20 \$5 181 354,65.

ADV CHASKALSON SC: And then the next table?

MR HOLDEN: Certainly. We have a very similar table which begins with the invoice CSR001 with the date of 20th of July 2015. Which then runs to invoice number 24, the date there is provided as the 2nd of August 2015.

Again we have a repeat of the invoice amount that had been submitted by Tequesta to CRRC. The amount that had actually been paid to them. And then the amount that withheld and again the most important figure appears rather blurrily at the bottom of page 424. And that reads a total amount withheld is \$9 963 156,23.

ADV CHASKALSON SC: And can you go to page 425 and 425.1 to identify the signatories?

MR HOLDEN: I do not appear to have a 425.1. It might be
10 in bundle B.

ADV CHASKALSON SC: I may, I may have made an error there. Let's look at 425. I will check my source document to see if there is a 425, if there should be a 425.1.

MR HOLDEN: I think there probably is, because the, the only signatory appearing at 425 is Zhu.

CHAIRPERSON: Ja, ja, you have – well 425 is, is it one signature there. And then the one where which would have been your 425.1 is the, is the outside page with, with the names of the parties. So there must be some page
20 missing. Or pages ...

ADV CHASKALSON SC: Chair, I don't want us to delay now. But we will search for the signatories.

CHAIRPERSON: Yes, no that is fine.

ADV CHASKALSON SC: The signatory page.

CHAIRPERSON: That's fine.

ADV CHASKALSON SC: Chair, can I ask if your 426 ...

CHAIRPERSON: Ja.

ADV CHASKALSON SC: The 426 is a document that ought to have a replacement agreement in it. Can I ask what your 426 cover page says?

CHAIRPERSON: It's got, it's handwritten at the top, Agreement number 0661 blah, blah, blah, blah.

ADV CHASKALSON SC: That's the correct ja.

CHAIRPERSON: [Indistinct]. Okay.

10 **ADV CHASKALSON SC:** Can I just check with Mr Holden if he has the correct document in front or he has a duplicate of the previous document?

MR HOLDEN: I think I have a duplicate.

ADV CHASKALSON SC: Can I offer you this replacement? And this is our last agreement. Can you tell the Chair Mr Holden what this agreement is on page 426?

MR HOLDEN: Certainly, this is an addendum to an agreement signed between CRRC Zhuzhou Locomotives and Regiments Asia Limited. And it's dated August 2016.

20 **ADV CHASKALSON SC:** And can I ask you to go to 2.2 on page 429? And tell the Chair what, what that deals with?

MR HOLDEN: Certainly, at clause 2.2. it states:

“That within 10 working days after CRRCZELC receives the letter of award for the maintenance project, CRRCZELC will release to Regiments the

previous accumulated amount of \$4 357 543,94 being
15 percent of the amount withheld till date on 3rd
August 2016 as per the details below.”

ADV CHASKALSON SC: And then the table?

MR HOLDEN: Certainly. We have again a further table
which is the indicates at the far left column an invoice
number. And then a series of dates, the first date is given
as the 11th of February 2015. And the final date I am afraid
is very difficult to decipher.

10 **CHAIRPERSON:** Yes. Are these the best copies you have
Mr Chaskalson?

ADV CHASKALSON SC: I’m afraid they are Chair. This is a
– whoever leaked these documents didn’t, didn’t use a
photocopier or ...

CHAIRPERSON: Okay.

ADV CHASKALSON SC: If they did ...

CHAIRPERSON: Alright.

MR HOLDEN: I am reluctant to hesitate to guess that that
date, I suppose that the key issue is that the total amount of
20 ...

CHAIRPERSON: Which one? Let me – which one? Which
date do you have, are looking at by the stand?

MR HOLDEN: The final entry which I think is invoice 125.

CHAIRPERSON: Is that the last?

MR HOLDEN: That’s the last date. And the amount withheld

is ... (indistinct) legible.

CHAIRPERSON: [Indistinct] 2018, line? But it is dangerous to ...

ADV CHASKALSON SC: I think the most important figure is the total.

MR HOLDEN: Chair, the total is then replicated as \$4 357 543,94.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: And then if we go to the signatory
10 page on 430.1?

MR HOLDEN: Certainly Chair, at that page we have the signature, the individual signing on behalf of Regiment Asia Limited, is Salim Essa.

CHAIRPERSON: Does it indicate where whoever signed, where it was signed? I saw that the previous one I think was signed in Sandton. The one of the ones that we just looked at was signed in Sandton.

MR HOLDEN: That's correct. There is one that is signed in Chen Chen(?) and the one that's signed in Sandton.

20 **CHAIRPERSON:** Yes.

MR HOLDEN: This one does not seem to provide a place.

CHAIRPERSON: Yes. Ja. Okay, alright.

ADV CHASKALSON SC: So we have seen a series of contracts and the ones that we focused on are the ones between the Chinese Rail Companies and Tequesta and

Regiments Asia. I want us now to go back and we've, we've touched on some earlier contracts with the Chinese Rail Companies and JJT and CGT.

I want us now to go back to that document with the workings email which indicated how much had been paid to JJT and CGT and how much was still due to be paid. That's on page 419 of bundle 6A. Can I ask you to go to 419? And I want us to focus on the dates here.

And you've taken the Chair through these dates. The
10 original email is 6 January 2015. It's from Bunsal Rupesh(?) who you identified as a World Window individual. Zhang Min Yu. Can you explain who Zhang Min Yu is?

MR HOLDEN: Certainly Chair. Zhang Min Yu is a very senior executive at Chinese South Rail.

CHAIRPERSON: A very senior?

MR HOLDEN: Executive.

CHAIRPERSON: Oh okay.

ADV CHASKALSON SC: And then Zhang Min Yu forwarded it to Businessman, who we believe to be Salim Essa on 7
20 January 2015. And then there was a delay of more than two months before it got forwarded again to Asha Tjala(?) on the 22nd of March. Want us to – can you broadly describe to the Chair what was happening in the Gupta enterprise world window relationship over that period, first quarter 2015?

MR HOLDEN: Certainly. What we see is a, we have hints

from the Gupta leaks that they are increasing tensions between the World Window Group and the Gupta enterprise. And that's indicated in certain documents, including that by May 2015 for example the company Outclass which is a subsidiary of Worlds Window Group, is entry, is cancelling all of its various agency agreements and its co-production agreements with all of the Gupta enterprise companies.

There was an interview that was conducted with an alleged member of the Worlds Window Group by Abu
 10 Bongani(?) who indicated that there was some sort of falling out between the Worlds Window Group and the Gupta enterprise related to the disposition of funds, related to coal mines that the Worlds Window Group had invested in that were, were beneficially owned by the Gupta enterprise.

ADV CHASKALSON SC: And, and the first agreement that we see between the Chinese Railway Companies and Tequesta or Regiments Asia that provides for monies that were previously to go to JJT or CGT now to come to Tequesta or Regiments Asia is I'm correct the annexure F.
 20 Page 358 which is the 15 – sorry the 18 May 2015 agreement between Tequesta and CSR, that records the 707 million that's already been paid to JJT and has that provision that if that Tequesta must essentially make sure that that money will be deducted from what's due to Tequesta and that Tequesta must take of JJT.

MR HOLDEN: That's correct. Although I must correct Mr Chaskalson. That the earliest agreement I have involving Tequesta is the 20th of May 2014.

ADV CHASKALSON SC: Yes, but not – that does not deal with taking over.

MR HOLDEN: That's correct.

ADV CHASKALSON SC: Well taking over rights to payment that previously had vested in JJP or CGT.

MR HOLDEN: Yes that's correct. I apologise, I
10 misunderstood the question. But that's correct.

ADV CHASKALSON SC: I want now to look a bit more closely at Mr Zhang Min Yu and what he was doing in the first quarter of 2015. Can I ask you to go to bundle 6B annexure XX at page 1110?

CHAIRPERSON: You said 1110.

ADV CHASKALSON SC: That's correct Chair.

CHAIRPERSON: That's A.

ADV CHASKALSON SC: B. Bundle B. 6B.

CHAIRPERSON: Okay. Well it's been a long day, so but I
20 see that the first page is 869?

ADV CHASKALSON SC: Yes, but it should go, it should go until – 1110 should be quite close to the end.

CHAIRPERSON: Oh 1110?

ADV CHASKALSON SC: 1110.

CHAIRPERSON: No I didn't hear the zero. So I was

wondering how 111 could be on this bundle. Okay. 1110.
Ja, I have got it.

ADV CHASKALSON SC: Can you identify that document for the Chair? Or can you say where that document comes from?

MR HOLDEN: Certainly Chair. This is a document that emanates from the Gupta leaks archives.

ADV CHASKALSON SC: And what is it?

MR HOLDEN: What we have here Chair is an email that's
10 sent from Asha Chawla to Salim Essa forwarding a reservation, confirmation from the Oberoi in Dubai. The reservation confirmation is for Mr Zhang Min Yu. The body of the email indicates that the guest name is Mr Zhang Min Yu and the arrival date is Friday, the 27th of February 2015. And the departure date is Sunday, the 1st of March 2015.

ADV CHASKALSON SC: Can I then ask you to turn to page 112 and to identify that document to the Chair?

MR HOLDEN: Certainly Chair. We have a document that also emanates from the Gupta leaks archive. It is sent from
20 the ...

CHAIRPERSON: Is it the top one or the bottom email?

ADV CHASKALSON SC: Chair ...

CHAIRPERSON: 1112.

ADV CHASKALSON SC: Chair. 1112. That's correct.

CHAIRPERSON: Okay, ja.

ADV CHASKALSON SC: It's a string that in fact starts on the previous, previous page.

CHAIRPERSON: Oh okay.

ADV CHASKALSON SC: But for now I ask Mr Holden just to identify the parties to the end of the string which is at the top of page 112.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: 1112, not 112.

MR HOLDEN: So we have the individual from whom it's sent
10 is Sanial at HRT Services. And it's sent to Asha Chawla. And the subject is, ... (indistinct) now 17th of March 2015.

ADV CHASKALSON SC: And the date, sorry. Ja, you have just given the date to which it relates. Can you tell the Chair what the string is dealing with?

MR HOLDEN: Certainly Chair. This is a string that relates to the booking of a private air charter for a company of individuals who would be travelling to like now.

ADV CHASKALSON SC: And if you go to the foot of page 1113 we see the passengers who are going to be flying on
20 this chartered plane in another email for Asha Chawla to Sunial Gow, at sunialaircharterservices.com. Also on 16 March 2015. Can you identify those passengers for the Chair?

MR HOLDEN: Certainly. We have first passenger is Mr Rajesh Gupta or Tony Gupta. We have Mr Salim Essa. We

have Mr Zhang Min Yu. We have Mr Digaan Yuah. We have Mr Wang Jincheng(?). And finally Mr Mokesh(?).

ADV CHASKALSON SC: And so we know about the first three. Do you know who Mr Digaan Yuan is?

MR HOLDEN: Yes. He is a executive also of CSR.

ADV CHASKALSON SC: And Mr Wang Jincheng?

MR HOLDEN: He is also an executive of CSR.

ADV CHASKALSON SC: And do you know who Mr Mokesh may be? I think the record won't be able to see your faces.

10 So I think that ... (indistinct).

MR HOLDEN: Yes. I'm wondering if I should know.

ADV CHASKALSON SC: [Indistinct] you had no reason to believe that you should know.

CHAIRPERSON: Well Mr Chaskalson you recall that yes, in years gone by in the Magistrate's court or maybe in the High Court's the interpreter would always sometimes describe whatever the witness is doing, to say well the face looks like he's shocked. So you might have to describe.

20 **ADV CHASKALSON SC:** The face looks like he does not know who this ... (indistinct).

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Our last issue in relation to – our last email in relation to Mr Zhang Min Yu is at page 1115. Can you identify that email to the Chair?

MR HOLDEN: Certainly Chair. At that page we have an email again emanating from the Gupta leaks. It's from Jacqueline Van Der Merwe at Oak Bay. It's sent on Thursday, the 8th of October 2015 to Naziem Hower(?), cc'd to Asha Chawla and Wana Karagvan(?) and the subject reads SATY Stats at six o'clock, on 8 October 2015.

And SATY is the acronym for South African of the Year. Indicating this is a statistics related to potential attendees at a South African of the Year event that was
10 going to be hosted by Oak Bay and the Gupta enterprise.

ADV CHASKALSON SC: And if you down a page to 1116, can you identify that document for the Chair?

MR HOLDEN: Certainly Chair. What we have here is an extract from the excel spread sheet that had been attached to the email from Jacqueline Van der Merwe, that I have just described.

ADV CHASKALSON SC: And you've highlighted one entry. Can you tell the Chair what that entry is?

MR HOLDEN: Certainly Chair. It is very small on the
20 document, I apologise. It is at row 173, it's highlighted. And the invitee is indicated as Zhang Min Yu. And it provides an email address in the third to last column which is zhangminyu542qq.com.

ADV CHASKALSON SC: Thank you Mr Holden. While we're on this topic, can I ask you to go to page 1117 and if I recall

correctly, Mr Zhang Min Yu stay at the Oberoi were 27 February to 1 March 2015.

MR HOLDEN: That's correct.

ADV CHASKALSON SC: Can you tell the Chair what you see on page 1117?

MR HOLDEN: Certainly Chair. This is another email emanating from the Gupta leaks. We have an email from one Sarah Ben Hoian(?) at the Oberoi, Oberoi Hotels to Asha Chawla. And the substance of the email is to confirm a
10 booking for Mr Tony Gupta, Mr Rajesh Gupta and with an arrival date of the 24th of February and a departure date of the 26th of February 2015.

ADV CHASKALSON SC: And then if you go down to page 11120.

MR HOLDEN: Certainly. This is a email that is sent again as part of the Gupta leaks. In this case it is from Asha Chawla to Sujay Grova(?) who we identified in our Estina related testimony as the Indian national who is employed by the Gupta enterprise, to manage their Dubai logistics and
20 accountant, accounts.

And that provides the substance of the, of the email is to confirm the booking at the Oberoi Dubai from Ms Ashi Kasing(?) with an arrival date of the 24th of February 2015 and a departure date of Thursday the 26th of February 2015.

ADV CHASKALSON SC: And then down to 1122?

MR HOLDEN: Certainly Chair. Again this is another email emanating from the Gupta leaks. It is a reservation, it is sent from a reservation address for the Oberoi Hotels to Asha Chawla. And the subject is reservation confirmation at the Oberoi Dubai for Anash Singh.

ADV CHASKALSON SC: And the dates? That reservation?

MR HOLDEN: Certainly. The date of that reservation appears on the following page 1123 and the reservation is for Mr Anash Singh, arrival date Tuesday the 24th of
10 February 2015. And departure date the 26th of February 2015.

ADV CHASKALSON SC: Can you then go down to page 113 ...

CHAIRPERSON: One second. So – can we infer that the same mentioned at 1122 is the same Singh mentioned at 1123? Namely Mr Anash Singh? Or not?

ADV CHASKALSON SC: I think we probably can, but we do know who the reservation was for Chair, because that's at 1123.

20 **CHAIRPERSON:** Yes, okay. No, no, when I was looking at 1122, that second line, after the greetings first line. I saw that they said Mr Singh without giving the name, but or there is another Singh. Ashika Singh, later in the ...

ADV CHASKALSON SC: [Indistinct] the paragraph above the reference to Ashika Singh identifies Mr Anash Singh.

CHAIRPERSON: Anash Singh. Okay, now ja I didn't see that. Okay. So this is February 2015.

ADV CHASKALSON SC: Indeed Chair.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: Now so we have Anash Singh, Ashika Singh and Tony Gupta at the Oberoi from I think the 24th to the 26th of February and we have Zhang Min Yu at the Oberoi from the 27th of February to the 1st of March. Can I ask you to go to 1125 and this is a document sourced by the
10 Commission Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: It's Mr Anash Singh's immigration records from the Department of Home Affairs.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And what this document reflects is that Mr Anash Singh left OR Tambo on an Emirates flight 766 on the 23rd of February 2015 and returned on Emirates flight 767 on the 1st of March 2015.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** We have been through the registration documents of Tequesta and Regiments Asia. I think we'll come back to abbeylie and stevenmslie a little later. Can I ask you now to turn to bundle 6B, page 995.1. 995.1? And Chair, this is a document that that Commission obtained from HSBC and it attaches transactions – it's an

affidavit from an HSBC ...

CHAIRPERSON: Hang on one second. Did you say 995.1?

ADV CHASKALSON SC: That's correct Chair.

CHAIRPERSON: On?

ADV CHASKALSON SC: Bundle 6B.

CHAIRPERSON: I don't think I have. I've got 995. Let me just see. Ja, no I don't have 995.1. I have got 995. And then the next one is 996.

ADV CHASKALSON SC: Chair I must apologise for that.

10 Can I offer you up a copy of 995 ...

CHAIRPERSON: 995.1.

ADV CHASKALSON SC: Well the whole 995.1 to point 34 bundle because ...

CHAIRPERSON: Yes.

ADV CHASKALSON SC: That needs to ...

CHAIRPERSON: Okay. So you can just repeat. Just replace the old pages, the other pages.

UNKNOWN MALE: No.

ADV CHASKALSON SC: It comes in between 995 and 996.

20 **CHAIRPERSON:** Oh okay. Okay. Well I think 995 is one side or 995 and 996 are on the same page, on the same document. Yes.

ADV CHASKALSON SC: We'll have to clean up your, your file.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Later Chair.

CHAIRPERSON: But in the meantime I think we can make do with – ja, okay, alright.

ADV CHASKALSON SC: So Chair at 995.1 you will see an affidavit furnished by Thomas Fletcher Shenfield(?) who is the Country Head of Financial Threat Litigation for HSBC Bank BLC Johannesburg branch, which is HSBC South Africa. And he has furnished this affidavit to provide transaction records for four entities that the Commission has
10 been looking at.

Freedom Trading Limited, Morning Star International Trade Limited, Regiments Asia and Tequesta Group. And the, these are transaction records that went through the South African office of HSBC when they conducted their own investigation. It confirms their authenticity as HSBC records of the transaction. And the transactions for Regiments Asia are annexure 3 to that affidavit, which is at – sorry. Which start at page 995.11.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** And those for Tequesta are annexure 4 to the affidavit that start at 995.16.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Now Mr Holden we have made these records available to you. And you, you've analysed them and, and drawn some conclusions from them. Can you,

can I ask you to go to page 263 of bundle 6A which is back in your report?

CHAIRPERSON: What's the page on 6A?

ADV CHASKALSON SC: At 263 Chair.

CHAIRPERSON: 263. Yes.

ADV CHASKALSON SC: Can we, sorry Chair. HS – included in those HSBC records are also records for JJ Trading that HSBC has. And for Century General Trading that HSBC has. I must emphasise then in relation to JJ
10 Trading and Century General Trading, what HSBC has is a small window, small section of the total banking records, because they ran several accounts at banks, other than HSBC.

CHAIRPERSON: Okay. Okay. Of course the writing, the words are very small on those.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: But maybe Mr Holden has been able to make a plan instead.

ADV CHASKALSON SC: I wonder do you have the original
20 spread sheets or the spread sheets that were made available. That might ...

MR HOLDEN: Yes Chair, up on the screen now. Check your screen is operational.

CHAIRPERSON: Ja.

MR HOLDEN: This is the one of the spread sheets as

provided for productions relating to Regiments Asia.

CHAIRPERSON: Okay, okay.

ADV CHASKALSON SC: If we can first go to your, your sort of overall big picture findings at, at paragraph 264.

MR HOLDEN: Certainly Chair. What I indicate at 264 is that a total amount of \$187 054 355,77 was paid to Tequesta Group and Regiments Asia.

CHAIRPERSON: And as US dollars. What? Is that US dollars?

10 **MR HOLDEN:** US dollars, correct.

CHAIRPERSON: Okay. Ja, and Regiments.

MR HOLDEN: Was paid to Tequesta Group and Regiments Asia by China South Rail, China North Rail, Allien(?) Locomotives and Rolling Stock Company, a subsidiary of China North Rail and CRRC.

ADV CHASKALSON SC: I think we must just come back to that total figure, because I'm not sure it's accurate. But we will come back to it. 265 Is, is the – when you break it down.

MR HOLDEN: Certainly. An analysis of annexure NN which
20 is the HSBC documents.

ADV CHASKALSON SC: Sorry NN is your extract from the HSBC documents, not the original HSBC?

MR HOLDEN: Correct, correct Mr Chair. It indicates that Tequesta Group Limited was paid a total of \$61 394 694,50 by China North Rail, CRRC and CSR of which

\$15 234 248,00 was paid by China North Rail.
\$2 704 159,00 was paid by CRRC and \$43 456 242,00 was
paid by China South Rail.

ADV CHASKALSON SC: And paragraph 266?

MR HOLDEN: Analysis of the annexure shows that
Regiments Asia HSBC account in Hong Kong was paid
\$83 781 589,22 by China North Rail CRRC, China South Rail
and Dalian(?) of which \$8 622 906,00 was paid by China
North Rail. \$40 757 788,75 was paid by CRRC.
10 \$45 750 600,47 was paid by China South Rail. And
\$80 119 990,00 was paid by Dalian a subsidiary of China
North Rail.

ADV CHASKALSON SC: And, and then your totals to
Regiments Asia and to Tequesta by each of those Chinese
locomotive companies.

MR HOLDEN: Certainly. At 264 we, we might consider
jointly Regiments Asia and Tequesta with us paid a total of
\$23 857 154,00 by China North Rail. \$70 461 947,75 by
CRRC. \$89 206 842,47 by CSR. And \$80 120 982,50 by
20 Dalian.

ADV CHASKALSON SC: Can I ask you to go back to
paragraph 264, because I think that figure of 187 million
includes also payments that the HSBC records show to JJ
Trading and CG Trading. Because it's greater than the sum
of the sum of the Regiments Asia and Tequesta payments.

MR HOLDEN: That's correct. And I think the correct amount is indicated at the bottom of the table at file, at page 266.

ADV CHASKALSON SC: Well before we get to that, those tables, can you just identify those tables to the Chair. Table 3 on page 264.

MR HOLDEN: Certainly. What we have here is the, I extracted it from the various HSBC bank statements, the payments that were made to Tequesta Group and Regiments Asia at HSBC Hong Kong. In the first part of the table I
10 indicate payments that are made by CSR, CNR and CRRC to Tequesta Group. The first payment is indicated at the 7th of August 2015.

And the final payment on the 1st of June 2016. And the second part of the table indicates all payments that are made to Regiment Asia by Dalian, CSR, CNR and CRRC. The first payment indicates that on the 8th of December 2014 and the final payment indicated as the 1st of September 2016. And then the final part of the table breaks down total amounts paid to Tequesta and Regiments Group by each of
20 those individual contractors.

ADV CHASKALSON SC: And then the aggregate amount paid to Regiments Asia and to Tequesta Group in the Hong Kong HSBC accounts you have a 145 dollar, \$145 177 086,91.

MR HOLDEN: That's correct Chair.

ADV CHASKALSON SC: At prevailing exchange rates what would, what would that be?

MR HOLDEN: This is a level of mental arithmetic I was not expecting to perform. But it would probably be roughly 1,6 billion rand.

ADV CHASKALSON SC: In fact would be quite a lot more than 1,6 billion rand at today's. Sorry at today's exchange rate.

MR HOLDEN: Today's, I thought you meant in 20 ...

10 **ADV CHASKALSON SC:** Oh, oh, sorry. Okay. We should probably do the same exercise that we promised the Chair in relation to rand exchange rates and rand equivalents on each of those payments, which we will do. Then can I ask you to go to annexure II.

Which is at page bundle – sorry, just see. Bundle 6B, page 885.1 to 885.25? And again I think we might need you to go to the source spread sheet to magnify it on screen. Can you identify this document at annexure II?

20 **MR HOLDEN:** Certainly Chair. This is a document that was compiled by the investigative generous group Ama Bongani(?). The substance of this work which is quite brilliant is to identify and track the amounts received and paid to CJT and JJT and to Regiment Asia and to Tequesta against the anticipated milestone payments in relation to kickbacks that were paid by the various Chinese State

Money Manufacturing Companies.

ADV CHASKALSON SC: And can you describe to the Chair how, how this document – I mean the original document is a spread sheet, but can you describe to the Chair how each one of the page, what each one of the pages does?

MR HOLDEN: Certainly. We have at page 1, I'll load it up on the screen so it's slightly easier to see. This is a set of calculations in relation to the 95 Locos contract. And the substance of this page is to track here – let me try zoom in
10 quickly. On the left here payments that are made on certain dates.

And then to track the anticipated kickbacks due on each payment and then to trace those kickback payments actually being made to various accounts. You can see the arrows then point. It's quite a complicated spread sheet, but the substance of which is to indicate that the payments that we do know that were made to Regiments Asia, or to Tequesta or to JJT or CJT match exactly what we would expect to see in terms of the kickback milestone payments
20 as described in the underlined contract or agreements.

ADV CHASKALSON SC: So, so just to take – maybe if we could go to – because let's illustrate one with reference to the HSBC accounts. And maybe we can use – so if you can maybe go to 885.5 which is the tab that relates to the 232 Locos. So if you click on your 232 Locos tab there, okay

each one of these sheets relates to a different underlying contract between Transnet and the Chinese Rail Manufacturers.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: So at page 885.5 we have the 232 Locos which was one, which was a diesel contract with China North Rail. That, is that correct?

MR HOLDEN: That's correct. It's subsequently replaced by CRRC.

10 **ADV CHASKALSON SC:** Subsequently replaced by CRRC as both China North and China South were. And Mr Holden let's take these columns one by one. So the starting column is the date?

MR HOLDEN: Correct Chair. So we have the date of a payment that's been made. The column B indicates the party that's paying. Column C indicates the party that's receiving. So this case we can see that on the 28th of March Transnet paid to CNR, related to then column B gives the particular deal, the first two which is the 232 Locomotive contract.

20 And then it indicates here at column E that a total of R994 700 475,00 had been paid by Transnet to CNR and CRRC. At column F we have a summary of the contractual terms between Regiments Asia and CNR related to this contract. And it anticipated that there would be upfront on the first payment milestone a two percent excess fee that

would be paid in relation to this contract.

The Honourable Bongani have then calculated the rand kickback due. And it's a bit difficult to – I can't zoom in on the formula number, but the formula is effectively takes the column E figure and works out what two percent of the total amount Transnet has paid. And under that calculation the rand value of the kickback that would be due for the success fee would be R198 940 093,00. Then that get continue Chair, Chair ...

10 **ADV CHASKALSON SC:** Do, do proceed. Yes.

MR HOLDEN: And what we have that proceeds thereafter is it's total of five payments that are made on consecutive days between the 8th of December 2014 and the 12th of December 2014. And these are payments that are made from Dalian Locomotive which is a subsidiary of CNR to Regiments Asia, in relation to the 232 deal.

And if we scroll here to the right, we have a record, because Abu Bongani also had access to a leak of the HSBC banking documentation. They provide the total dollar
20 amount that's paid on each date. And as we can see the five amounts here which were paid on two consecutive days.

The first was 3,5 – \$3 599 998,00. The second amount was \$3 574 998,00. The third amount is \$3 716 998,00. The fourth amount is \$3 649 998,00.

ADV CHASKALSON SC: Can I stop you there and Chair can

I ask you to go to bundle 6B at page 995.11? 995.11 Where we ... (indistinct).

CHAIRPERSON: 599.11.

ADV CHASKALSON SC: 995.11.

CHAIRPERSON: 995.11. Yes I'm there.

ADV CHASKALSON SC: And these are the Regiments Asia, HSBC records. And the four amounts that Mr Holden has just cited from that spread sheet, you will find Chair on the fourth, fifth, sixth and eighth entry on that page. So if you
10 go across, the first column says transaction identity. The second says source transaction type code.

Original currencies, US dollars all the way through. The posting date and the value date. Let's look at the value dates, you go four down, there is 2014/12/08 and the amount is 3599998, which corresponds almost exactly to what Ama Bongani had. Then 35974998, 3716998, and 3649998. Which are those four ...

CHAIRPERSON: Payments.

ADV CHASKALSON SC: Payments.

20 **MR HOLDEN:** And that there is actually, if I may add a fifth payment as well.

ADV CHASKALSON SC: 3577998.

MR HOLDEN: That's correct and as you can see on the spread sheet this is the HSBC transaction sheet. It appears there.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: If we go back to the Abu Bongani document, annexure II.

MR HOLDEN: So what we have here then is the total calculation of the amounts paid by CNR to Regiments Asia. It's \$18 119 990,00. And the calculation is then performed by Abu Bongani here which indicates the ...

ADV CHASKALSON SC: Sorry Mr Holden, when you say here can you identify the column?

10 **MR HOLDEN:** Oh apologies.

ADV CHASKALSON SC: Apologies.

MR HOLDEN: At column B, row 8.

ADV CHASKALSON SC: And because the printed copies don't have column headings, they have column headings but not column letters. Can you just read the, the what looks like the heading to the column in, in that red band?

MR HOLDEN: Certainly. It says ZAR or South African Rand paid at SARB rate on Transnet pay date. So that is the South African rand paid to the South African Reserve Bank
20 rate on a Transnet pay date. And you can see there is a line that, a red line, I will show you the origin of that, but it indicates at row 8, column B, R192 323 762,00 which if I scroll back to the original calculation of the anticipated kickback is roughly equal, very similar in amounts to the rand kickback that they anticipated will be paid in relation to

the success fee.

So according to this calculation by Abu Bongani I think we can pretty safely assume that the five payments that are made by Dalian on these consecutive days relates specifically to the anticipated success fee on this contract.

CHAIRPERSON: Okay. And then I'm not looking here because I can't read anything. But so.

ADV CHASKALSON SC: But we will get, we will get bigger and better. Then they have to be A2.

10 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: Because there is so much detail.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But what the spread sheet does, is each one of these pages relates to a different one, contract, the 100 locomotives contract. The 95 locomotives contract. The 232 locomotives contract. The maintenance contract and so on. And it tracks what you would expect the kickback to be what you see at HSBC.

CHAIRPERSON: Okay.

20 **ADV CHASKALSON SC:** And they broadly match up in all cases. It's an extraordinary piece of work by the looks of it.

CHAIRPERSON: And it looks like Ama Bongani got it right.

ADV CHASKALSON SC: Absolutely.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: The – let's have a little bit of light

relief. Let's see who before we get into the laundering of these funds, let's see ...

CHAIRPERSON: Maybe before we proceed Mr Chaskalson, let's talk about our plan for the evening. What is your situation? Your assessment?

ADV CHASKALSON SC: Chair my guess is 45 minutes to ...

CHAIRPERSON: Okay, well. I think, I think then that should be fine. Ja.

ADV CHASKALSON SC: Thank you Chair.

10 **CHAIRPERSON:** Ja, okay.

ADV CHASKALSON SC: Can I, can I ask you to go back to porch at page 267, Bundle 6A at page 267, and there you have identified a series ...[intervenes]

CHAIRPERSON: I am sorry Mr Chaskalson it may be that at some stage somebody must do an exercise to go back to where we used this Bundle 6 and if we are now only going to have A and B we won't have the original Bundle 6 and in the transcript indicate where it is supposed to be A and where it's supposed to be B.

20 **ADV CHASKALSON SC:** Yes.

CHAIRPERSON: But if we are going to have maybe for convenience the original 6 which is combined then that exercise won't be necessary and then still have 6A and 6B because then it would mean that where the transcript reads 6A whoever has the files can go to 6A where it says 6B

they can go to 6B, where it simply says 6 without saying A or B then there will be a file written 6.

ADV CHASKALSON SC: Yes Chair I will have to speak to the Secretary to see if an original 6 still exists, because I think what they have done is they have cannibalised – but one way or another we will – either you will get an original 6 plus your current 6A and B or we will have to do that exercise.

CHAIRPERSON: Ja okay.

10 **ADV CHASKALSON SC;** At page 267 of Bundle 6A you record a range of individuals who were paid out of the Tequesta and Regiments Asia accounts. Can you just quickly give – take the Chair through those payments.

MR HOLDEN: Certainly we have a total, the first payment is to Salim Essa who received a payment of 99 985 dollars and thirteen on the 26th of October 2015 and that was paid into an account held at Habib Bank in Dubai. The second entry is for Bartholomew Diaz Domingo who was paid 665 257 dollars and eighty seven in eight payments
20 between the 24th of December 2014 and the 9th of February 2015 into an account held at Banco PPISA in Porto Portugal. At C we have Antonio Palango Sangosango who was paid 665 243 and one cent in eight payments between the 23rd of December 2014 and the 9th of February 2015, again into an account held at Banco PPISA in Porto

Portugal. At B we have a payment made to Prachi Desai who was paid 21 214 dollars on the 22nd of April 2016. At E we have Faizel Rashied who was 29 992 dollars and eighty nine on the 2nd of November 2016. We have Marc Y Yung who was paid 70 000 dollars on the 24th of January 2015 and then Chen Shwang who was paid 99 985 dollars and fourteen on the 16th of April 2015.

ADV CHASKALSON SC: Those individuals what were you able to find about them from public records?

- 10 **MR HOLDEN:** Certainly I think Salim Essa is relatively, his identity is relatively well established. For Bartholomew Diaz Domingo he is a Angolan Entrepreneur and owner of a Angolan company by the name of Guppo Bartholomew Diaz. The public records for Antonia Sangosango which I describe at paragraph 276 was appointed to the position of Director of Administration and Budget in the Angolan Ministry of Foreign Affairs in at least 2011 although I did indicate his personal LinkedIn page indicates that he held this position from at least 1998 and I indicate here in any
- 20 event the payments made to Sangosango took place while he held public office and I make a gentle suggestion that the Commission maybe might need to alert the appropriate authorities in Angola so they may conduct their own investigations into the probity of the payments.

ADV CHASKALSON SC: Prachi Desai.

MR HOLDEN: Prachi Desai is a Bollywood actress who performed at the wedding of A J Gupta's son, Kamal Singala in Antalya, Turkey on the 23rd and 24th of April 2016. As pointed out above she was paid 21 214 dollars on the 22nd of April 2016, on the same day the organisers of the wedding Catalyst Entertainment Private Limited were paid 64 394 dollars and we can refer to the annexure which describes that event.

ADV CHASKALSON SC: We found a sort of glossy mag,
10 an Indian glossy mag online, Chair if you go to 6B page 1094.

CHAIRPERSON: 1094?

ADV CHASKALSON SC: Yes Chair.

CHAIRPERSON: 6B 1094?

ADV CHASKALSON SC: 1094 and Mr Holden can you describe to the Chair what 1094 is?

CHAIRPERSON: I have got it.

MR HOLDEN: Certainly, Chair 1094 is a copy of a magazine which is called Excel which appears to be short
20 for Experiential Celebrations, the copy, the issue number or the issue date is between July and December 2016 and the tagline for the magazine is "An Insight into the Business of Social Evens."

ADV CHASKALSON SC: And then if you go to the contents page on 1095 there's an entry for what we find at

page 8 of the magazine.

MR HOLDEN: Certainly it indicates under the heading Wedding Planning at page 8, Happening and then the title of the article is Turkish Delight the Multiplanner Managed Antalya wedding.

ADV CHASKALSON SC: And if you go to page 1096 we see this article about Turkish Delight, can you read the first two paragraphs and the first line of the third.

MR HOLDEN: So the heading is “Turkish Delight”:

10 “We bring you glimpses of the much talked about
Multiplanner managed Antalya wedding which took
place at Mardan Palace Antalya Turkey in April
2016. On April 23 600 guests from South Africa,
UK, India and Dubai flew into Antalya Turkey to
attend the wedding celebrations of billionaire
businessman and politician Ajay Gupta’s son Kamal
Gupta and Delhi based businessman A J Jain’s
daughter Palak Jain. One of the biggest weddings
to have taken place this year the much talked about
20 Multiplanner managed Antalya wedding took place
at Mardan Palace in Antalya. Entertainment was
handled by Catalyst while catering was taken care
of by the Seasons Group.”

ADV CHASKALSON SC: Okay if we can stop there, can you just identify what we found in relation to Catalyst in

the HSBC payments?

MR HOLDEN: We identified a payment of just over – I will get the precise amount from the bundle again, at paragraph 277 ...[intervenes]

CHAIRPERSON: Are we still on the same bundle?

ADV CHASKALSON SC: No Chair this will be 6A 277, but if you just keep that bundle open because we are going to go to the next page in a minute.

CHAIRPERSON: Oh okay, 277 on the other one.

10 **ADV CHASKALSON SC:** That's correct Chair.

MR HOLDEN: Page 268, paragraph 277.

ADV CHASKALSON SC: Is it page 268.

CHAIRPERSON: Oh okay, alright, yes I have got it.

MR HOLDEN: Here I indicate that on the same day that Prachi Desai was paid an amount of 64 394 dollars was paid to Catalyst Entertainment Private Limited.

ADV CHASKALSON SC: Sorry, what was that date?

MR HOLDEN: It was the 22nd of April 2016.

ADV CHASKALSON SC: And if you go back to page 1096
20 6B what was the date that the wedding started?

MR HOLDEN: The 23rd of April.

ADV CHASKALSON SC: Right, let's see what Prachi Desai did at the wedding. Can I ask you to – I've lost my reference, do you have the reference to Prachi Desai?

MR HOLDEN: I think it is 1098, let me double-check.

CHAIRPERSON: In the other bundle?

ADV CHASKALSON SC: 6B Chair yes.

CHAIRPERSON: Yes, okay.

MR HOLDEN: Sorry, it is 1097 Chair.

CHAIRPERSON: Yes we looked at some paragraph 1096 then there is 1097.

MR HOLDEN: Correct Chair.

CHAIRPERSON: Okay.

MR HOLDEN: And then it says on the left hand side of
10 the page it says the exotic beachfront engagement.

CHAIRPERSON: Yes.

MR HOLDEN: And as you can see the second paragraph I will read it into the record, it reads:

“Energetic performance by actresses Sonal Chauhan and Prachi Desai and singer Richa Sharma were enjoyed thoroughly by the guests.”

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And can you remind the Chair what Prachi Desai was paid out of that HSBC account?

20 **MR HOLDEN:** Certain Prachi Desai was paid 21 214 dollars on the 22nd of April 2016.

ADV CHASKALSON SC: Thank you. Now if we move away from payments to individuals to see where most of this money was distributed at page 269 of your bundle 6A in your report you produced a table of companies that

received amounts in excess of a million dollars from that – from the Regiments and Tequesta HSBC accounts. Can I ask you just to take the Chair through that table, page 269.

MR HOLDEN: Certainly sir we have table 4, recipients of over one million dollars from Regiments and Tequesta Holding, the largest recipients of funds was a company by the name of Almalucky Limited which received a total of 54 payments between the 12th of August 2015 and the 10th of October 2015 and the amount is 15.312million Dollars.

10 The second entry there is for Success Stan Limited which was paid a total of 13 539 115,30 dollars across 44 payments between the 19th of May 2015 and the 15th of January 2016. The third entry is ...[indistinct] Garment which was paid in 38 payments 11 244 776,63 dollars and those payments are made between the 18th of August 2015 and the 15th of January 2016. The following entry is for Shunshi Limited which was paid 7 198 747,16 dollars, across 22 payments between the 13th of December 2015 and the 13th of January 2016.

20 **ADV CHASKALSON SC:** I think in the interests of speeding up maybe just describe to the Chair what this table is doing generally because it really speaks for itself.

MR HOLDEN: Certainly what this table indicates Chair is the – listed from the largest recipients to the smallest recipients of amounts totalling over a million dollars from

Tequesta and Regiments HS accounts, the number of payments they received and the dates they received those amounts.

ADV CHASKALSON SC: Then you produced another table under 6.4.3 which you refer to at the bottom of page 270, paragraph 282. That table – sorry that table is included on Annexure NN but it relates to an entity called Morning Star International, can you tell the Chair who Morning Start International are?

10 **MR HOLDEN:** Certain Chair. Morning Star International was a company that was also controlled by the Gupta Enterprise, they are most well-known because they received payments from Homex Pty Limited, the HSBC records indicate that they were paid in ten payments, they were all made between the 22nd and 29th of May 2015 from Homex's Mercantile Bank facility in South Africa and in total Morning Star was paid 393 965 dollars. We know that Morning Star and Homex were involved in allegations of impropriety in relation to contracts that were also awarded
20 by Transnet.

ADV CHASKALSON SC: And at paragraph 284 you list a range of companies that received payments from all of Regiments, Tequesta and Morning Star International, can you identify them?

MR HOLDEN: Certainly the first company is Almalucky

Limited, the second company is Success Stand Limited, third company is Meridian Warrior GL, the fourth company is Fly Bridge International DNCC and the fifth company is Silirtis Company Limited.

ADV CHASKALSON SC: And what do you – what conclusions do you draw from the fact that there are companies receiving payments from Regiments Asia, Tequesta and Morning Star?

MR HOLDEN: I believe that these three companies were
10 all making use of the same money laundering organisation, and money laundering routes with which the funds paid in relation to kickbacks could dissipated.

ADV CHASKALSON SC: At 286 to get ahead of ourselves a little bit you talk about payments from the Tequesta Group Limited accounts at Habib Bank in Dubai, can you just take the Chair through that paragraph?

MR HOLDEN: Certainly I indicate here that following Tequesta Group's decision to no longer use the HSBC accounts they made use of accounts at Habib Bank and I
20 read as I state here - Bank statements made public by Amil Bongani have revealed that Tequesta Group Limited operated a US Dollar denominated bank account at Habib Bank in Dubai with account number 2012-7771698603. T his account was used to receive three payments from CRRC between the 22nd of October and 29th of October

2016 valued at 19 886 383 dollars and forty one, and what is notable here is that this account was also used to make two payments to Fly Bridge International one of 198 876.33 Dollars which is equivalent to 755 000 Durham on the 28th of August 2016 and an amount of 735 000 Durham which is equivalent to 200 238 dollars and thirty five, also paid on the 29th of August 2016 also to Fly Bridge International.

ADV CHASKALSON SC: Can I ask you to turn to 6B, page 977, and can you identify that document for the
10 Chair?

MR HOLDEN: Certainly Chair, what we have here is the documents that was ...[indistinct] by Amil Bongani it is a statement of account in relation to an account held at Habib Bank Limited and the owner or operator of the account is identified in the top left corner as Tequesta Group Limited and it provides the address for Tequesta Group Limited as Flat A, 16P, Effilia, which if we cross-reference back to the Hong Kong company registration documents is the registered address for Tequesta Group in
20 Hong Kong, and it provides a statement of account in relation to the account number 20127771698603.

ADV CHASKALSON SC: Then can I ask you to go back to page 272 of Bundle A. There you talk about a Sunnyside Import and Export CC report by the Reserve Bank, first can I ask you to identify that report by going to – sorry, we are

jumping between bundles, it is now going to be Bundle B
page 1051.

CHAIRPERSON: Just the page again Mr Chaskalson?

ADV CHASKALSON SC: 6B 1051.

CHAIRPERSON: 1051, yes.

ADV CHASKALSON SC: And can you identify that
document to the Chair?

MR HOLDEN: Certainly Chair this is a memorandum
drafted by Mr K Naidoo who is the Deputy Governor of the
10 South African Reserve Bank, from the Surveillance
Department, the date of the report is or the memorandum
of authority is the 10th of March 2016 and it is a proposed
forfeiture – the memorandum is a proposed forfeiture of
money to the State in terms of the provisions of Regulation
22B of the Exchange Control Regulations, Sunnyside
Import and Export Close Corporation and it provides a
registration number for Sunnyside Import and Export.

ADV CHASKALSON SC: And – so this dealt with
Exchange Control Violations by Sunnyside and I ask you to
20 turn to page 1060 of the same bundle and can you identify
that document for the Chair?

MR HOLDEN: Certainly Chair, this is a list of transactions
that were recorded by the South African Reserve Bank in
relation to Sunnyside Import and Export.

ADV CHASKALSON SC: And those are across border

transactions?

MR HOLDEN: That is correct, these are payments from Sunnyside Export out of the country.

ADV CHASKALSON SC: Can I then ask you to turn to page 1093 and this is a document that you have generated, can you tell the Chair what it is?

MR HOLDEN: Certainly, what I have done here is identify all of those companies to which Sunnyside Import and Export made payments that also appear on the bank
10 statements or the transaction records for Regiments Asia and Tequesta Limited.

ADV CHASKALSON SC: And have you counted them, do you know how many there are?

MR HOLDEN: There are 23 companies here.

ADV CHASKALSON SC: And what inference do you draw from the fact that there are 23 companies who Sunnyside Import & Export did transactions, did cross-border transactions with from South Africa who also were paid money by Regiments Asia and Tequesta?

20 **MR HOLDEN:** Chair I believe that this is evidence of the existence of a complex professional money laundering organisation that served to launder funds both from South Africa and also served to launder funds for the Gupta Enterprise in relation to Regiments Asia and the Tequesta Group.

ADV CHASKALSON SC: You have repeatedly referred to what is going on in those Tequesta and Regiments Asia accounts is money laundering, can I ask you to go to page 281 of Bundle 6A where you identify what you describe as obvious signs of money laundering taking place through these accounts and can you take the Chair through those signs, those indications of money laundering?

MR HOLDEN: At paragraph 300 I state the receipt and dissipation of funds from the accounts happened in a
10 highly suspicious manner in particular the funds paid in by CSR, CNR, Dallian and CRRC were paid out of the HSPC accounts almost immediately after they had been received. In addition the amounts paid out by Regiments Asia and Tequesta had all hallmarks of smurfing, in which large payment amounts are split into a series of smaller payments made contiguous with each other. This is to avoid the movement of single large sums that may incur compliance checks or mandatory reporting requirements. I then provide an example at paragraph 302 which provides
20 indicative examples of this and the first example between the 31st of December 2014 and the 25th of March 2015 Regiments Asia transferred 2 984 050 Dollars to a company called the Light Forever Limited in eleven transfers but most noticeably between the 10th of March 2015 and the 24th of March 2015 Regiments Asia made ten transfers on a

nearly daily basis, the transfers were mostly in round figures and then I provide a table here, thereafter Table 7, which indicates the payment amounts that were made from Regiments Asia to Light Forever and as the Chair will see here we have a series of payments that are made between the 10th of March and the 25th of March or within very close proximity all in round amounts and/or with all hallmarks of smurfing and money laundering ...[indistinct] administratively to transfers all of those amounts in one go
 10 rather than across a number of different transactions incurring transaction fees.

In the second example which I indicate at paragraph 303 between the 18th of August 2015 and the 6th of November 2015 Tequesta Group transferred 9 087 002,92 to Almalucky Limited in 34 different payments, although realistically I must add that this was actually 33 payments, as one payment made of two dollars and ninety three cents. The payments again took place on a regular basis often only a day or two apart and were roundabouts in a
 20 pattern that would be pretty indicative of smurfing and money laundering, again I provide a table of those payments beginning at the 18th of August 2015 and concluding on the 6th of November 2015.

ADV CHASKALSON SC: And then finally your concluding remarks at page 284 paragraph 304 in relation to the Hong

Kong accounts of Regiments Asia and Tequesta Group.

MR HOLDEN: Certainly, I say at 304 I say based on the above discussion the following facts can be confirmed, at paragraph A; Regiments Asia and Tequesta Group were paid 145 177 086,91 by CSR, CNR, Dallian and CRC seemingly after it was decided to get this ...[indistinct] window network to launder kickback payments. At B; Regiments Asia and Tequesta Group were incorporated in Hong Kong shortly before receiving payments from CSR, 10 CNR, Dallian and CRC. The Gupta Enterprise Associate Salim Essa was the sole director of both Regiments Asia and Tequesta Group until 2016 after which he was replaced Aashika Singh, another Gupta Enterprise associate. The amounts paid in Regiments Asia and Tequesta Group were immediately dissipated out of these accounts. The payments made out of Tequesta and Regiments accounts were made to, one, a small wedge of individuals, two a large number of Chinese registered textile, clothing, bedding or consumer goods manufacturers, many of whom 20 are shown by public customs data to have been shipments to South Africa or alternatively to have at least reported such shipments to customs authority in China. Three, a large number of Hong Kong registered shelf companies all taking the same corporate form and none of which have any notable online profile. At F; payments to Morning Star

International are also reflected at Annexure NN as are payments out.

These records show that only five companies received payments from all of Morning Star International, Tequesta Group and Regiments Asia namely Almalucky Limited, Success Stand Limited, Meridian Warrior GL, Fly Bridge International DMCC. Silitis Co Limited. At 305, based on the above facts I believe it is reasonable to infer that:

10 [a] The payments made to Tequesta Group and Regiments Asia CSR, CNR, Dallian, CRRC were in all or part actually made for the benefit of the Gupta Enterprise;

[b] Tequesta Group and Regiments Asia were created specifically as vehicles to receive laundered funds paid to the Gupta Enterprise by CSR, CNR, Dallian and CIRC and receive and launder funds from Homix.

[c] The Gupta Enterprise through Tequesta Group and Regiments Asia paid funds to at least identifiable laundering networks which may or may not have been
20 linked, namely the Hong Kong Shell Company network and the Chinese South African Consumer Goods Export Import Network.

[d] Morning Star International, Tequesta Group and Regiments Asia all participated in the same money laundering network as shown by payments made by all

three to the same five entities.

ADV CHASKALSON SC: Thanks Mr Holden. I realise we haven't taken you, some of those conclusions are based on material in your report which we haven't actually addressed in these hearings but I think we have done quite well for tonight. I am not going to ask you to go back.

Chair that concludes Mr Holden's evidence on the kick backs paid into Hong Kong for the Transnet Locomotives contract. Tomorrow we will be dealing with
10 the kickbacks paid to CDT and JJT and the World's Window Network at an earlier stage. I understand that the Eskom evidence tomorrow may in fact finish earlier ...[intervenes]

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: ...than anticipated so would you like us to be on standby from two o'clock?

CHAIRPERSON: I would like you to be on standby for earlier than today but I am not sure how long, I think if you speak to Mr Seleka he might give an indication whether two o'clock would ...[intervenes]

20 **ADV CHASKALSON SC:** He was suggesting that two o'clock would be a sensible time.

CHAIRPERSON: Then that would be in order ja, that would be in order.

Okay alright.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Thank you very much and thank you to everybody for working late, so we shall still be here tomorrow hopefully not until this time but if it has to be it has to be, but thank you very much Mr Holden, thank you Mr Chaskalson and your team, thank you to the staff. We are going to adjourn for the day.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 8 DECEMBER 2020