

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

08 DECEMBER 2020

DAY 320



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 08 DECEMBER 2020

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Good morning Dr Ngubane. Thank you. Are we ready?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you Chair. Chairperson this
10 morning Dr Ngubane has come back to deal with certain transaction matters at Eskom and I believe that he is ready to take the oath or affirmation.

CHAIRPERSON: Okay please administer I think it is the oath.

REGISTRAR: Please state your full names for the record.

DR NGUBANE: Baldwin Siphon Ngubane.

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

DR NGUBANE: No.

20 **CHAIRPERSON:** Do you consider the oath to be binding on your conscience?

DR NGUBANE: 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.

DR NGUBANE: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you for coming back Dr Ngubane.
There is unfinished business.

DR NGUBANE: [African language].

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Just – just by way of
10 background Chairperson whilst Dr Ngubane was here in the
previous appearances he testified on the suspension
issues and we ended at the point where in Dr Ngubane's
affidavit he says that there was a serious vacuum as a
result of the suspension of the executives. And we have to
see how you filled that vacuum Dr Ngubane and what
happens thereafter as a result of that gap being filled.

CHAIRPERSON: That light which is normally on it is....

ADV SELEKA SC: Oh yes I see that.

CHAIRPERSON: So it is – as a result it is darker.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Somebody should attend to that. I do not
know what the story is with this one. Ja okay. If – if it
causes problems then somebody must tell us. Okay alright
continue Mr Seleka.

ADV SELEKA SC: Thank you Chair. And – and the filling

of that vacuum will take us into the matters that we are focussing on this week Dr Ngubane which is the transactions in regard to the Tegeta matter in the main.

And I will relate the facts and you – you could confirm or otherwise explain what happened in regard to that.

By way of a starting point Chairperson we will refer to Dr Ngubane's affidavit which is contained in Eskom Bundle 9[A]. Dr Ngubane I believe you have...

10 **CHAIRPERSON:** On – on my bundle there is no indication that his affidavit was admitted last time. Oh I do not know what your recollection is. I would normally write Exhibit XYZ on if it was admitted. So if we did not do it we should do it today.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: And if we did do it then I must just correct this.

ADV SELEKA SC: Yes. Mine is also not marked.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** It is – let us do that.

CHAIRPERSON: I suspect that we did not admit it formerly.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay so I think we should get that out of the way first.

ADV SELEKA SC: Correct Chair. Dr Ngubane Eskom...

CHAIRPERSON: Page here – what page was it?

ADV SELEKA SC: Ja it is the first – is the first document in the file. Let us go to page 4.

CHAIRPERSON: Page 4.

DR NGUBANE: Oh yes.

ADV SELEKA SC: Page 4 and we follow the black numbering. The black numbering on the left hand corner – top left hand corner

10 **CHAIRPERSON:** The top.

DR NGUBANE: The top?

CHAIRPERSON: Ja the black numbers on the top.

ADV SELEKA SC: Just turn the page – no go the other way.

DR NGUBANE: Oh alright yes.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: Yes but go back Dr Ngubane.

DR NGUBANE: I have got it yes.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Yes. He says he has got it.

ADV SELEKA SC: Ja Dr Ngubane.

DR NGUBANE: Yes.

ADV SELEKA SC: Do not read yet all we need to confirm is you look at the affidavit on page 4 – affidavit of Baldwin Siphon Ngubane. I think you are on the wrong page.

DR NGUBANE: I am at the four executives.

ADV SELEKA SC: Yes but I think you are on the wrong page. I want you to go back. Yes that is right, go back.

CHAIRPERSON: To the first page of the affidavit.

ADV SELEKA SC: Of the affidavit.

DR NGUBANE: Oh okay alright.

ADV SELEKA SC: Yes the affidavit runs from page 4 of the paginated bundle to page 54. Can you give him some assistance?

10 **CHAIRPERSON:** Hang on a second. Go to page 54 black numbers at the top left corner.

DR NGUBANE: Homan and Gilfillan?

ADV SELEKA SC: Ja just assist.

DR NGUBANE: It might be a wrong file.

ADV SELEKA SC: Page 54. So page 54 that is the end of the affidavit Dr Ngubane and there is a signature there above the deponent. You see that signature? Is that ...

CHAIRPERSON: Sorry just switch on – ja.

DR NGUBANE: That is my signature.

20 **ADV SELEKA SC:** Yes. That is your signature.

DR NGUBANE: Yes.

ADV SELEKA SC: And the affidavit is dated 4 August 2020. You confirm this to be your affidavit?

DR NGUBANE: That is correct.

ADV SELEKA SC: Chairperson I will beg leave to have it

admitted as Exhibit U19.1.

CHAIRPERSON: The affidavit of Dr Baldwin Siphon Ngubane starting at page 4 is admitted as Exhibit U19.1.

ADV SELEKA SC: Thank you Chair. Then Dr Ngubane at page 22 of the affidavit.

ADV MKHABELA: Excuse me it is this channel, without me seeing Mr Seleka.

CHAIRPERSON: Oh I think he forgot about you.

ADV SELEKA SC: Not at all.

10 **CHAIRPERSON:** Yes please place yourself on record.

ADV MKHABELA: The name is Mkhabela for Dr Ngubane. I just would like to add Mr Seleka would recall that there was a supplementary affidavit. I have not had mention of it and I think for the sake of completeness that too must be placed on the record.

ADV SELEKA SC: Thank you. Thank you.

CHAIRPERSON: Yes.

ADV SELEKA SC: Mr Mkhabela that is..

20 **CHAIRPERSON:** Do we already – do we already have the supplementary affidavit?

ADV SELEKA SC: We do have it.

CHAIRPERSON: Oh.

ADV SELEKA SC: It is an explanatory affidavit of Dr Ngubane.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Alright.

ADV SELEKA SC: But it is an explanation of that the guarantee did not come to the board.

CHAIRPERSON: Ja. Obviously it will be important to know where it is in the bundle.

ADV SELEKA SC: Okay. My junior will find it Chair.

CHAIRPERSON: You can continue in the meantime.

ADV SELEKA SC: Ja.

10 **CHAIRPERSON:** And you can attend to that in due course.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Dr Ngubane page 22 of your affidavit.

DR NGUBANE: Page?

ADV SELEKA SC: 22.

DR NGUBANE: 22?

ADV SELEKA SC: Yes.

DR NGUBANE: Yes.

ADV SELEKA SC: [00:09:19] to paragraph 6.1.

20 **DR NGUBANE:** Appointment of Mr Molefe.

ADV SELEKA SC: Correct ja. So paragraph 6.1 the appointment of – the appointment and early retirement of Mr Brian Molefe – paragraph 6.1 says:

“After the suspension of the four executives including Mr Matona who was the C – the

GCEO there was serious vacuum in the leadership of Eskom.”

You see that?

DR NGUBANE: Yes.

ADV SELEKA SC: And that serious vacuum came as a result of the decision made by the board to suspend the four executives. But we know that one Mr Koko who was the – one of the suspended executives does come back ultimately.

10 **DR NGUBANE:** Right.

ADV SELEKA SC: On the – in July 2015. So Dr Ngubane let us sketch this background and I will come back to this appointment of Mr Molefe. This board is appointed – the board of which you were a part is appointed on the 11 December 2014 by Minister Lynne Brown. Correct?

DR NGUBANE: Correct.

ADV SELEKA SC: The board has an induction on the 16 January 2015.

DR NGUBANE: Correct.

20 **ADV SELEKA SC:** And they are taken through the operations of Eskom; what Eskom does and so on. Correct?

DR NGUBANE: That is right.

ADV SELEKA SC: The board has a scheduled meeting on 26 February 2015 that meeting gets to be cancelled on the

eve of the meeting date.

DR NGUBANE: Correct.

ADV SELEKA SC: On the 8 March 2015 the board receives an email inviting the board to a special meeting the next day which is the 9 March 2015.

DR NGUBANE: That is correct.

ADV SELEKA SC: It is at that special meeting that the board is told about an inquiry requested by the President. Mr Tsotsi relates that to you. Correct?

10 **DR NGUBANE:** It is correct.

ADV SELEKA SC: And the board said look we are new; we cannot make this huge decision let the Minister or shareholder representative come and address us.

DR NGUBANE: Correct.

ADV SELEKA SC: Two days later the meeting with the Minister is scheduled the 11 March 2015.

DR NGUBANE: That is correct.

ADV SELEKA SC: From that meeting your write in your affidavit:

20 “It became clear to us that the Minister wanted the inquiry to be proceeded with and that the executives should step aside.”

DR NGUBANE: Correct.

ADV SELEKA SC: And the stepping aside or suspension of the executives is executed on the same day. They are

suspended on the same day.

DR NGUBANE: Correct.

ADV SELEKA SC: On the 19 March 2015 the board has a meeting and Mr Tsotsi is in trouble.

DR NGUBANE: Correct.

ADV SELEKA SC: There is a vote of no confidence which is ultimately acted upon in the meeting of 30 March 2015 where Mr Tsotsi tenders his resignation.

DR NGUBANE: That is correct.

10 **ADV SELEKA SC:** The executives are suspended 11 March. The following month on the 17 April 2015 Minister Brown makes a press – calls a press conference and she makes a public announcement that she has decided to second Mr Molefe to Eskom.

DR NGUBANE: That is correct.

ADV SELEKA SC: Now you have said in your affidavit page 23 paragraph 6.3 and this is dealing with how the secondment of Mr Molefe came about. You say:

20 “Whilst the search for a new GCEO was underway the Minister suggested that we consider Mr Brian Molefe. The board was amenable to the Minister’s suggestion because we knew of Mr Molefe’s track record based on his work at the Public Investment Commissioners and Transnet.

The board felt that Eskom was in dire straits and needed someone with Mr Molefe's skills and experience. The Minister suggested that the board approaches Transnet to request for Mr Molefe's release to Eskom."

And then you say:

"I wrote to the Chairperson of Transnet."

Now the Minister has put it slightly differently. In her
10 affidavit she says that:

"The Transnet and Eskom boards negotiated discreetly the transfer of Mr Brian Molefe and Mr Anoj Singh to Eskom. My role as the shareholder representative was to approve the negotiated outcomes. If I remember correctly from 2016 Eskom's MOI required me to be noted as a party to the appointment of CEO. I also seem to recall that there was a very – a query about the
20 legality of the transfers and leave an opinion."

The emphasis is on her saying it was the two boards that discreetly negotiated the appointment or secondment of the two. I only came into the picture to approve the negotiated outcomes. What is your comment on that?

DR NGUBANE: Well we approached the Minister as I say – as I have stated Chairperson to present our problem in terms of leadership of the organisation. And she said Brian Molefe would help Eskom and we were very happy with this because in our minds Brian Molefe had done a good job. PIC, Transnet and so on. But also at the press conference she said the secondment of Mr Molefe was discussed with the Deputy President and President Zuma. Quite clearly Chairperson this was a very big decision
10 which could not have been undertaken just by the chairpersons or the boards of the two organisations. There had to be a higher authority to it.

ADV SELEKA SC: Yes. So prior to the decision because we dealing with the – the pretext to the decision. The Minister says you negotiated the two boards discreetly. You are saying well the board – who approached the Minister?

DR NGUBANE: We did.

ADV SELEKA SC: When you say we who are you referring
20 to?

DR NGUBANE: The PNG.

ADV SELEKA SC: PNG?

DR NGUBANE: Yes.

CHAIRPERSON: That is the People and Governance Committee of the board of Eskom.

DR NGUBANE: That is correct.

CHAIRPERSON: Ja and I guess doing so on behalf of the board.

DR NGUBANE: That is correct.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: But the important point is do you go to the Minister with a name in mind or is it the Minister who suggests the name?

DR NGUBANE: No we wanted a secondment of a senior
10 official either in government or in one of the SOE's and then she came up with the name of Mr Molefe.

ADV SELEKA SC: So the Minister is the one who suggested it as you say in your affidavit.

DR NGUBANE: Yes that is right.

CHAIRPERSON: So you – you – you were looking at getting somebody who would be – would take the position of Group CEO at Eskom.

DR NGUBANE: A secondment.

CHAIRPERSON: For a – but you wanted a secondment.

20 **DR NGUBANE:** For the – while we were busy.

CHAIRPERSON: Oh looking.

DR NGUBANE: Yes.

CHAIRPERSON: So somebody would act?

DR NGUBANE: Exactly.

CHAIRPERSON: Oh okay alright. Okay, no, no then I

understand. So – and you were saying well it could be somebody in one or other government department or one of the SOE's.

DR NGUBANE: That is correct Chairperson.

CHAIRPERSON: But at that stage as a committee you did not have any particular name yourselves.

DR NGUBANE: No we did not.

CHAIRPERSON: Oh okay alright. And the Minister suggested Mr Brian Molefe.

10 **DR NGUBANE**: Yes.

CHAIRPERSON: Okay.

DR NGUBANE: And she also suggested that we write the board of Transnet. So I wrote to the Chairperson of Transnet.

CHAIRPERSON: Oh okay alright. Do you recall around about when it was that the PNG Committee approached the Minister. Mr Seleka sketched out the background. The suspensions were on the 11th March 2015. Mr Tsotsi resigned on the 30th I think of March 2015.

20 **ADV SELEKA SC**: Correct.

CHAIRPERSON: The Minister announced the secondment of Mr Brian Molefe on the 17 April. In other words two weeks after Mr Khoza, Mr Zola Tsotsi had resigned. Do you have a recollection of when it might have been that the PNG Committee met with the Minister?

DR NGUBANE: I am not too sure. am not too sure.

CHAIRPERSON: Yes. Do you think it would have been before the end of March?

DR NGUBANE: It should have been around there because the annual report and financial statements were totally disappointing. I mean the auditors that put an emphasis of matter in their report which meant Eskom was not a going concern. And also the debt – I mean the previous CEO Mr Matona had written or informed the Minister that they
10 would not be able to pay salaries from January 2015. So it was a very tumultuous situation that we were getting in. So we decided that we must ask for a senior experienced person to act while we look for a GCEO.

CHAIRPERSON: Oh okay alright.

ADV SELEKA SC: But should there been around end March.

CHAIRPERSON: Around end of March.

ADV SELEKA SC: Somewhere yes.

CHAIRPERSON: Or so beginning of April.

20 **DR NGUBANE:** That is right.

CHAIRPERSON: Ja. Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Yes Dr Ngubane that incidentally seems to coincide with what the then acting DG says in her affidavit which I provided you with Ms Matsietsi Mokholo. She says in her affidavit that:

“It was somewhere between March 2015 and April 2015 that she was again requested to accompany the Minister to a meeting at Eskom.”

Now the first meeting is the 11 March meeting where the Minister went to meet with the board in that special meeting to discuss the inquiry and the stepping aside of the executives. Now this is the second time around she is called to Eskom. And she said:

10 “The meeting took place at the Chairman’s office at Eskom and included the acting chairperson Mr Ben Ngubane – I mean Dr Ben Ngubane and the acting CE Zethembe Khoza. Also the chairperson of the Transnet board Ms Linda Mabaso. She was – I was also present.”

She goes on to say.

20 “With Minister Brown. It must be noted that no minutes were taken during this meeting it was just a verbal discussion pertaining to the secondment of Mr Brian Molefe from Transnet to Eskom which topic of discussion was introduced.”

And she says:

“By the acting Chairperson Dr Ngubane.”

Let me just stop there and hear your comment on that?

DR NGUBANE: Well – we were almost at the end of the process when that meeting happened. I had written the Transnet board. They have agreed. So we were just crossing the T's and dotting the I's at that meeting. It was not the original start of the request. Now of course being chairman because it was in my office I introduced the subject as being the secondment of Mr Molefe. Not that I was initiating that process.

10 **CHAIRPERSON:** The – when the – when the PNG Committee approached the Minister as you said earlier on was that approach by way of a meeting or was it a letter written on behalf of the committee to the Minister?

DR NGUBANE: We discussed the issue to request the Minister but then when I met the Minister I am not sure whether I was with Ms Venete Klein or with Mr Zethemba Khoza but we had to put this request to the Minister directly.

20 **CHAIRPERSON:** Oh okay so there was a discussion of the issue within the PNG Committee first.

DR NGUBANE: That is right.

CHAIRPERSON: Right and then the PNG Committee decided that the Minister should be approached.

DR NGUBANE: That is correct.

CHAIRPERSON: And it was not the whole committee.

DR NGUBANE: No.

CHAIRPERSON: That met with the Minister. It was yourself and one other member either Mr Zethembe Khoza or Ms Klein?

DR NGUBANE: That is correct Chair.

CHAIRPERSON: But then on that occasion did the two of you meet with the Minister as such on that occasion?

DR NGUBANE: That is correct.

CHAIRPERSON: Okay and that is where she put – came
10 up with the name of Mr Brian Molefe?

DR NGUBANE: That is correct.

CHAIRPERSON: And your – you cannot remember the date but you think that meeting would have been where about in terms of dates? Sometime during March or sometime during April?

DR NGUBANE: I think it was sometime during March towards probably the end.

CHAIRPERSON: Oh okay alright. Mr Seleka.

ADV SELEKA SC: Thank you Chair. So of the two
20 meetings Dr Ngubane the PNG going meeting with the Minister and this meeting of the two of – chairpersons of the board – one of Transnet the other of Eskom with Mr Zethemba Khoza which of the two meetings came first?

DR NGUBANE: Sorry?

ADV SELEKA SC: Which of the meeting took place first?

DR NGUBANE: Well the previous meetings as I say the meeting in my office.

ADV SELEKA SC: Yes.

DR NGUBANE: Was the last meeting

ADV SELEKA SC: Okay. So this was the last meeting.

DR NGUBANE: Ja.

ADV SELEKA SC: Because Ms Mokholo goes on in her affidavit to say that”

10 “Mr Molefe was touted by the Eskom chairperson that would be you in that meeting as an ideal candidate for the acting CEO position albeit on a temporary basis while the board will be embarking on a selection and recruitment process. The proposal was supported by Transnet Chairperson. Both chairpersons agreed that Mr Molefe was a perfect [00:27:26].”

So she seems to paint a picture that the name of Mr Brian Molefe came from your side.

20 **DR NGUBANE:** No Chairperson. As I said that was the almost final meeting.

ADV SELEKA SC: Okay.

DR NGUBANE: Leading to Mr Molefe’s secondment.

ADV SELEKA SC: yes.

DR NGUBANE: Now we had discussed the issue of

Molefe's abilities prior to this stage. So I was merely introducing the subject saying to the Minister and the DG we have agreed as the two boards to this proposal.

ADV SELEKA SC: Yes.

CHAIRPERSON: So you are not saying that you did not bring up Mr Brian Molefe's name in that meeting but what you are saying is bringing it up did not mean that the name was coming from you. You were bringing it up because it had been brought up already.

10 **DR NGUBANE:** Yes.

CHAIRPERSON: And you say it had been brought up by the Minister much earlier. So you were just saying here is a name that has been mentioned. That is what – is that what your – what you are saying?

DR NGUBANE: Certainly Chairperson the necessary processes like writing the letter – exchange of letters it had already taken place.

CHAIRPERSON: Yes. Okay. Do we by any chance have a copy of that letter in the bundle? I do not seem to have
20 seen it.

ADV SELEKA SC: Is it the one ...

DR NGUBANE: I struggled to find it.

CHAIRPERSON: You could not find it?

DR NGUBANE: I could not find it.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you Chair. Is that – you saying – it is your letter to the Chairperson of Transnet?

CHAIRPERSON: YEs.

DR NGUBANE: Yes and the response from the Chairperson of Transnet.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chair we will check with the investigators.

CHAIRPERSON: Ja okay.

10 **ADV SELEKA SC:** So Dr Ngubane this is either a coincidence or an orchestration. Because the Chair – the Commission has heard the evidence of one Mr Hank Bester.

DR NGUBANE: Mr?

ADV SELEKA SC: Mr Hank Bester. He is not from Eskom. These are independent – a person belonging to some company. He says to the Commission – he testified in the Transnet work stream and says to the Commission that way back in or about April 2014 when the company he was
20 employed by seeking to conclude a transaction with Transnet. They are called to the meeting, firstly with Mr Anoj Singh, who is still with Transnet at the time, 2014, April 2014.

DR NGUBANE: Ja.

ADV SELEKA SC: This meeting takes place at Melrose

Arch. Present in that meeting is Mr Salim Essa, who is the dominant figure, who does most of the talking.

And Mr Salim Essa is pressing on him that you will take the particular company as your Supply Development partner which is a company of Mr Salim Essa.

And this is how we will increase the figures in the contract, in the transaction that will rise to this level. And he thinks this is ridiculous. You cannot reach those figures in this transaction. I know the budget.

10 That meeting is followed by another meeting shortly after that where Mr Henk Bester to called to, again, Melrose Arch. And this time around, they meet at JB's Corner. You are familiar with that restaurant?

DR NGUBANE: Ja.

CHAIRPERSON: Is that a yes Dr Ngubane?

DR NGUBANE: Well, Chairperson I think every Johannesburger knows JB's Corner. [laughs]

CHAIRPERSON: [laughs] So I must be the only one who does not know it. [laughs]

20 **ADV SELEKA SC:** Well, I do not know that. [laughs]

CHAIRPERSON: Ja. [laughs] Yes, h'm.

ADV SELEKA SC: Mr Mkhabela might know it. I do not know this place.

CHAIRPERSON: Yes, I think Mr Mkhabela knows it. [laughs]

ADV SELEKA SC: [laughs]

DR NGUBANE: You must introduce him to good company.

[laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: Yes.

ADV SELEKA SC: In the second meeting, Mr Anoj is not there but Mr Salim Essa is there and he is pushing the same proposition to include Mr Salim Essa's company as a Supply Development partner in the transaction.

10 And Mr Henk Bester says, as Mr Salim Essa is talking, he also says to him that: To show you how powerful we are. He says, they - (Mr Salim Essa), we have already decided that the new boss of Eskom will be Brian Molefe. Now this is way back in April 2014.

CHAIRPERSON: You must double check Mr Seleka. My recollection is that Mr Bester said that meeting where Mr Salim Essa said that was some time in October 2014.

So just double check. I may be mistaken but I seem to think I particularly ask him when it would have been.

20 Obviously, because it is important to see where it links with what happened in Eskom.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: If you are correct, we will check ...[intervenes]

CHAIRPERSON: Because there was some time, I think, in 2014.

ADV SELEKA SC: Yes.

CHAIRPERSON: Whether it was April or October. I seem to remember it as October.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Salim Essa in order to try and convince Mr Bester that he or they, whoever they were, up with powerful people and therefore he must seriously consider
10 taking his company as a Supply Development partner for the job his company was going to get at Transnet.

Says the next boss of Transnet is going to be Brian Molefe. And of course, if that meeting happened in October, as I think Mr Bester says it did, seven months later Mr Brian Molefe is seconded to Eskom after the Group CEO, Mr Matona and other executives had been suspended under certain circumstances.

I think Mr Seleka's point or proposition he is putting to you is. How come there is somebody outside of Eskom who
20 speaks like this to a particular party who has got nothing to do with Eskom in 2014 and indeed what he says is what actually happens. I am going ahead of him now. He will tell me if that is not what he was saying.

I think he is saying. It just seems that this whole thing was being driven by people from outside and Mr Salim Essa

seems to have been at the centre of this.

You will remember that there is evidence saying to the effect that on the 10th of March, one day before the board was told that there was a need of suspensions or the suspensions of executives, that he was meeting with Mr Koko, and he and Mr Koko had a meeting with or met with Ms Daniels.

And met with Mr Abram Masango where they told them in separate meetings that there would – certain executives
10 would be suspended.

So Mr Seleka is saying. What do you say to somebody who says but Mr Brian Molefe's ultimate trip from Transnet to Eskom was long planned from outside if this evidence by Mr Bester is correct?

DR NGUBANE: Well, this is a very, I mean, strange happening. I do not think we have that many powerful prophets in this country.

CHAIRPERSON: [laughs] Ja.

DR NGUBANE: I mean, when it came to the suspension of
20 the executives, we were taken aback and we did not really want to go with this until the shareholder indicated that it had to be done.

So I will call it a random happening because in terms of our own actions, there was no plan. We just – things just developed but there was no ...[intervenes]

CHAIRPERSON: Maybe there was no... Maybe there was no plan within the board and when I say that, I am not saying it as a final thing, but maybe there was no plan within the board but certain people outside of Eskom may have had a plan and they may have had that plan way before you and the new board members got appointed to that board.

DR NGUBANE: Well ...[intervenes]

CHAIRPERSON: If the evidence that we heard from Mr Bester is true.

10 **DR NGUBANE**: Ja.

CHAIRPERSON: So far, nobody has challenged it.

DR NGUBANE: Ja.

CHAIRPERSON: And maybe somebody will challenge it but he was here to testify about matters of Transnet.

DR NGUBANE: Okay.

CHAIRPERSON: And he, as far as I know, he did not – he would not have known much about Eskom except what he may have read in the newspapers or in the media, heard in the media.

20 So as he gives evidence, he comes up with this idea that, you know, Mr Salim Essa was pushing this idea that: My company must include his company as a Supply Development partner in this Transnet job. And I did not want that.

DR NGUBANE: Ja.

CHAIRPERSON: And he was telling me how he would increase the price effectively for us to get a lot of money.

DR NGUBANE: Ja.

CHAIRPERSON: And I was dismissive of this idea or his.

DR NGUBANE: Ja.

CHAIRPERSON: So as if to show me that I must take him seriously.

DR NGUBANE: Ja.

CHAIRPERSON: He is powerful.

10 **DR NGUBANE:** Ja.

CHAIRPERSON: He told me that he knows who the next boss of Eskom is going to be. It is going to Brian Molefe.

DR NGUBANE: And they ...[intervenes]

CHAIRPERSON: That is what he said. Mr Bester said, when later we got to learn that Brian Molefe was Group CEO of Eskom, then he thought about that meeting.

DR NGUBANE: Well, I am really surprised Chairperson. Ja.

20 **CHAIRPERSON:** Of course, there are other things Dr Ngubane relating to Mr Brian Molefe. You may or you may not have... You may or you may not be aware that when Transnet was looking for a Group CEO after Ms Maria Ramos had resigned, it took quite a long time.

DR NGUBANE: Ja.

CHAIRPERSON: She resigned, I think, at the beginning of

2009, it took quite a long time. We will not go into issues but by end of October 2010, the position had not been filled. Ms Barbara Hogan who was Minister of Public Enterprises was dismissed. Mr Gigaba succeeded her.

And in December of 2010, the Gupta's launched their newspaper, The New Age. I do not know whether it was the first edition or – but in December, I think December – I do not know if it was December 10 or 8 or thereabout, they published a story which included a statement that Mr Brian
10 Molefe was going to be the new Group CEO for Transnet.

This was at a time when Transnet had no Group CEO. I think Mr Wells was acting. And applications had been invited but Mr Molefe had not applied for that position. But that is what The New Age said.

And a few weeks later, I think in January, the Board of Transnet – members of the board were given a chance to nominate candidates for this position and I think Mr Shaman nominated Mr Brian Molefe and I think Mr Sharman is alleged to be a Gupta associate.

20 He nominated Mr Brian Molefe. And Mr Brian Molefe ended up being Group CEO of Transnet, exactly as The New Age had said in December even before he applied or was nominated.

And then now, you have a situation where Mr Bester tells us that in 2014, Mr Salim Essa told him that Mr Brian Molefe

was going to be the new boss of Eskom and indeed Mr Brian Molefe did become the new boss of Eskom.

But also, you have the meeting between Mr Jonas and somebody from the Gupta, who I think was Tony Gupta – it may have been Tony Gupta at the Gupta residence on the 23rd of April 2015, at which, according to Mr Jonas, he was told by the Gupta brother who was there that Mr Brian Molefe was one of the people who were working with them and said something like his career is well-looked after or something
10 like that. That was in October 23(?).

And of course, I think there may be an argument that Mr Molefe, you know, went to Eskom, resigned and went to parliament and went back to Eskom. There seems to be something quite special, maybe, about Eskom and him.
[laughs]

DR NGUBANE: [laughs]

CHAIRPERSON: So but I think, the main point Dr Ngubane is. Here are these – some of these very strange features where somebody connected with the Guptas, whether it is
20 The New Age or Mr Salim Essa, seemed to say what is going to happen in Mr Brian Molefe's life and SOE's and it happened.

DR NGUBANE: Well, Chairperson my response to this would be. If it was a mediocre person, an entity as it were, who started to be chairperson of the – or CEO of PIC, CEO

of Transnet, CEO of Eskom. I would say, definitely there is something amiss.

However, you know, among black people, there are very, very, few people with the capabilities of Brian Molefe. And this is a problem because when you fixate on those few at the top, there seem...

Well, there was a saying when BEE came in, that the same scoundrels were getting all the tenders and all the BEE partnerships.

10 Now in our society, there is a very limited amount of people with real skill and capability. So it can be easy to predict someone's transgressions(?).

I am not saying I was exceptionally gifted but I went to be... When Mr Mandela ask me to be the Minister of Science and Technology in the first government of South Africa... KwaZulu-Natal was in trouble.

Dr Buthelezi asked me to go back to KwaZulu-Natal to Premier for about one and a half years. President Mbeki asked me back to National Ministry of Science and
20 Technology.

One night he called me to his house and he said then, the Japanese have said they need an ambassador who understands technology. Say, I want you to go to Tokyo as ambassador.

I come back from there. One morning, around seven, I

get a phone call from Mr Pravin. It was Minister Pravin, saying the cabinet has decided that you are going to be Chairman of SABC and you are also going to be Chairman of Lend(?) Bank. These two organisations are in trouble. We think you can help them.

I say: Pravin... I mean, he was my friend. We were together at Codesa. I said: Pravin, but this is madness. How can one person take two such organisations? You know, what I am trying to say is ...[intervenes]

10 **CHAIRPERSON**: Yes.

DR NGUBANE: ...you get to a situation where the same people circulate, you know, in different organisations.

CHAIRPERSON: H'm, h'm.

DR NGUBANE: So I am not, in a way, too surprised when I think about it.

CHAIRPERSON: H'm.

DR NGUBANE: That a person like Brian Molefe with his capability can be touted for all sorts of positions.

20 **CHAIRPERSON**: H'm, h'm. Well, the strange part, I would imagine you would concede, is in regard to Transnet, a situation where that is said when there is a competitive process that is going to take place, is it not?

In other words, you might be good but you do not know who else will apply. And one would have thought that when there is a competitive process ...[intervenes]

DR NGUBANE: Ja.

CHAIRPERSON: ...you would not be able to or to say so and so will. Maybe if you already know who the other applicants are and you weigh them, that might be different, but when you do not know yet who will apply, it is strange, is it not, to be so sure that so and so will be, unless you have some information that other people do not have.

DR NGUBANE: But Chairperson let me remind you. In our development as a new government was in 1994.

10 **CHAIRPERSON:** H'm.

DR NGUBANE: There has been a very strong element of deployment of indicators(?). So it may be competitive but when the elite, the governing party, knows someone they think can fulfil their objectives, they will make sure that person gets it.

CHAIRPERSON: H'm. Well, one, to the extent that you have a competitive process and that is done, that might not be right because then the competition is not fair. If you talk about your position that is not subject to competition

20 ...[intervenes]

DR NGUBANE: Sure.

CHAIRPERSON: ...like being a minister, that is different, you, know. But if there is going to be a competitive process, it is wrong for that process to be undermined like that. [laughs] But I guess you are saying: Well, it happens.

Maybe... [laughs]

DR NGUBANE: Well, I have been in politics. You have been in the judiciary.

CHAIRPERSON: Yes.

DR NGUBANE: So approaches are different.

CHAIRPERSON: Our worlds are different. [laughs]

DR NGUBANE: [laughs]

CHAIRPERSON: No, I will not claim to know what you know from politics. [laughs]

10 **DR NGUBANE**: [laughs]

CHAIRPERSON: Okay Mr Seleka.

ADV SELEKA SC: Thank you Chair. Dr Ngubane, we are going to come back to that because what I was saying to you that it is either a coincidence or an orchestration that what he said a year before becomes a reality a year later. Is that a coincidence or an orchestration?

DR NGUBANE: Well, I think the Chairperson and myself have been discussing this very issue.

ADV SELEKA SC: Yes.

20 **DR NGUBANE**: So it could be a coincidence but as I have said people are earmarked for some type of jobs(?). [Speaker's voice trails off – unclear]

ADV SELEKA SC: Yes.

DR NGUBANE: So ...[intervenes]

ADV SELEKA SC: As far as you ...[intervenes]

[Speakers intervening each other – unclear]

DR NGUBANE: ...give you the information and say from the cabinet ...[intervenes]

ADV SELEKA SC: Yes.

DR NGUBANE: ...or from the people high up and downwards, they could very well predict Dr Ngubane from here will be there.

ADV SELEKA SC: Ja, but that – that means Salim Essa then will be part of the cabinet.

10 **DR NGUBANE:** Sorry?

ADV SELEKA SC: That means Salim Essa then will be part of the cabinet or has insight into what happens.

DR NGUBANE: No, I am just giving you an example.

ADV SELEKA SC: I know you are just giving me an example.

DR NGUBANE: Yes.

ADV SELEKA SC: But this is a factual example. What I am giving to you is a factual example because the strange part of it is, that somebody outside of cabinet, outside of
20 parliament, outside of SOE's, outside of your meetings with the minister has said a year before prophetically but we have decided that Mr Brian Molefe will be the chairperson.

So that is what is strange about it. If you and I are earmarked for a job by Lesley Nkabela, that is fine. But if the minister's advisor, as he introduced himself, Mr Salim

Essa to Ms Suzanne Daniels...

He is saying these things when he is not - a legal advisor to the minister, then it is a problem. And that is what we are dealing with here.

DR NGUBANE: Ja. No, certainly that is wrong Chairperson.

ADV SELEKA SC: Ja. Chairperson, just quickly on the transcript of Mr Bester before the Commission here when asked questions by my colleague, Ngube.

10 "And who did he say that person would be?"

Ja, let me first read Mr Bester's response.

"He did not go into the detail but he said to me I must worry about the detail or budget.

I recall, for instance, he told me that they had already decided who is going to be the next CEO of Eskom.

And I could clearly see when it happens that what the power is that they have and how they make decisions if I do not believe him."

20 Then he is asked by my colleague:

"And who did he say that person would be?"

Mr Bester responds:

"He said it is going to be decided that Mr Brian Molefe will be the CEO of Eskom."

And my colleague asks:

“And this was all during that meeting?”

And the response is:

“That is correct.”

“Okay now this ...[intervenes]”

And then the Chairperson comes in.

“I am sorry. This would have been after April 2014, you said. Did you say this meeting would have taken place after April 2014 Mr Bester?”

And he says:

10 “That is correct. Yes”

So that Chair would have then been asked about April.

CHAIRPERSON: I just checked. I think I may have asked how long after April 2014.

ADV SELEKA SC: Yes, yes. But then, it is still ...[intervenes]

CHAIRPERSON: But we can check. You do not have to check everything ...[intervenes]

ADV SELEKA SC: Ja.

CHAIRPERSON: ...for purposes of Dr Ngubane’s evidence.

20 **ADV SELEKA SC:** Yes, we will do that ...[intervenes]

CHAIRPERSON: For any purposes. It does not matter whether it was April or October.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: So that Dr Ngubane then – he accounts

for Mr Brian Molefe. The announcement is made on the 17th of April and you mentioned the minister says you have met with the president and so on. She later had to correct that and ...[intervenes]

DR NGUBANE: Sorry, Chair. I got a bit of a sinusitis. My ears are blocked.

CHAIRPERSON: Oh. Ja, please raise your voice.

DR NGUBANE: I was driving up here from KZN.

CHAIRPERSON: Oh. [laughs]

10 **DR NGUBANE**: Yes.

CHAIRPERSON: Please raise your voice Mr Seleka.

ADV SELEKA SC: Yes. So the minister makes the announcement on the 17th of April 2015 regarding the appointment of Mr Molefe.

And as you mentioned, she had said in that meeting that she had met with the relevant stakeholders being the president and deputy-president but she also included the boards of Transnet and Eskom.

20 Her statement which she later had to correct because by the time she made the announcement, she had not met with the two boards. She had only met with you and Ms Linda Mabaso.

DR NGUBANE: We were representing the two boards.

ADV SELEKA SC: Yes. But you did correct but she did not meet with the boards. She met with the two chairpersons.

DR NGUBANE: That is right.

ADV SELEKA SC: Yes. So you go into the meeting of the 23rd of April 2015. The board meeting of the 23rd of April 2015. At least you as the acting chairperson of the board with the knowledge that Mr Molefe is coming. He has been seconded to Eskom.

DR NGUBANE: Well ...[intervenes]

ADV SELEKA SC: Maybe more than you because the announcement was publicly made. So the entire board
10 would know this. Correct?

DR NGUBANE: Well, I think the secondment of Mr Molefe became public knowledge immediate.

ADV SELEKA SC: Yes. So the board goes into this meeting knowing his coming because it is in the meeting of the 23rd of April 2015 that the board approves Mr Molefe's secondment.

DR NGUBANE: Right, ja.

ADV SELEKA SC: Ja. So the resolution is, the secondment of Mr Brian Molefe from Transnet as interim Chief Executive
20 for Eskom is approved with effect from 20 April 2015.

DR NGUBANE: Okay.

ADV SELEKA SC: That is the approval. The chairman of the board is authorised to sign any and all agreements and documents to give effect to the above resolution and the chairperson of the board is reflected as you, in fact, acting

chairperson at the time.

Then it comes this issue of Optimum which is the focus of our attention. The issue of Optimum, I supposed the board would have known this, it comes way back from 2014 before the board is appointed.

DR NGUBANE: It comes back from 2012?

ADV SELEKA SC: Even way back from 2012. But when Optimum goes into hardship, when its export market plummets, the export market which it used to subsidise its
10 sale to Eskom, plummets.

Optimum falls into difficulties because it cannot sustain the price at which it was selling coal to Eskom. The price is way below its operational costs. Then it goes into hardship. This happens – it triggers negotiations in 2014 before your time.

DR NGUBANE: Sorry, sorry. Can I – before you get even more complicated ...[intervenes]

ADV SELEKA SC: Okay. [laughs]

DR NGUBANE: The issue with Optimum ...[intervenes]

20 **ADV SELEKA SC**: Yes.

CHAIRPERSON: H'm.

DR NGUBANE: From what I have read or what I have heard ...[intervenes]

CHAIRPERSON: H'm.

DR NGUBANE: There was a period when the export coal

price was rocketing in dollars and every coal producer was trying to get into the international market. That time Optimum Coal Mine was washing its coal, taking out the best for export and giving rubbish to Eskom. Even that rubbish was below the coal supply agreement stipulated and this is where the issue of penalties starting coming in.

So they are misrepresenting the issue that their hardship started when the export coal price collapsed. They have benefited billions at the expense of Eskom,
10 while the coal price was up there.

So really, it is pathetic that big organisations like this, wealthy as they are, have totally abused us in South Africa to cream off all the wealth and take it overseas to their shareholders. I think this was a very well felt sensitivity in Eskom that Glencoe and their subsidiaries were just interested in profit.

Whether Eskom boilers burst or suffered damage because of the poor coal quality that was being burnt, they did not care and hence the hardening of attitudes and
20 when we say Molefe told us later that Mr Glasenberg had said to him from here because you are stiff-headed, I am going to stop supplying Hendrina and this load shedding will then become a national blackout. We all felt it because it was real arrogance coming from a man from Switzerland coming to tell us how he wants us to bow to

his demands to treble the price of coal from R150 to R513 per tonne over night. So I would beg this Commission to take some of this evidence with circumspection. Thank you, Sir.

CHAIRPERSON: No, it is very important, Dr Ngubane that you and Brian Molefe and whoever else was at Eskom at the time and was involved in these discussions, give us your full perspectives how you saw matters so that we have, you know, all perspectives. So we want to hear your
10 full perspectives of exactly what caused Eskom to make certain decisions, what caused Eskom to adopt a certain attitude. So it is very important.

ADV SELEKA SC: Well, Dr Ngubane, it is apparent to me that you are familiar with the issues, so let us free flow into them.

DR NGUBANE: Well, I am not familiar with all the issues, but I am talking about [inaudible – speaking simultaneously]

ADV SELEKA SC: Well, I will assistance with reference to
20 documents where we need to.

DR NGUBANE: Okay.

ADV SELEKA SC: So then this matter of OCM, which Optimum Coal Mine, the evidence was led yesterday, comes from 20 – and I want to limit it to 2014 where there is a cooperation agreement between OCM and Eskom,

there is a fourth addendum which is proposed in terms of the prices, increases to the supply of coal to Eskom and the intention is, as we understand it, all that negotiation. Process, the cooperation is done in order to achieve a new agreement on the 1 January 2015. I do not know whether you are aware of that. There is...

DR NGUBANE: [indistinct – dropping voice]

ADV SELEKA SC: It rings – you can recall. Let us confirm it so that the Chairperson can hear you.

10 **DR NGUBANE:** Quite so, I do recall.

ADV SELEKA SC: Ja, so it is just the board outlines because what is referred as Excops, the executive procurement committee had agreed on the addendum, they then referred it to the BTC for approval. It comes to the BTC in the meeting of 13 or 15 April. The BTC does not decide that matter, it refers it to the board.

Then it comes to the board on the 23 April. When it comes to the board, the board also does not decide it. The board decides instead to refer it to the new Acting
20 CEO and maybe you could give the Chairperson some insight into why did the board make that decision to refer this matter that comes way back, at least 2014, to a man who is completely new and he would be, what, about a week at Eskom and if you are seconding him effective from the 20 April, I do not know when does he start, you are

making your decision three days about referring this matter to him. Now what – give the Chairperson some insight into that decision.

DR NGUBANE: Well, Chairperson, I wish I had a video of Brian Molefe going to the most troubled power stations. He comes in there, staff is gathered, there is an open space, he jumps in there and starts jiving and singing. That was the man. And then, one, two, three, all station masters are under pressure to produce because their own
10 people are demanding efficiency, productivity. That is how we overcame load shedding.

So the fact that he was new, the fact that the BTC was refusing to accept the proposal from Excops, which is the Exco procurement subcommittee, on an increase in price which again I think was about threefold. They said they cannot deal with this, they will not accept it, they are bringing it to us and also we, of course, could not deal with this because this was a matter of negotiation but we all said let us leave it for the CEO.

20 But, knowing Brian, he came in here boots and all and started dealing with it and we were quite happy with the way he dealt with it because he was stopping exploitation of the people of this country.

ADV SELEKA SC: Yes. Of course, by the time you made the decision, he had not gone to a power station, climbed

on a platform to dance and jive.

DR NGUBANE: Sure.

ADV SELEKA SC: You did not know anything on whether – how he would turn around the situation. But, anyway, you have accelerated it, you say you were happy with the way he handled it.

DR NGUBANE: Ja.

ADV SELEKA SC: Because what he did is, a year after the cooperation agreement had been concluded, it is
10 concluded in May 2014, the parties have entered into an agreement that they will negotiate in May of 2015. he terminates negotiations process, he terminates the cooperation agreement and he imposes – not impose, but he demands the payment of the penalties, the R2.17 billion penalties, which you have referred to.

DR NGUBANE: Sure.

ADV SELEKA SC: And you are saying the board was happy with the way he handled it.

DR NGUBANE: Ja.

20 **ADV SELEKA SC:** Now talking of the penalties, do you know how the penalty issue was handled? ,

DR NGUBANE: Sorry?

ADV SELEKA SC: Do you know how the penalty issue was handled?

DR NGUBANE: Oh, ja. Well, not fully.

ADV SELEKA SC: Okay.

DR NGUBANE: But in terms of what I know, this penalty issue had originated from 2012. By the time we came in as a board some parts of it because it was happening at different stages accumulating penalties for this period and so on. By the time we came in, some parts of it, a big part of it was going to – in law they call it prescribe – and from what Brian reported, he had no choice but to make sure that he does not allow prescription, he does not allow OCM
10 and Glencoe to get away with murder and that was the approach that was taken, that we will not take your sad story of hardship when you are so wealthy, you tell us hardship, you tell us Glencoe from Switzerland is refusing to give you money every month to run the show. I mean, that was all false.

You know, they could use their reserves to support Optimum. Optimum went into business rescue purely to avoid the issue of paying the penalty. And even when arbitration was suggested they refused it. So they must
20 not come here, Chairperson, and be holy, holy and nice. They are bad. I will call them crooks, like many other international corporations when they come into Africa, they think we are there for the taking, the stupid Africans for the taking. No, no, Sir.

ADV SELEKA SC: Yes.

CHAIRPERSON: You know, remembering the evidence that was given last year about these issues, one of the matters that was strange to me was this, that I think OCM's complaint was that the price of coal that they were bound to, in terms of their agreement with Eskom, was a price that had been there for ages, it had not been revised. But, of course, the question would be, but how did you sign an agreement that tied you to the same price for ages without putting in a clause that would ensure that it increased
10 according to the inflation or whatever.

DR NGUBANE: Sure.

CHAIRPERSON: Or that made room or annual negotiations to take place to revise the price, but – so there was that particular aspect to say when they say look, this price that Eskom is enforcing is an old price, all we are asking is that let us talk and revise it and they are refusing. Of course, to the extent that Eskom may have been refusing, it would have been usual its contractual rights.

20 But the question also from their side, OCM's side, would be but how did you allow whoever signed on your behalf, signed this contract, to sign a contract that the price would be the same for 10 years or more? Were they sleeping or what was – how could you have signed such a contract? Nobody signs such a contract.

So there was that aspect. Of course, it did come across, I can say, maybe a little harsh on Eskom's side when they – I think it was Mr Brian Molefe's – we are not negotiating, go according to the contract, go according to the contract, but that may have been contractually permissible but it is important that we get the full perspective from Eskom's side because you have now said, for example, they took the cream of the coal and sent it overseas and gave you coal that was below standard and
10 that is why the penalties came in. So it is important to have all of that in the basket.

DR NGUBANE: Well, on that note, Chairperson, Glencoe came in fairly late into mining in South Africa, Witbank. They bought a lot of mining assets. I think at one stage they had about 14 in the coal basin area of Witbank. They bought companies that had been corruptly given very long contracts in the apartheid era. So what they were talking about itself was corruption in its own right.

Now they come in because they realise that, you
20 know, it is not giving them as much returns, they want suddenly to up it, they do not want to pay the penalties. No, Sir.

Pembani wanted to buy OCM, I mean there were three bidders for OCM. One of them was Pembani, the other one was Tegeta. I forget the third one. Pembani

came to Eskom to say raise the price then we buy OCM. Eskom said no, it will not be done. So it was not just to OCM that Eskom was hard, it was hard even to the people, other people who wanted to buy OCM. Eskom was insisting that unless you stick to the established coal supply agreement we are not interested in you.

CHAIRPERSON: I suspect there is going to be a time when Mr Seleka will say but was it hard on Tegeta? But let me leave [inaudible – speaking simultaneously]

10 **ADV SELEKA SC:** I think relating(?) to the next question.

DR NGUBANE: Before you say it, Sir, Tegeta offered to pay R150 per ton after taking Optimum, so...

CHAIRPERSON: Well, there are other matters, Dr Ngubane. Let us take the tea break.

ADV SELEKA SC: Tea break. Thank you, Chair.

CHAIRPERSON: We will take the tea break and Mr Seleka will raise other matters as well.

ADV SELEKA SC: Indeed, Chair.

20 **CHAIRPERSON:** It is twenty two minutes past, we will resume at twenty to twelve.

ADV SELEKA SC: Thank you, Chair.

DR NGUBANE: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you Chair. Dr Ngubane there is the issue of penalties and the issue of exploitation you referred to just before the adjournment. I will come to the penalties in a moment, but let's deal with the exploitation that you mentioned, surely I gather from your testimony that you did not want to deal with Glencore anymore, I mean I will be the last person myself to support exploitation of a foreign company, the exploitation of a
10 local company by a foreign company, I will be the last person to do that, I wouldn't encourage that situation, and so you are saying that to the Chairperson as well, that this is what you didn't want as Eskom, the exploitation of Eskom by Glencore or OCM, right?

DR NGUBANE: Chairperson unfortunately issues arise here that force one to make certain observations, because of electricity at one stage was very low, the lowest in the world, that is why we got smelters like Alusav, iron, I mean steel and so on and a very strong mining sector, because
20 our energy costs were low, but when it came to the coal plus mines which were the main suppliers to Eskom Power Stations, reducing their production as a way of forcing Eskom to give them higher rates, and the cost of producing energy escalated and then the electricity tariff started going up like it is today. We applied for a 16% increase in

tariff in 2015, NERSA gave us only 8%. We employed McKinsey to do DTC2 which is designed to cost two, before that we had business productivity programme, which was aimed, mainly, at cost saving, reducing costs.

The DTC2 was aimed at finding a new tariff trajectory which will not require taxation of people in buying electricity rise to high but for Eskom to develop alternative ways of raising revenue. One of the programmes we had with the University of Stellenbosch and the University of Johannesburg was to produce our own rooftop panels for solar energy, very advanced. The first factory was going to be built in Soweto and then other factors were built elsewhere. The water heating solar energy was going to be provided to every home in an attempt to ensure equitable access to energy for everyone by keeping the tariff low but what's happened now, we're seeing an escalation in tariff, Eskom is not even making the same revenues that we used to make because we are paying IPP's, lots and lots of money for very small amounts of megawatts of electricity, they are burning diesel at, probably, R1billion a month because the IPP's can't provide – produce enough wattage or megawatts, sorry, of electricity so as was the case with Baseload when we had coal fire power stations. So, what I'm getting to is, we had a vision for electricity accessibility in this country to

benefit everybody. They've decided to close down the coal fired power stations in favour of IPP's, okay, we're all concerned about climate change, but we are a developing country. You can't expect a poor person to pay a very high tariffs that renewable energy will demand, you can't. in other words, we're going to cut-off from electrical supply and power, a huge percentage of the South African population, 75% probably, because people are unemployed, there's no money, it's only the ones that are going to afford
 10 electricity in the future with these high tariffs.

So, I'm getting back to the point that, you must look at the philosophy that we pursued and look at the present charges and claims against us. As Koko said, history will absolve us because we cannot have growing industrialisation and at the present regime, in terms of electricity management and cost, so I just wanted to make that remark before we continue.

ADV SELEKA SC: You undertook to me that you wouldn't be long-winded.

20 **DR NGUBANE:** Sorry?

ADV SELEKA SC: I said, you undertook to me that you wouldn't be long-winded in your answers.

DR NGUBANE: I be?

ADV SELEKA SC: You wouldn't be long-winded in your answers.

DR NGUBANE: Oh, I'll be short, thank you.

ADV SELEKA SC: [Laughter].

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Yes so, I was saying Dr Ngubane that, clearly from what you're explaining before the adjournment you didn't want to continue dealing with the situation, you were being exploited by Optimum as Eskom, from your explanation before the adjournment.

DR NGUBANE: Yes.

10 **ADV SELEKA SC:** Yes, you're taking too long to think about it, but if your decision on the 10th of December was opposite to that sentiment, I'm going to blame you and your Board.

DR NGUBANE: 10th of December...[intervenes].

CHAIRPERSON: 10th of December, which decision on – which one is that?

ADV SELEKA SC: The pre-payment decision.

DR NGUBANE: Pre-payment?

ADV SELEKA SC: Yes.

20 **DR NGUBANE:** As far as I am concerned it's been taken totally out of context.

ADV SELEKA SC: Yes.

DR NGUBANE: If you read the motivation, you know, Ms Daniels came to my office in the afternoon just before I was going home and said, there's an emergency now, we

need to deem this as an emergency and an emergency in Eskom is 24 hours. Within 24 hours we must have a resolution passed by the Board. I said, for what, she showed me the papers, R1.68billion pre-payment for coal to Optimum. I said, IFC will have to deal with this first, she said, no they've already taken a resolution.

ADV SELEKA SC: Oh, so when is he meeting with you?

DR NGUBANE: Sorry?

ADV SELEKA SC: When is this – her coming to your
10 office that would be on the 9th...[intervenes].

DR NGUBANE: Before we put the Round Robin to the Board members, she came to the office with the documents.

CHAIRPERSON: On the same day?

DR NGUBANE: On the same day.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

DR NGUBANE: I had to approve that she starts the Round Robin.

20 **CHAIRPERSON:** Okay.

DR NGUBANE: But the condition for any emergency is that the most senior officer on site must approve alright.

ADV SELEKA SC: Yes, sorry, but you say she also said to you IFC has already dealt with this...[intervenes].

DR NGUBANE: Yes, yes so – in fact, I think I said that in

my affidavit alright, and then she explained, we read the documents, there was an emergency, the putting of OCM into business rescue has created an emergency anything can happen if they go into liquidation, we might lose all our coal, we might – the workers may lose their jobs, DMR is committed on this, it's the best approach is to pre-purchase the coal. So, I read the documents and I said, well that's fine then put it onto a Round Robin. The terms of this resolution centred on the fact that if we pre-
10 purchase the coal we'll lock in the coal supply for Eskom for a year, 5.5 billion tons of coal. So, whoever purchases or if it's liquidated, whoever purchases OCM we have locked in our supply of coal, they cannot take the coal and walk away with it, say export it or do anything, they will still have to supply our coal. That, essentially, was the logic of the pre-purchase.

ADV SELEKA SC: So, your decision was to buy directly from OCM?

DR NGUBANE: Yes.

20 **ADV SELEKA SC:** And...[intervenes].

CHAIRPERSON: So, in other words, you would say to OCM, you would determine how much coal you needed as Eskom for a year?

DR NGUBANE: That's correct.

CHAIRPERSON: And say to OCM we are paying you in advance for coal that will last us for a year.

DR NGUBANE: That's correct.

CHAIRPERSON: Therefore, if this succeeds it means Eskom would be guaranteed of coal for at least a year.

DR NGUBANE: That's correct.

CHAIRPERSON: That would give you or Eskom an opportunity to see how to handle the situation beyond 12 months.

10 **DR NGUBANE:** That's correct.

CHAIRPERSON: Okay, Mr Seleka.

ADV SELEKA SC: So, OCM obviously had coal available.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes, did you pre-pay them?

DR NGUBANE: OCM was in business rescue but they were going to come out of business rescue for the purpose of this transaction.

ADV SELEKA SC: Yes, but did you pre-pay them?

DR NGUBANE: Sorry?

20 **ADV SELEKA SC:** Did you pre-pay them?

DR NGUBANE: We prepaid them, but the conditions were very clear, the funding will not be a lump sum it will come in stages. We'll reduce the inventory of our stockpile from 54 days to 48 days. Now, the inventory working capital reduction is a university applied methodology because

when you reduce inventory, that is the stockpile in our case, on rand of reduction in inventory results in one rand addition into operating cash...[intervenes].

ADV SELEKA SC: Before you go into those details, Dr Ngubane, a pre-payment was never made to OCM.

DR NGUBANE: The pre-payment was for coal.

ADV SELEKA SC: Ja but it was never made.

DR NGUBANE: Well, I'm talking about how we approached the resolution.

10 **ADV SELEKA SC:** Yes, but my question was, was the pre-payment made to OCM?

DR NGUBANE: Well, it was going to be made over time, it wasn't going to be a lump sum payment. I mean, it's like, what Toyota would call just on time, you know you empty your bin of spare parts and then the computer sends the message to the supplier of the parts they deliver the parts, it was that same sort of approach.

ADV SELEKA SC: Yes, but let's clarify it because it needs to be clarified. You said it's been taken out of
20 context and we need to contextualise it. One is that, if your pre-payment was meant to go to OCM owned by Glencore it goes contrary to the sentiment expressed by you, so strenuously before the adjournment, that you didn't want to be exploited. You took a decision that goes contrary to that sentiment. Contrary to the actions of Mr

Molefe which you supported, terminating the agreement – corporation agreement with OCM terminating negotiations, that's the one aspect, it goes contrary to all that.

DR NGUBANE: No, the issue with OCM was wanting R513 per ton, instead of R150 we were going to buy it at the coal supplier agreement price.

ADV SELEKA SC: By the way, the correct amount is R432 per ton.

DR NGUBANE: Okay, alright.

10 **ADV SELEKA SC:** The second point is this...[intervenes].

DR NGUBANE: Sorry, I hadn't finished.

ADV SELEKA SC: Okay.

DR NGUBANE: So, it wasn't part of the settlement negotiations with a second addendum or anything like that it was simply purchasing coal for a year because we needed the coal, without that coal Hendrina Power Station would go out of service. Komati Power Station would go out of service, so it was a critical issue that we had a supply of coal for a year. As Chairperson said, well you
20 make other arrangements so I don't see where now, I'm contradicting myself, sorry, you know.

ADV SELEKA SC: Yes, that's alright. The second point is this, and I want to read it from the submission itself which is on page 281 of Eskom Bundle 18 Chairperson.

DR NGUBANE: Yes.

ADV SELEKA SC: Page 281...[intervenes].

CHAIRPERSON: Do you recall, Dr Ngubane, whose idea this pre-payment was, I know that you said Ms Daniels came to you with the paperwork or the submission, I'm not sure but did you get to know whether it was her idea or whether it was somebody else's idea?

ADV SELEKA SC: No Mr Matshela Koko had signed the document.

CHAIRPERSON: Yes, okay so you took it to be Mr Koko's
10 idea?

ADV SELEKA SC: Also, there was also a letter from DMR which was also suggesting the same thing.

CHAIRPERSON: Okay, yes Mr Seleka.

ADV SELEKA SC: Thank you Chair. Can I just piggyback on the Chairperson's questions because according to Ms Daniels – I will not lose focus of that point, according to Ms Daniels you were the one who called her on or about the 7th of December so...[intervenes].

DR NGUBANE: Sorry I phoned her?

20 **ADV SELEKA SC:** Ja, she says in her affidavit you were the one who telephoned her, on or about the 7th of December 2015, you said to her,

“Suzanne, please assist Mr – there are two Executives, Mr Koko and Mr Anoj Singh in drafting a submission that would be submitted to the Board”,

She then set about to do that, gets the information from the two Executives in order to put together this document I'm about to refer you to. The document is then circulated to the Board members on the 8th of December, today five years ago but much later in the day, in the evening, it's circulated to the Board members for a resolution by Round Robin, that's how she tells the evidence, can you recall whether you called her?

DR NGUBANE: Well, I'm thoroughly disappointed with Ms
10 Daniels, you know, I relied on this lady for everything at Eskom, she was highly knowledgeable, I never initiated anything with – I didn't even know about this project until she brought the documentation to me, you know. So, I don't know why she should try – what is she trying to do, I mean, I was hardly involved in primary energy issues which is coal, diesel...[intervenes].

ADV SELEKA SC: But just understand, her evidence is that you called to say, the two Executives.

DR NGUBANE: No, no.

20 **ADV SELEKA SC:** Thank you. Let me go to the point I wanted to make with you Dr Ngubane, then we're on page 281, page 281 paragraph 2.1...[intervenes].

CHAIRPERSON: Just so that the record will be clear, that's page 281 of Eskom Bundle 18?

ADV SELEKA SC: 18, correct Chairperson, thank you

Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Do you see that Dr Ngubane?

Paragraph 2 says,

“Resolution required, then it says, it is hereby resolved that the request from the Department of Mineral Resources is hereby noted”,

Now you know that, that request is the letter you’re talking about, Dr Ngubane?

10 **DR NGUBANE:** Yes.

ADV SELEKA SC: That request is that letter from the DMR you were talking about.

DR NGUBANE: Okay.

ADV SELEKA SC: Then you have paragraph 2.1.2,

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

20 Now the proposed owners was Tegeta.

DR NGUBANE: At this stage no, I don’t think Tegeta was owning OCM and this stage.

ADV SELEKA SC: No, the proposed owner.

DR NGUBANE: Oh, I see.

ADV SELEKA SC: Yes, was Tegeta.

DR NGUBANE: Ja.

ADV SELEKA SC: Now, explain this paragraph then or statement because that's the required resolution. You say the pre-purchase of coal was to buy it from OCM.

DR NGUBANE: Yes.

ADV SELEKA SC: Directly.

DR NGUBANE: Well, they still owned the mine, I mean, the mine was in business rescue, owned by Glencore.

ADV SELEKA SC: That's right.

10 **DR NGUBANE:** It hadn't changed hands.

ADV SELEKA SC: That's right.

DR NGUBANE: Did it change hands?

ADV SELEKA SC: No, it hadn't.

CHAIRPERSON: The point that Mr Seleka is making, Dr Ngubane is this, he says, in terms of the evidence that you have already given the pre-payment, according to you, was to be an arrangement or agreement between Eskom and OCM in order to secure coal for 12 months but he says, when you look at this clause here it authorises the Group
20 Chief Executive for Generation and the Chief Financial Officer not to negotiate with OCM for this deal to be made for a pre-payment but it authorises them to negotiate with people who are not owning the mine who are proposed owners. So, he is saying, are you able to explain why the resolution said these three are authorised or were

authorised to negotiate, not with OCM or with the rescue practitioners but with people who didn't own the mine at the time but were proposed owners, that's what he'd like you to deal with.

DR NGUBANE: Thank you for clarifying, Chairperson.

CHAIRPERSON: Yes.

DR NGUBANE: I think this comes from the fact that OCM had already stated that they were selling the mine. They were taking OCM out of business rescue under Glencore.
10 Eskom – I think I saw a letter to that effect and also that two other bidders had fallen away and Tegeta was the only one remaining but what I was not understanding was, whether in fact he meant that we already knew that Tegeta had bought the mine, I don't think so, but we knew that it was in the process of being bought, you know.

ADV SELEKA SC: Yes, so the statement here in the resolution, which was sought from the Board appears, on the face of it, to be inconsistent with the explanation that, in your understanding as the Board, you were dealing here,
20 directly with OCM in regard to the pre-payment.

DR NGUBANE: Well, as I said the whole thing is very complex but in my understanding the coal would come from OCM which was still running the mine, even the one who bought it, would be bound by that sale, that payment and so the coal, will, essentially, have been ceded to Eskom

even before the sale, that was in that context, I was saying. I wasn't saying the money will be taken to the potential buyer in my understanding.

ADV SELEKA SC: Yes, the money will go to the supplier.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes.

DR NGUBANE: But even when it's sold, we would be sure of coal.

CHAIRPERSON: Well, I would have expected that the
10 negotiations would be with the owners – the then owners of
the mine or those who represented the owners, maybe the
business rescue practitioners, if they were any place at the
time. Precisely on the basis that you give that if such an
agreement was concluded with the current owners or their
representatives that agreement would bind those who
bought the mine if it was sold. So, if that approach is
correct then it's difficult to understand why the Board
would authorise these three officials the CEO, Chief
Financial Officer and the Group Executive for Generation
20 to negotiate with people who are proposing to buy the mine
and not just negotiate, conclude a deal with them instead
of the Board saying, negotiate and conclude a deal with
the current owners of the mine because these proposed
owners don't own the mine yet so why should you negotiate
with them and conclude a deal with them, you see, I think

that's where there are question marks, you understand?

DR NGUBANE: I do, I do Chairperson.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes, and then the urgency of the matter, Dr Ngubane, because you see the DMR's letter is put together on the 4th, the 4th of December 2015, it is signed by Mr Koko on the 6th, two days later, of December 2015, he sent it to the DMR, he's asking for the DMR's assistance. The type of assistance is not spelt out, there's
10 a response from the DMR which is undated but signed by Dr Ramontja, so we don't know, when exactly do you receive it but apparently it was part of the package that went to the Board. In that response letter mention is made of the R1.7billion liability that OCM might still have, it's not clear what is this, until you read the affidavit of Dr Ramontja which he says – he explains it by reference to rehabilitation, Environmental Rehabilitation Fund. Mention is made of a pre-payment and Eskom should actively assist in that, that is the letter from DMR. Your meeting – it's not
20 even a meeting, I beg your pardon, the Round Robin, that pack is circulated to the Board but before that we have gone through the draft of the submission yesterday, the draft is a submission to IFC, Investment Finance Committee, were you aware of that?

DR NGUBANE: Well, I was aware in the sense that Ms

Daniels told me that IFC had actually taken a decision on the emergency supply.

ADV SELEKA SC: Ja, well this is how – from the documentation, the evidence unfolds. A draft is prepared before it's circulated on the 8th of December, today five years ago and it goes out of Eskom right, it goes to Mr Eric Wood and Mr Hower [?] and Businessman. Businessman writes an email, he says he doesn't want – there's a requirement for PFMA approval, he doesn't want that and
10 number two, he says, this thing should not go to IFC, it should go directly to the Board, were you aware of that?

DR NGUBANE: No, not at all.

ADV SELEKA SC: And that's how this document changes from a submission to IFC to a submission to the Board.

DR NGUBANE: But that can't be, Chairperson, in an emergency either BTC can decide or if not IFC can decide on amounts like this. So, without a recommendation from, either BTC or IFC this Board Round Robin cannot happen.

ADV SELEKA SC: That's important, Dr Ngubane because
20 it happened, and let me tell you how it happened.

DR NGUBANE: Well then there is something very wrong.

ADV SELEKA SC: That is right. So I will give you the facts. So it gets changed. We went through the evidence yesterday.

DR NGUBANE: Ja.

ADV SELEKA SC: From IFC – submission to IFC. It is a submission to the board. On the 8th in the evening of the 8th it is circulated to the board members to be decided upon by way of a Round Robin. Right. It was only when one of the board members approving the ...

CHAIRPERSON: Oh I am sorry Mr Seleka.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Actually I do remember now yesterday that it was Businessman who said the – the resolution should not
10 – the matter should not go to the Investments and Finance Committee.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: It should go straight to the board.

ADV SELEKA SC: Correct.

CHAIRPERSON: Ja there is an email along those line I think Mr Seleka might read it to you from Businessman I think to Mr Koko and from Mr Koko to Ms Daniels if I am not mistaken.

DR NGUBANE: No I – I was not aware Chairperson of the
20 background.

CHAIRPERSON: Yes, yes. No it is one of those things that are strange because I said to Ms Daniels it looks again like somebody from outside Eskom is giving instructions to people inside Eskom when people inside Eskom think this matter should go to the Finance and Investment Committee

he or she whoever he or she is says no, no, no you people take this to the board not to the Invest – Finance and Investment Committee. And then that is what happens.

DR NGUBANE: Ja.

CHAIRPERSON: You know they obey.

DR NGUBANE: And Businessman is not a DG.

CHAIRPERSON: And the Businessman is not the DG.

ADV SELEKA SC: That email.

CHAIRPERSON: Alright. And – and he says you know in
10 this submission I do not want this PFMA..

ADV SELEKA SC: Yes.

CHAIRPERSON: Take it out.

ADV SELEKA SC: The page reference to this is 453.

CHAIRPERSON: In the Bundle 18?

ADV SELEKA SC: Eskom Bundle 18.

CHAIRPERSON: Okay. Assist Dr Ngubane to have – so that
he can have – he can see what we are talking about.

ADV SELEKA SC: Yes.

CHAIRPERSON: What is the page?

20 **ADV SELEKA SC:** Page 453.

CHAIRPERSON: 453.

ADV SELEKA SC: Yes.

CHAIRPERSON: So he can see what was happening at
Eskom while he was acting chairperson or chairperson.

ADV SELEKA SC: Yes. He was the chairperson at the time.

CHAIRPERSON: Ja he was the chairperson.

ADV SELEKA SC: Molefe.

DR NGUBANE: But this – this suggestion is totally invalid.

ADV SELEKA SC: Indeed. Indeed.

CHAIRPERSON: Well it might not be – it might not be a suggestion Dr Ngubane. You see the language there – I want the PFMA approval part removed.

DR NGUBANE: Ja.

CHAIRPERSON: It is not I am suggesting.

10 **DR NGUBANE:** But then the person does not understand actually how the Public Finance Management Act works.

CHAIRPERSON: Ja maybe he does not care about that.

ADV SELEKA SC: Ja I was about to say that.

CHAIRPERSON: Ja maybe he does not care about that. Maybe his attitude is you people do not tell me about PFMA – no and do not tell me about the – the Investment Committee this thing must go to the full board. He says I also think it should be full board not IFC. Ja. Okay Mr Seleka.

20 **ADV SELEKA SC:** Thank you Chair. So – so then Dr Ngubane so that is the evolution of this document. It changes and changes and ultimately it goes to the board – this email is on the 7 December.

DR NGUBANE: Right.

ADV SELEKA SC: The board receives the pack on the 8

December according to the evidence led yesterday for a Round Robin. So the board has not received a notice for a meeting.

DR NGUBANE: No.

ADV SELEKA SC: Correct

DR NGUBANE: You are right.

ADV SELEKA SC: There is no agenda circulated a few weeks beforehand or two weeks beforehand.

DR NGUBANE: Chairperson that is the nature of an
10 emergency. Those processes are suspended.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja – no I think that is a fair point.

ADV SELEKA SC: Yes.

DR NGUBANE: I think – I think 32.10.34 are Procurement Procedure describes the emergency.

CHAIRPERSON: Emergency.

DR NGUBANE: Procurement.

CHAIRPERSON: Ja.

DR NGUBANE: [Inaudible]

20 **CHAIRPERSON**: No that is a point.

ADV SELEKA SC: Yes. No let me write that emergency down in big letters and I will come to it. So the board then in the email from Ms Daniels is asked to decide on this by 12 midday on the 9 December. Well I do not know whether you recall that? We can find the email to you from Ms Daniels.

DR NGUBANE: Well we do not need to Chairperson because ...

ADV SELEKA SC: Ja.

CHAIRPERSON: Yes.

DR NGUBANE: It would follow the – emergency.

CHAIRPERSON: Ja, ja that is right ja.

ADV SELEKA SC: Then as Verushni Naidoo on the same evening I think after nine she says I approve and mentions points there one of which is the matter should go to IFC.

10 That is the evening of the 8th. And Ms Daniels says she acted on that to call an IFC in the morning of the 9th December. An IFC started at nine o'clock meeting of IFC started at nine o'clock. You – do you know that?

DR NGUBANE: No I do not know that because that actually invalidates that Round Robin completely.

ADV SELEKA SC: Ja. Yes you are right because you gave your approval to the submission.

DR NGUBANE: Yes.

20 **ADV SELEKA SC:** At 8:34 on the 9 December before IFC had its meeting.

DR NGUBANE: Ja.

ADV SELEKA SC: Well need I go any further there. So this Round Robin is invalidated.

DR NGUBANE: Ja Sir absolutely ja.

ADV SELEKA SC: So the emergency – can I come to the

emergency issue? What was – what was the emergency here?

DR NGUBANE: Well if by putting Optimum Coal Mining into business rescue we were actually saying that it cannot trade anymore. So if it was not trading there would be no coal supply to Hendrina and Komati Power Stations. That was the essence of the emergency.

ADV SELEKA SC: Yes. So that is how you understood it or that is how it was put to you?

10 **DR NGUBANE**: Essentially when she went with me – with – through this document with me.

ADV SELEKA SC: Yes.

DR NGUBANE: That was the understanding.

ADV SELEKA SC: Yes. Well I appreciate you are not a lawyer but the business rescue practitioners when they take over as business rescue.

DR NGUBANE: Yes.

ADV SELEKA SC: As he word says rescue – business rescue they are trying to rescue that business. The business
20 will trade that is why Tegeta is able to come and be the middle man between you and OCM. They get coal from OCM and supply to Eskom. Because that business can still trade. It is trying to come out of the difficulties it finds itself in. To be rescued.

But let us – you understand it?

DR NGUBANE: Ja. But I – I – it is contrary to what I thought business rescue was about.

ADV SELEKA SC: Ja because it is not liquidation.

DR NGUBANE: Okay.

ADV SELEKA SC: They are not being liquidated.

DR NGUBANE: Sure. Alright.

ADV SELEKA SC: The business rescue comes with a plan how to rescue this business and they...he business rescue comes with a plan how to rescue this business and they..

10 **CHAIRPERSON:** You are being helped to survive.

ADV SELEKA SC: Yes.

DR NGUBANE: Alright.

CHAIRPERSON: Ja alright. You are being helped to survive.

DR NGUBANE: Okay.

CHAIRPERSON: Ja.

ADV SELEKA SC: But you know what happened to the – your decision for pre-payment Dr Ngubane? By now you know by then I do not know whether did you know.

20 **DR NGUBANE:** No.

ADV SELEKA SC: It gets converted into a guarantee.

DR NGUBANE: No that ...

ADV SELEKA SC: Ja it is ...

DR NGUBANE: Is a mystery.

ADV SELEKA SC: it is a mystery?

DR NGUBANE: Ja because it is not what the resolution was saying.

ADV SELEKA SC: That is right. So how did it happen because it happened the next day on the 10 December?

DR NGUBANE: Well again you see I cannot believe that Ms Daniels failed to inform the board. Well it reached me as chairperson about this development.

ADV SELEKA SC: But what do you say about the executives who converted it because she did not sign the guarantee
10 somebody else signed it.

DR NGUBANE: No, no I am just talking in terms of this has happened.

CHAIRPERSON: Yes.

DR NGUBANE: Because she is the custodian of governance.

ADV SELEKA SC: I see.

DR NGUBANE: In the company.

ADV SELEKA SC: Yes so she never told you this?

DR NGUBANE: No, no never did. I only learnt about this
20 somewhere in April as I was about to leave Eskom.

CHAIRPERSON: Hm.

DR NGUBANE: You know it came through the media. Otherwise there was never a submission to say this person signed an illegal order or whatever.

CHAIRPERSON: Hm.

ADV SELEKA SC: And you know that the guarantee was in favour of Tegeta and not OCM.

DR NGUBANE: Well that is what I learnt.

ADV SELEKA SC: So completely the antithesis to ...

DR NGUBANE: No absolutely.

ADV SELEKA SC: The resolution.

DR NGUBANE: Which undermined this whole thing.

ADV SELEKA SC: Yes.

CHAIRPERSON: It – it raises the question Dr Ngubane
10 which I kind of said last time when you were here the
commission has to look at. We have to remain open minded
about various issues and conclude when all the evidence is
in. But I said in effect one cannot close one's eyes to a
certain line of thinking.

DR NGUBANE: Right.

CHAIRPERSON: And it is important to put it to people who
were involved so that one hears what they have to say about
it. It raises the question of whether there were people
outside of Eskom who may have been manipulating Eskom
20 processes for their own agendas and that includes the issue
of the suspension of the executives. So it raises that
question whether there were people outside of Eskom who
were manipulating Eskom processes in order to achieve or
pursue their own goals. I mean in regard to this we have
just referred to the fact that here is Businessman sending an

email saying take out the PFMA approval I do not want it. I want it removed. Do not send this thing to the IFC it must go to the full board. We have just told you about Mr Henk Bester's evidence that already in 2014 he says he was told by Mr Salim Essa the next boss of Eskom is Mr Brian Molefe and then of course you have the Transnet things but with regard to Eskom you then have the evidence of – from Abram Masonga and Ms Daniels which says before the board could know about this idea of suspensions because the board only
10 got to know about that from the evidence that I have heard on the morning of the 11th or on the 11th March. But before the board could discuss this already on the 10th March the day before if Ms Daniels evidence is correct and if Mr Masonga's evidence is correct Mr – Mr Salim Essa knew about it and knew the names of the executives who would be suspended and of course Mr Koko you know according to their evidence. And if their evidence is correct Mr Koko denies that such a – those meetings happened. But if I evaluate the evidence at the end and if I ultimately find that
20 indeed those meetings did take place which involved Mr Salim Essa and Mr Koko on the 10 March and that what was said included that the four executives would be suspended according to Mr Masonga he goes further he says, Mr Koko said that although he would be one of the executives to be suspended ultimately he would come back after the

suspension but the other three would not come back. That is what Mr Masonga says. Of course Mr – as I said Mr Koko denies that. But if – if the – if it was true – if it were to be true that that meeting did take place and that is what was discussed then it would be difficult not to – to seriously consider whether there was not one or more people outside of Eskom who were manipulating either processes within Eskom or even manipulating some people within Eskom for their own purposes. And it is important that all of us look at
10 these issues and give our own input because if it did happen it is not something that should happen – that should have happened.

DR NGUBANE: Agree Chairperson.

CHAIRPERSON: Ja. Ja. Mr Seleka.

ADV SELEKA SC: So Dr Ngubane it would seem that these executives were on the frolic of their own.

DR NGUBANE: That was?

ADV SELEKA SC: That these executives were on a frolic of their own.

20 **DR NGUBANE**: Well quite clearly.

ADV SELEKA SC: From this information here.

DR NGUBANE: Ja.

ADV SELEKA SC: And let me tell you I do not know – he – I do not know whether you are aware when Mr Anoj Singh was at the Parliamentary Portfolio Committee he explains the

rationale for the guarantee when asked about it in this way. He says he concluded – he issued that guarantee because Eskom could not obtain coal immediately from Tegeta. The agreement – the underlying agreement – that agreement was concluded between Eskom and Tegeta for the supply of coal which is your – to which your resolution relates a pre-purchase of coal. It was not concluded with OCM it was concluded as per that paragraph 2.1.

DR NGUBANE: But there is no mention of Tegeta.

10 **ADV SELEKA SC:** Yes but the agreement was concluded with Tegeta.

DR NGUBANE: Alright.

CHAIRPERSON: Of course the resolution did not say they must negotiate and conclude a deal with OCM.

ADV SELEKA SC: Yes.

CHAIRPERSON: The resolution of the board said they must negotiate – they should negotiate and conclude that the deal with the proposed owners of [00:17:45].

ADV SELEKA SC: Ja.

20 **CHAIRPERSON:** Which they identified as Tegeta.

ADV SELEKA SC: And ...

DR NGUBANE: Well Chairperson just to – well devil's advocate.

CHAIRPERSON: Yes.

DR NGUBANE: Obviously once the buyer takes over there

would have to be negotiations about the coal supply agreement and the prices again and so on. So negotiating with the new owner is inevitable because there will obviously be regulatory issues that need to be ironed out.

CHAIRPERSON: No. No, no I understand but based on the idea of an emergency the emergency if there was one.

DR NGUBANE: Yes.

CHAIRPERSON: Dictated that the deal that needed to be concluded was with OCM.

10 **DR NGUBANE:** That is correct.

CHAIRPERSON: If there were to be any negotiations with the proposed buyers or owners that could come later.

DR NGUBANE: That is right.

CHAIRPERSON: That was not urgent. What was urgent was a deal with OCM.

DR NGUBANE: Correct.

CHAIRPERSON: And of course if the position was that if Eskom negotiated with OCM and concluded a deal that bill that deal would be binding on the buyers. There would be no
20 need for other negotiations with the buyers. But if it was not going to be binding on the buyers then there may have been a need for negotiations. You understand?

DR NGUBANE: I do.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: Thank you Chair. So the agreement –

now we are on the 10 December.

DR NGUBANE: Okay.

ADV SELEKA SC: That agreement with Tegeta is concluded on the very day the 10 December but it has suspensive conditions.

DR NGUBANE: To buy coal.

ADV SELEKA SC: Ja pre-purchase of coal.

DR NGUBANE: Okay.

ADV SELEKA SC: So on page 719 of this bundle – Eskom
10 Bundle 18.

CHAIRPERSON: 719?

ADV SELEKA SC: 719. And it is signed by Mr Anoj Singh on behalf of Eskom on page 722. You see it on 719? Agreement regarding the pre-purchase of coal from – it says Optimum Coal.

DR NGUBANE: Ja.

ADV SELEKA SC: You see that

DR NGUBANE: I see that.

ADV SELEKA SC: But see who signs on page 722. Page
20 722.

DR NGUBANE: Yes.

ADV SELEKA SC: For Tegeta Exploration and Resources 10 December 2015 [00:20:51]. And Mr Singh at the top. There is two things I can go quickly to the one aspect. So this agreement is then subject to suspensive conditions and Mr

Singh says to the Parliamentary Portfolio Committee. I did this the guarantee because Eskom could not in terms of this agreement obtain coal immediately from Tegeta because of the suspensive conditions. There crumbling the theory of an emergency. Do you follow?

DR NGUBANE: I do but I mean probably the – the mistake was to say the resolution grants the right to negotiate and conclude. Normally in many tender processes the mandate is given to the negotiating team to negotiate but not
10 conclude. This forces the issue to come back to the BTC where – which have a board committee. Here this we did not include that. I think this is what led to this type of thing.

ADV SELEKA SC: So the mistake was on the part of what the board?

DR NGUBANE: Well I mean it is now signed on behalf of the board a mandate which was not given directly like this. It was just a mandate to negotiate.

ADV SELEKA SC: No it also said to conclude.

DR NGUBANE: Ja to conclude yes but on the basis of what
20 was before us.

CHAIRPERSON: Well let me ask this question. At the time that this Round Robin Resolution was that – by the time that you considered it.

DR NGUBANE: Yes.

CHAIRPERSON: Were you aware that it was saying the

board was authorising the three officials Group Executive, Chief Executive, Group Executive for Generation and the CFO to negotiate and conclude a deal not with OCM but with the so called proposed owners of OCM. Did you understand that at the time or were you under a different understanding that something you picked up later – or you heard about later?

DR NGUBANE: Well I must say no that one beat me because I was thinking in terms of OCM and the – the
10 business rescue people. But clearly here...

CHAIRPERSON: Ja.

DR NGUBANE: It gives them authority.

CHAIRPERSON: Yes, yes.

DR NGUBANE: To go outside.

CHAIRPERSON: Yes. Do you – do you – are you able to throw light on whether maybe other members of the board were under the same understanding as yourself maybe through discussion afterwards or do you not know whether other members of the board did understand it that this way
20 and approved it like that?

DR NGUBANE: Well I think on average most people would have thought what I did think that it was to buy pre-purchased coal.

CHAIRPERSON: Yes.

DR NGUBANE: From OCM.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Dr Ngubane then if go – that is the agreement – go to page 723.

DR NGUBANE: Of my...

ADV SELEKA SC: 7 – yes of...

DR NGUBANE: This one?

ADV SELEKA SC: Where we were looking at the agreement – Eskom Bundle 18.

DR NGUBANE: Sorry page?

10 **ADV SELEKA SC:** 723.

DR NGUBANE: 723.

ADV SELEKA SC: Now there Businessman again raises his head. There is an email from Businessman to Mr Matshela Koko on the 10 December 2012 and there the subject is two-pager and he deals with what should go into the construction of the guarantee. Three pager between Tegeta and Eskom not OCM Tegeta and Eskom salient points Eskom will provide bank guarantee for R1.68 billion. See piece we understand those are condition precedents for release is Section 11
20 approval from DMR Competitions Commission approval and then the rest of it. That document gets to be forwarded to Ms Suzanne Daniels from Matshela2010@yahoo.com. These conditions if you go to page 726 – 725, 26 it is an email on 7:25 from Ms Daniels on the 10 December still to Mr Rishaban Moodley of CDH and she is asking for their

assistance in drafting the agreement.

CHAIRPERSON: CDH I take it to Cliff Decker?

ADV SELEKA SC: CDH yes correct Chairperson.

CHAIRPERSON: Ja.

ADV SELEKA SC: Cliff Decker Hofmeyr.

CHAIRPERSON: Ja.

ADV SELEKA SC: She – that is what she testified yesterday. And if you look at the document on page 726 which she says was an annexure to that email it reproduces
10 those points you saw in the email of Businessman on the previous page which is the point the Chairperson has been emphasising that you see the strings being pulled on Eskom by somebody from outside of Eskom. You see that?

DR NGUBANE: Ja. I do.

ADV SELEKA SC: Hm. That is the state capture that is being investigated. I think I am done not to mention your emails between yourself and Businessman.

DR NGUBANE: With?

ADV SELEKA SC: You and Businessman.

20 **DR NGUBANE:** Businessman?

ADV SELEKA SC: Yes. That came in June 2016.

DR NGUBANE: Well it happened.

ADV SELEKA SC: Ja. It is water under the bridge. Chair that I think are the questions I had for Dr Ngubane.

CHAIRPERSON: Well – well Dr Ngubane I want to hear

whether having learnt what you have learnt, having read what you have read, having heard what you have heard about matters or things that were happening at Eskom at the time that you were Chairperson whether you do not see the possibility – you do not concede at least to the possibility that during your time at Eskom there may have been people outside of Eskom who were manipulating or who may have been manipulating processes within Eskom. Maybe also manipulating or using people within Eskom for their own
10 agendas and before you respond I go back to just giving you the picture that emerges and I am not saying that that is what I believe to be the position but it is something I cannot ignore as I hear more and more evidence. You have a situation where in 2010, December the New Age suggests. Maybe it is more than a suggestion. [laughs] That Mr Brian Molefe is going to be the new Transnet Group CEO. He does become the new Transnet CEO. You have...

Of course, certain things happened at Transnet, transactions and allegations of irregularities while he is
20 there.

And there, according to Mr Henk Bester, it was at some stage in 2014, Mr Salim Essa tells him, Mr Brian Molefe is going to be the new boss of Eskom. And then you and your other members of the board are new at Eskom.

And out of the blue, the news comes that there must be

an inquiry. Four executives must be suspended at the same time.

When you hear about this, you are opposed to this and you want to hear from the shareholder minister. She comes and she says what she said and after that, the board goes along.

But the day before, namely the 10th, now we hear that Mr Salim Essa was meeting with Mr Koko and with Ms Daniels and some other time on the same day with
10 Mr Abraham Masango.

And saying to Ms Daniels: What is the procedure that must be followed if you want to suspend an executive at Eskom? According to Ms Daniels, that is what Mr Salim Essa asked, you know.

And then Mr Masango has his version also in terms of what was said. And then mister... After the executives are gone, are suspended, indeed three do not come back. Quite some money is then to – to let them go. Mr Koko does come back.

20 And in the meantime, I think about a month or so after the suspensions of the executives, Mr Brian Molefe comes. Is seconded to Eskom.

And then, of course, on this evidence and Mr Koko is still going to come to put his side of the story on some of the things about this email and so on.

But on the face of it, it looks like, somebody from outside, Businessman is kind of dictating to Mr Koko that certain things must happen and Mr Koko passes this on to Ms Daniels and so on and so on.

So when you look at all of those things and, of course, certain transactions happened at Eskom and there are allegations of irregularities about certain transactions.

When you know what you know now, and when I say know, I accept that we have not heard all the evidence. We
10 must still here more.

But on the face of it, do you think that the possibility that there were people outside of Eskom who may have been manipulating Eskom processes, maybe also manipulated some people within Eskom or using them for their own agenda, is farfetched?

DR NGUBANE: Well, it is quite disturbing because what we read here should never have happened. I mean, people actually dictating to us, remove PFMA, the board must do this.

20 So. However, one must also bear in mind that I think it is a bigger problem we have as a country. The issue of governance. So I do not know how to find it but I see it as a problem that the country faces.

Why is information leaking... I mean, there were accusations, for instance, that the Gupta family was

appointing ministers.

CHAIRPERSON: Yes, yes.

DR NGUBANE: Things like that.

CHAIRPERSON: Yes, yes.

DR NGUBANE: You know. Why are we having all these sorts of things.

CHAIRPERSON: H'm, h'm.

DR NGUBANE: So the suggestion that there were people manipulating, I agree but I think it is a bigger problem.

10 **CHAIRPERSON**: H'm, h'm. Ja, okay.

ADV SELEKA SC: Chair, may ...[intervenes]

CHAIRPERSON: Anything arising?

ADV SELEKA SC: And may I? [laughs]

CHAIRPERSON: Ja.

ADV SELEKA SC: Dr Ngubane, I had said that I will touch on the penalties. You know those penalties were settled... Well, there was a settlement agreement with Tegeta, ultimately, in 2017 on those penalties.

DR NGUBANE: H'm.

20 **ADV SELEKA SC**: You know that?

DR NGUBANE: [No audible reply]

ADV SELEKA SC: The R 2.17 billion ...[intervenes]

DR NGUBANE: Yes.

ADV SELEKA SC: ...was settled at R 599 million in terms of the agreement. It is a significant drop.

DR NGUBANE: Well, as far as I know, it was the application process ...[intervenes]

ADV SELEKA SC: Yes.

DR NGUBANE: That came to that.

ADV SELEKA SC: Yes.

DR NGUBANE: And if OCM had gone to arbitration ...[intervenes]

ADV SELEKA SC: Yes.

DR NGUBANE: ...most probably they would have got the
10 same results.

CHAIRPERSON: But is it not the position that it was not the result of arbitration, it was the result of negotiations?

ADV SELEKA SC: Correct.

CHAIRPERSON: You remember when you said – when you said – I think you said Mr Brian Molefe adopted a hard attitude towards OCM because they were taken all the cream and giving it to overseas and giving you all the rubbish.

DR NGUBANE: Ja.

CHAIRPERSON: And so on. And I said: Well, you know, I
20 think Mr Seleka will say but they might not have been hard on Tegeta.

So the picture that emerges – emerged, at least, on what we know now. Mr Brian Molefe is still going to come and put his side of the story and put his perspective. Maybe that will change when he has done that.

But at this stage, the picture seems to be that when OCM was there, Mr Brian Molefe... Eskom, through Mr Brian Molefe, did not even want to negotiate.

DR NGUBANE: I see.

CHAIRPERSON: And yet, when it was Tegeta, one, they are prepared to negotiate. Not just negotiate. Agree to a significant reduction of the penalties from two comma something billion to ...[intervenes]

ADV SELEKA SC: To R 599 million.

10 **CHAIRPERSON:** To R 599 million.

ADV SELEKA SC: And the story does not end there Dr Ngubane.

CHAIRPERSON: Ja.

ADV SELEKA SC: Then there are deductions on that amount but reduces it further to R 255 million.

CHAIRPERSON: Yes.

ADV SELEKA SC: And it does not end there. Tegeta is given 20-months to pay in instalments. But it does not end there. Tegeta defaults after paying R 121 million. And it
20 remains with a balance of over R 13 million before it goes into business rescue. And Eskom has lost.

DR NGUBANE: Ja. Well, I think Ms Daniels would have better knowledge of these processes because she was obviously a legal person, advisor, the company secretary. But on the face of it, there is a discrepancy that is

significant, you know.

ADV SELEKA SC: Chair, I am going to finalise with this because this is ...[intervenes]

CHAIRPERSON: Okay.

ADV SELEKA SC: This is too important.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Ms Daniels has not finished testifying Dr Ngubane. She has an email attached to her affidavit and I want to get your view on this. As we talk about the
10 seriousness of the control and the lack of corporate governance.

On the same bundle, Eskom Bundle 18, page 288. I am going to take you back and show you what is happening within your board. Not by yourself. Page 288.

Now this is an email exchange from the 22nd of November 2015. It is the build-up to December 2015. It is a parallel process. Bear in mind, because Tegeta wants to acquire OCM. Tegeta wants to acquire OCM.

DR NGUBANE: Ja.

20 **ADV SELEKA SC:** They have offered R 2.1 billion to buy that mine. And the evidence, as we see it, is that this prepayment resolution we went through which becomes a guarantee.

The actual intension is to assist Tegeta in acquiring OCM but before they could conclude their agreement, which

is concluded on the 10th.

Incidentally, on the 10th of December, the very day Mr Anoj Singh is signing this guarantee and the pre-purchase agreement, you – before that, see this email 22nd of November 2015, is from Mr Mark Pamensky, one of your board members.

He is writing to athol@ann7.com and there is Varoom(?). Meeting of even date, is the subject and he says:

10 “Hi Chair. Thank you for the conversation
 ...[intervenes]

[Parties intervening each other – unclear.]

CHAIRPERSON: Who is the chair he is referring to?

ADV SELEKA SC: Sorry Chair?

CHAIRPERSON: Who is the chair he is referring to?

ADV SELEKA SC: The chairperson seems to be Mr Athol Gupta, who ...[intervenes]

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** Who was... Let us see. If you turn the
page Chair, he is the Chairman of TMA. The signature on
the email that I will come to after this.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: So he says:

 “Hi Chair. Thank you for the conversation today. I
will action all the items and ensure that they are
completed. I will send an email to Terry regarding

the lead independent.”

Now I want to get to the paragraph I want to.

“We will have the Shiva Uranium Board
...[intervenes]

CHAIRPERSON: I am sorry. I am sorry Mr Seleka.

ADV SELEKA SC: Yes, Chair?

CHAIRPERSON: So that email address – that email at page
288, Bundle 18 of Eskom is from Mr Mark Pamensky?

ADV SELEKA SC: Correct Chair.

10 **CHAIRPERSON**: And on the email address
markpam2@mark.com.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then there is mail to
markpam2@mark.com, dated 22 November 2015 at 07:40 in
the morning or pm.

ADV SELEKA SC: It is pm.

CHAIRPERSON: Ja, the afternoon. Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: At 19:40.

20 **ADV SELEKA SC**: Twenty to eight.

CHAIRPERSON: Ja, pm. And then it is addressed to
athol@ann7.com.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mail to athol@ann7.com. And it is copied
to varoom@shiva.com. Mail to varoom@shiva.com. And the

subject is: Meeting of even date.

ADV SELEKA SC: Yes.

CHAIRPERSON: I just wanted to capture that into the record.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes. Thank you Chair. And I have read, Hi Chair. Then it goes on to other paragraphs. Paragraphs number 1 to 2, 3, 4, starting with the words: In terms of... It

10 says:

“In terms of the Investment Committee, I am available to start straight away.”

Now Chair... Dr Ngubane, Mr Pamensky, Mark Pamensky, at this time, he is a member of the board of Eskom. This is November 2015.

CHAIRPERSON: In November 2015?

DR NGUBANE: Ja.

ADV SELEKA SC: Yes?

CHAIRPERSON: You confirm?

20 **ADV SELEKA SC:** You confirm?

CHAIRPERSON: H'm.

DR NGUBANE: Ja.

ADV SELEKA SC: He says:

“In terms of the Investment Committee, I am available...”

Oh, sorry. He was the Chairperson of the IFC. He is the one who recused himself in December.

DR NGUBANE: Yes.

ADV SELEKA SC: So:

“In terms of the Investment Committee, I am available to start straight away.

As I am at the tail end of the main accusation of Optimum Coal, please ensure that a condition precedent is that the R 2 billion claim from Eskom is withdrawn or it becomes the seller’s problem.

10

I am happy to get involved to assist with the acquisition and monthly monitoring/analysing of all investments from today.

I can meet anyone you require.

If you need me in India or Dubai to discuss, I will meet you there.

Travel safe and looking forward to seeing you soon.

Once again, thank you for today.

Kind regards, Mark.”

20 He seems to be talking about Tegeta requiring Optimum.

DR NGUBANE: Ja.

ADV SELEKA SC: He is telling this Mr Athol Gupta: Let the condition precedent of R 2 billion, which is the penalties, let it be withdrawn or let it be the problem of the seller of Optimum. Do you see that?

DR NGUBANE: Ja.

ADV SELEKA SC: Before the deal is made. And you were sketching out the problem in corporate governance. The problem which seems to be inherent in our system. You talk of it. This cannot be any more evident of that problem.

DR NGUBANE: Ja.

ADV SELEKA SC: You see that?

DR NGUBANE: Ja, ja. I see that.

ADV SELEKA SC: Did he ...[intervenes]

10 **CHAIRPERSON:** Ja. Okay Dr Ngubane, I know it might be a long day but it is important for the recording to capture your responses.

DR NGUBANE: Okay.

CHAIRPERSON: Ja. [laughs]

DR NGUBANE: Well ...[intervenes]

CHAIRPERSON: You said you do see that. Is that right?

DR NGUBANE: I do see that Chairperson.

CHAIRPERSON: Yes. Ja.

20 **DR NGUBANE:** And it is unfortunate. Let me put it like that.

ADV SELEKA SC: H'm.

DR NGUBANE: Ja.

ADV SELEKA SC: Did you suspect anything on his part at the time?

DR NGUBANE: No, not at all.

ADV SELEKA SC: Did you know that he was a director, my understanding, Oakbay?

DR NGUBANE: Well, he had recused himself from ...[intervenes]

[Parties intervening each other – unclear]

ADV SELEKA SC: ...that tells the story

DR NGUBANE: Yes.

ADV SELEKA SC: That tells the story.

DR NGUBANE: But... Well, we did not know that he was
10 ...[intervenes]

ADV SELEKA SC: Ja.

DR NGUBANE: ...that active.

ADV SELEKA SC: Ja. Because the email above, which is forwarded, it seems from Athol Gupta on the 22nd of November. It is sent to Giovanni at the same meeting and to Rajesh Gupta Tony. tony@sahara.co.za. But it does not end there Mr Ngubane.

And this may well explain what we were talking about, the penalties. A significant drop of the penalties from
20 R 2.1 billion to five. Five with deductions made it, it becomes to R 255 million. Even that R 2.5 million is only partly paid.

DR NGUBANE: Ja.

ADV SELEKA SC: And then Tegeta defaults. You turn to the next page. Go to the next page.

DR NGUBANE: [No audible reply]

ADV SELEKA SC: This is on the day of the agreement on both sides between OCM and Tegeta and between Tegeta and Eskom, which is Mr Singh's doing.

The email below that page, page 289, Eskom Bundle 18 is on the 10th of December 2015 at 22:32.

Now that is twenty eight minutes before eleven at night. Also coming from Mr Mark Pamensky, the same email address. Oh, no. This is mark@blts.co.za. Do you know
10 what b-l-t-s stands for Dr Ngubane?

DR NGUBANE: I... Sorry?

ADV SELEKA SC: Do you know what b-l-t-s stands for?

DR NGUBANE: Sorry, just... which ...[intervenes]

CHAIRPERSON: Where is BLT?

ADV SELEKA SC: In the middle of – his email address Chairperson. mark@blts.co.za.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes. Because that is the first... You know, you always have to read from bottom up, these emails.
20 Just show Dr Ngubane.

DR NGUBANE: No, no. I see.

ADV SELEKA SC: You see it?

DR NGUBANE: I see, ja. mark@blts.co.za.

ADV SELEKA SC: Ja.

DR NGUBANE: Right.

ADV SELEKA SC: Do you know what that BLTS stands for?

DR NGUBANE: I am sure ...[intervenes]

ADV SELEKA SC: It is a company also.

DR NGUBANE: Ja, it is a company address. I am sure.

ADV SELEKA SC: So he says ...[intervenes]

DR NGUBANE: It was Blue Label.

ADV SELEKA SC: Oh, Blue Label?

DR NGUBANE: Yes.

ADV SELEKA SC: Yes, he worked for Blue Label?

10 **DR NGUBANE:** Ja.

ADV SELEKA SC: He says: Hi Chair. The email... Well, we do not see who it is addressed to but you see the response at the top. Let us read the message first. It says:

“Hi Chair. Congratulations!”

Then there is that word in brackets. “(Mazel tov)”. You can assist us there Dr Ngubane.

“Congratulation on a brilliant and well-thought out plan and strategized acquisition of the Optimum Group of Companies.

20 Well done! I am proud of you all.

This is only the beginning of the resource group growth and many more to come into play.

I am more than sure that you and the team will make a huge success of this acquisition.

I wish you all the success on the deal.

The hard work begins now and we as the team will produce the results.”

We as the team will produce the results. Next:

“Let me know when you are ready to discuss the operational implementation.

I am truly proud to be part of this group.

Enjoy the well-deserved holiday.

Mark.”

DR NGUBANE: [laughs]

10 **CHAIRPERSON**: [laughs]

DR NGUBANE: Well, Chairperson this capital has met its best. [Speaker not clear.]

ADV SELEKA SC: [laughs]

CHAIRPERSON: [laughs]

ADV SELEKA SC: Within the board. [laughs] Ja, I can only picture, punching the air with his fist.

CHAIRPERSON: Well, Dr Ngubane. If you go back to Mr Pamensky’s letter or email at 288, the one where Mr Seleka starts, which is addressed to Mr Athol Gupta.

20 It seems to me that if you ask somebody to make another company withdraw a claim of R 2 billion, must be that you think that that person is very powerful.

DR NGUBANE: H’m. Ja.

CHAIRPERSON: By any standards, that is a huge claim.

DR NGUBANE: H’m.

CHAIRPERSON: To expect that that person can get it withdrawn. It just seems that you must be thinking – so Mr Pamensky must have been thinking that Athol was capable of achieving that.

DR NGUBANE: Ja.

CHAIRPERSON: Is that a sentiment that you find also – that it agrees(?) with you?

DR NGUBANE: Well, I always thought it was the arbitrator.

CHAIRPERSON: Yes.

10 **DR NGUBANE**: But now it is clearly the ...[intervenes]

CHAIRPERSON: Ja, the negotiations.

DR NGUBANE: [Speaker not clear – speaking too soft.]

CHAIRPERSON: Ja. Okay alright. Mr Seleka.

ADV SELEKA SC: Yes. No, it was not the arbitrator at all. They settled, saying there were errors in the calculations. So that is what they said. But go back to page 289 Dr Ngubane, so we can... You see there is a response then at the top of that page? A response to Mr Mark Pamensky's email of 10 December.

20 **DR NGUBANE**: [No audible reply]

ADV SELEKA SC: That response is from Athol Gupta, athol@ann7.com. It is to Mark Pamensky. And that these... I think they swopped the date and the month, judging from the previous email. So that would be on the 12th of November or the 11th of December. Well, the

11th of December.

CHAIRPERSON: Ja, the 11th of December.

ADV SELEKA SC: That is correct, ja.

CHAIRPERSON: Ja. H'm.

ADV SELEKA SC: Ja. I could hear a message from my junior(?) out of the chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: And it is copied to Varoom and to Rajesh Gupta Tony. He says – Athol says – Athol Gupta:

10 “Hi. Thank you Mark. I really appreciate it. We will
talk soon. Regards Athol Gupta. Chairman, TMA
Media (Pty) Ltd.”

And that is the correspondence between the parties. So even the board – some board or one board member, at the very least, seems to have assisted the Gupta's in the acquisition of Optimum.

DR NGUBANE: Well, I do not think you can accused the board of assisting. Obviously, this was an individual.

ADV SELEKA SC: Yes.

20 **DR NGUBANE**: You know.

ADV SELEKA SC: Ja, but ...[intervenes]

CHAIRPERSON: Of course, if in the end that deal was brought to the board and the board approved, it would be legitimate to ask the board to explain. You accept that?

DR NGUBANE: [No audible reply]

CHAIRPERSON: A claim of R 2 billion going down to ...[intervenes]

ADV SELEKA SC: R 599 million.

CHAIRPERSON: [laughs] It would be legitimate to... I mean, I have not checked. I assume that for such a big amount, before they settled, whoever was negotiating would need that to be brought to the board to approve. I am assuming because it is a big amount.

DR NGUBANE: It was never brought to the board Chair.

10 **CHAIRPERSON**: It was never brought to the board?

DR NGUBANE: No. That is why I was suggesting probably Ms Daniels ...[intervenes]

CHAIRPERSON: Arbitration.

DR NGUBANE: ...is the legal person.

CHAIRPERSON: H'm.

DR NGUBANE: Who might shed light on the processes ...[intervenes]

CHAIRPERSON: Yes.

DR NGUBANE: ...there.

20 **CHAIRPERSON**: Yes. But on your own understanding. Any negotiations that led to an agreement where Eskom's claim of R 2 billion was reduced to five hundred and something million or two hundred and something million, should have been brought to the board for the board to approve, is it not? It is too big an amount to say – to be dealt with by somebody

else. I would imagine.

DR NGUBANE: Well, I would say so Chairperson because we were seized with the issue of penalties.

CHAIRPERSON: H'm. Yes, yes, yes.

DR NGUBANE: And they influenced a lot of thinking.

CHAIRPERSON: Yes, yes.

DR NGUBANE: On the side of the board.

CHAIRPERSON: Yes, yes. Okay but you say, definitely it was not brought to the board?

10 **DR NGUBANE**: No, it was not.

CHAIRPERSON: Ja. Mr Seleka.

ADV SELEKA SC: Well... Sorry, Chair. Dr Ngubane, Ms Daniels has not finished testifying. But is it not that, she had submitted a memorandum to the board.

DR NGUBANE: Yes.

ADV SELEKA SC: Yes. And she requested a mandate for Mr Anoj and I think Mr Koko to authorise, to do the settlement because she did not want to do it herself. The board had said she should do it.

20 And she said: No, you authorised these two executives. And this was prior the settlement. And in her memorandum to the board, proposed an amount by which the settlement should be concluded.

And she was told: No less than five hundred million. Settle but no less than five hundred million. But the

authorisation was then by the board given to Mr Anoj and Mr Koko.

DR NGUBANE: Not by the IFC.

ADV SELEKA SC: I do not know but I know that from my reading of the documents, the memorandum is made to the board and the request is that the board should authorise the two executives.

DR NGUBANE: I do not remember it Chairperson.

ADV SELEKA SC: Ja.

10 **DR NGUBANE**: Do you have the document?

ADV SELEKA SC: Well, she says: I presented the BTC... Sorry. To BTC but the Board Tender Committee was chaired by you.

DR NGUBANE: Mr Khosa.

ADV SELEKA SC: Was it chaired by Mr Khosa?

DR NGUBANE: Ja.

ADV SELEKA SC: Well, there was a time that it was chaired by you.

CHAIRPERSON: Ja.

20 **DR NGUBANE**: A very short time.

ADV SELEKA SC: A very short time?

DR NGUBANE: Ja. Once I became acting chairperson, I stopped chairing BTC.

ADV SELEKA SC: Well, that was... She says BTC.

DR NGUBANE: Okay.

CHAIRPERSON: But I guess, even the BTC for writing of, in effect, such a big amount ...[intervenes]

DR NGUBANE: Ja.

CHAIRPERSON: They would have need to make sure that the board went along with that. I would imagine.

DR NGUBANE: They would probably need to make sure that IFC approved it and then report it to the board.

CHAIRPERSON: Yes, yes.

DR NGUBANE: Ja.

10 **CHAIRPERSON**: Ja, okay.

ADV SELEKA SC: That is from ourselves Chairperson. That is it from ourselves.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Will this mean we are done with Dr Ngubane or are there some matters that he will still come back for?

ADV SELEKA SC: Ja.

CHAIRPERSON: Oh, you are not sure?

20 **ADV SELEKA SC**: Oh. I know Chair and I spoke this morning ...[intervenes]

CHAIRPERSON: Oh, yes about other matters.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: And ...[intervenes]

CHAIRPERSON: So you will talk to him in due course if you need to.

ADV SELEKA SC: I think that will be the next call.

CHAIRPERSON: Ja. Okay. Thank you very much Dr Ngubane. We are done with you for today but the work of the Commission continues and if we ask you to come back, I am sure you will cooperate again as you have done all along.

DR NGUBANE: Not on New Year's Eve or Christmas Eve Chairperson.

10 **ADV SELEKA SC:** [laughs]

CHAIRPERSON: [laughs]

DR NGUBANE: That is when we are...

CHAIRPERSON: Yes, but before we finish. Mr Mkhabela, you do not have any re-examination you need?

ADV MKHABELA: Not from our side Chair. Thank you.

CHAIRPERSON: Okay thank you very much. So thank you very much Dr Ngubane. And we are going to adjourn for lunch and then ...[intervenes]

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** ...I will resume at quarter past two with another work stream.

ADV SELEKA SC: As it pleases.

CHAIRPERSON: We adjourn.

ADV SELEKA SC: Thank you Chair.

DR NGUBANE: Thank you.

CHAIRPERSON: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon, Mr Chaskalson, good afternoon, everybody.

ADV CHASKALSON SC: Good afternoon, Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Today we are going to finish the money flows relating from the kickbacks on the Transnet
10 contract.

CHAIRPERSON: Before that, have you been told what the explanation is for this delay? Ten minutes delay about the files. Has somebody given you an explanation?

ADV CHASKALSON SC: Chair, no, I was not part of or...

CHAIRPERSON: This is just not acceptable. We were supposed to start at quarter past, I was ready, I was told certain people are supposed to bring the files, they were not here.

ADV CHASKALSON SC: Chair, I can find out what the
20 cause of the delay was and maybe report when I am back on Thursday.

CHAIRPERSON: Yes. At least the least we were entitled to is an explanation as to why there was this delay. I was kept waiting for ten minutes after we were supposed to start. I understand that it is not the legal team's fault,

from what I have been told.

ADV CHASKALSON SC: Well, only to the extent that we were not taking responsibility for getting the documents here, Chair.

CHAIRPERSON: Ja. No, no, no, that is fine, but please do find out.

ADV CHASKALSON SC: I will, Chair.

CHAIRPERSON: Ja. Okay, alright, let us continue.

ADV CHASKALSON SC: So we are going to be finishing
10 the Transnet money flows evidence – well, offshore evidence today and today we are going to be focusing for the most part on kickbacks that were paid through the Worlds Window network and so we touched on the Worlds Window network a fair amount on the last few days but maybe just very briefly, Mr Holden, to start again ...[intervenes]

CHAIRPERSON: Which bundle do we start with?

ADV CHASKALSON SC: We will be in 6A and 6B today, Chair.

20 **CHAIRPERSON:** Oh, we will use both.

ADV CHASKALSON SC: Indeed, Chair.

CHAIRPERSON: Okay, alright.

ADV CHASKALSON SC: Most of it will be 6A but there will be a little bit in 6B.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Mr Holden, can you very briefly just maybe go to paragraphs 135 and 136 of your report at page 220 where you touch on who the Worlds Window network were and the companies in that network were?

CHAIRPERSON: 220?

ADV CHASKALSON SC: 220, Chair, of 6A.

CHAIRPERSON: 6A, ja. Okay, alright.

MR HOLDEN: Certainly, Chair. The Worlds Window network as I have indicated at paragraph 135, the
10 centrepiece, the heart of the Worlds Window Group – sorry the heart of the Worlds Window Network is the Worlds Window Group and I provide the website address there which www.wwg.c.in. According got the group website and also according to filings with the Indian Company Registration house, Worlds Window was first registered in 1997 and it began trading ferrous and non-ferrous metal scrap.

Subsequent to 1997, the Worlds Window Group opened up a vast array of businesses registered in India
20 and elsewhere. I provide a list of the key entities there under. The first one is provided at A which is Worlds Window Impex India Private Limited which is described on the Worlds Window Group website as the flagship of the group and one of the largest importers in Northern India.

On accessing Indian company records held at their

version of Companies House was to able to establish that Worlds Window Impex Private Limited was established on the 14 February 1997 with the address 75 Khirki Village, New Delhi and that is an address that continues to be used throughout in relation to all of the other Worlds Window subsidiaries.

Important to bear in mind is that Worlds Window Impex Private Limited is 49% owned by International Metal and Steel BV which is registered in Holland and IMSBV, 10 which is the acronym for International Metal and Steel BV, is a wholly owned subsidiary of the European Metals Recycling Group based in Liverpool in the UK. So 51% of the centrepiece company was still owned by the Worlds Window Group.

I identified 13 other Worlds Window Group companies. I am going to just list them by name and the reason why I list them by name will become a little bit clearer in the evidence but the 13 additional companies identified Worlds Window Agro Private Limited, Worlds 20 Window Cabs Indian Private Limited, Worlds Window Developers Private Limited, Worlds Window Eco Trade Private Limited, Worlds Window Estate Private Limited, Worlds Window Exim Private Limited, Worlds Window Farming Private Limited, Worlds Window Greenfield Private Limited, Worlds Window Holding Private Limited, Worlds

Window Infrastructure and Logistics Private Limited, Worlds Window Trading Private Limited, Worlds Window Urja Private Limited and Worlds Window Wardha Infrastructure Private Limited.

In addition to that the Worlds Window Group also maintained and ran one company of particular notice in Dubai which was Everest Metals FZE which the Worlds Window Group claims was established in 2008 as the international trading arm of the group. The relevance here,
10 Chair, is that Everest Metals FCE (sic) was the wholly owned Everest Global Metals registered in South Africa and as we discussed in relation to the Estina evidence a while back, that was the entity which was engaging in a loan back scam involving the Gupta enterprise including using Estina as one of the payees.

And then finally worth mentioning is Arctos Trading (Pty) Ltd which is a South African company and that was registered with registration number 2011/002541/7. That company was a wholly owned – was beneficially owned by
20 Vasudhamaa Resources PTE Limited, a company incorporated in Singapore. On accessing the Singapore company records I was able to establish that one or the two directors of Vasudhamaa Resources was Worlds Window company director as well, his name is Anil Kumar Mishra.

It is very clear from the Gupta Leaks records themselves that Arctos Trading was the vehicle through which the Worlds Window Group conducted the majority of its investments into the Gupta enterprise including mining investments and providing another Gupta link is the address that registered for Arctos Trading, the registered address for Arctos Trading is 144 Grayston Ridge, Katherine Street, Sandton, which is an address that is shared with a number of other Gupta enterprise companies.

10 **ADV CHASKALSON SC:** Mr Holden, can I ask you to go to bundle 6A page 498 which is some financial statements for Arctos for 2011.

CHAIRPERSON: What is the page number?

ADV CHASKALSON SC: It is in fact 499, Chair, of bundle 6A.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Annexure B and you have already mentioned to the Chair that the holding company of Arctos was Vasudhamaa Resources. One sees that at
20 page 499 where it says incorporated in Singapore.

Can I ask you to turn to page 512, still part of the same document? And under 4, Investment and Mining Rights, can you just note to the Chair what we see there and what the significance is?

MR HOLDEN: Certainly, Chair, what we see at paragraph

4 there of the financial statements ending 2011 is a first –
 it reads Investments and Mining Rights and the name of
 the company is Idwala Coal (Proprietary) Limited and the
 carrying amount is R165 million and the name underneath
 that is Tegeta Exploration and Resources (Proprietary)
 Limited and the carrying amount as of 2011 is
 R197 852 050. Those two amounts added together are
 R362 852 050. The relevance here, Chair, is that both
 Idwana Coal and Tegeta Exploration are Gupta enterprise
 10 companies which would very clearly at Arctos has
 undertaken an investment into Gupta enterprise companies
 and therefore the two enterprises, the Worlds Window
 Group and the Gupta enterprise are operating together.

ADV CHASKALSON SC: And then to develop that point,
 two pages down, page 514 under 11, other financial
 liabilities.

MR HOLDEN: Certainly, Chair, at other financial liabilities
 it indicates a number of entries, it says:

20 “At amortised cost, a Bank of Baroda loan of
 R283 611 482 which the financial statements
 indicate were secured by investments in Tegeta
 Exploration and Indwala Coal with interest charged
 at 9% linked to prime and repayable quarterly in 20
 equal instalments effective from 28 February 2012.”

The next entry of relevance is:

“JIC Mining Services.”

It indicates:

“An unsecured loan, interest free and repayable on terms agreed annually for R44 million.”

ADV CHASKALSON SC: And what JIC Mining?

MR HOLDEN: JIC Mining is the formal name for West Dawn. West Dawn traded as West Dawn but the underlying corporate entity was JIC which is a Gupta enterprise company. Beneath that we have JJ Trading, which

10 indicates:

“An unsecured loan with interest charged at 2% percent per annum and payable on terms agreed annually.”

And that is ...[intervenes]

ADV CHASKALSON SC: Can you just remind the Chair who JJ trading is?

MR HOLDEN: Certainly, JJ Trading is a company registered in the UAE, that was beneficially controlled by the Worlds Window Group and was one of the primary
20 vehicles through kickbacks are paid in relation to the early phase of the Transnet kickback scheme. That indicates a loan amount of R9 564 773.

Thereafter there is a loan indicated for Oakbay Investments:

“An unsecured loan, interest free and repayable on

terms agreed annually for R96 million.”

And then finally IMR General Trading:

“An unsecured loan where interest is charged at 2% per annum and payable on terms agreed annually for R1 246 922.”

IMR General Trading, Chair, is a company that was ultimately owned by the Worlds Window Group.

ADV CHASKALSON SC: Then, Mr Holden, can we just describe the people who we will come across in relation to
10 the Worlds Window Group maybe starting with Mr Piyoosh Goyal who we have met already but you describe his Worlds Window role at page 223 of bundle 6A, paragraph 139. 223.

MR HOLDEN: Chair, the key figure here is in the Worlds Window Group for our investigation was Mr Piyoosh Goyal. Mr Piyoosh Goyal was the Chairperson of the Worlds Window Group during the period in which the Transnet kickbacks were paid.

I should mention, Chair, that when this particular
20 story and the connection to Worlds Window Group was made public, the Worlds Window Group effectively erased Mr Piyoosh Goyal from their website and he was no longer a director in the Worlds Window Group. What I was able to do is to look at archived copies of their website which confirmed that previously and during the time in which we

consider he was the Chairperson and he was a director of a number of different Worlds Window Groups at that time - Worlds Window Group companies at that time.

ADV CHASKALSON SC: Can you then go to paragraph 140 over the page on 224, 6A, where you describe other Worlds Window employees who you come across in the Gupta Leaks.

MR HOLDEN: Certainly, Chair, the first individual I indicate there is a Shuchi Bansal who was styled as the
10 executive assistant to the Chairman's office, therefore the executive assistant to Piyoosh Goyal.

An individual by the name of Amit Agrawal who was an accountant at the Worlds Window Group and he corresponded extensively with Ashu Chawla in relation to payments made by Everest Metals FCE in South Africa in relation to a loan back scheme.

Pooja Puri, Worlds Window employee, who corresponded extensively with Ashu Chawla again regarding payments made by Everest Metals FCE.

20 And then finally Lalit Tewari, a Worlds Window employee who the Gupta Leaks record show was involved in running Arctos and operated in Arctos email address. Interestingly Mr Tewari appears to become integrated into the Gupta enterprise as of 2014. My search of the records indicates that from at least March 2014 he was operating in

Oakbay address and an Elgasolve address from at least August 2014.

ADV CHASKALSON SC: Then if I can take you to annexure Z which starts at – let me just get my reference, I think it is bundle 6A.

MR HOLDEN: 597.

ADV CHASKALSON SC: 597. 597 where you have a collection of Gupta Leaks documents showing Piyoosh Goyal's role in relation to the Gupta enterprise. The one
10 document that I would ask you to describe to the Chair is at page 615. 615 of bundle 6A and can you tell the Chair what that is?

MR HOLDEN: Certainly, Chair, this is an email again emanating from the Gupta Leaks, it is sent from Beverley Hardy, an employee of Sahara to Jolene Roux, also an employee of Sahara on the 4 January 2011 with the subject: TNA Dinner Table Allocation. That stands for the New Age dinner table allocation and it attached a spreadsheet with the name ...[intervenes]

20 **CHAIRPERSON:** I am sorry. I am sorry, Mr Chaskalson, I think I have lost you, the last page number I had was 597.

ADV CHASKALSON SC: Sorry, Chair, we have gone down to 615.

CHAIRPERSON: 615.

ADV CHASKALSON SC: Still in the same bundle 6A.

CHAIRPERSON: Okay. Yes, I have got it.

ADV CHASKALSON SC: And maybe if you can just take the Chair again to the covering email that you were describing at 615.

CHAIRPERSON: Yes.

MR HOLDEN: Certainly, Chair. Again this is an email that comes from the Gupta Leaks, the email is saying from Beverley Sahara, that Sahara address, she was a Sahara
10 employee, to Jolene Roux, another Sahara employee, the date is the 4 January 2011 and the subject is:

“TNA Dinner Table Allocation.”

And TNA is an acronym for the New Age. The attachment reads:

“TNA dinner table allocation XLSX”

Which is an Excel spreadsheet.

ADV CHASKALSON SC: And then if you go over the page to 616, is that the attachment or the beginning of the attachment?

20 **MR HOLDEN:** That is correct, Chair.

ADV CHASKALSON SC: And can you take the Chair quickly through 616 and then get to 617 where the critical information is for our purposes?

MR HOLDEN: Certainly, Chair, this is a spreadsheet that sets out the ways in which seating was to be allocated at

the particular that is described here with number 1, the first table being described as the President's table and as you can see there the number 1 entry is President Jacob Zuma and it provides a number of individual who would also be sitting at the table with the former President.

Table 2 is Ashu table, which I take to mean Ashu Gupta, who was the Chairman of the New Age at that time and he is sitting with a number of notable individuals including Malusi Gigaba.

10 The third table was the Duduzane table which I take to mean Duduzane Zuma. That is clarified by the fact that the first entry there is provided M D Mabangela and he was a director in Mabangela Investments and it provides a number of different individuals who are sitting there.

And then turning to the entry of relevance here on page 617 is table 6 which is described as Piyoosh table and we can see definitely that this refers to Piyoosh Goyal because he is the number 1 entry at that table allocation.

CHAIRPERSON: And what is happening at table 5, is it
20 one person? And table 4? Or maybe it was reserved for him and whoever he brought along.

MR HOLDEN: I think so. It is not entirely clear which Mr Zuma it is referring to, I am afraid, here.

CHAIRPERSON: Yes, yes, yes. Okay.

ADV CHASKALSON SC: Going to Piyoosh's table, table

6, can you identify any people who would be seated with Piyoosh Goyal?

MR HOLDEN: Certainly. We have entry number three, was the Deputy President Kgalema Motlanthe, although slightly misspelt. And then of interest to this discussion is the entry number 7 which is adviser to Min PE which I understand to mean the advisor to the Minister of Public Enterprises and the first name is given as Siyabonga, I take that to mean Siyabonga Mahlangu, who has given
10 evidence before the Commission already.

And then the entry there at number 8 is DG Public Enterprise, which I take to mean Tshediso Matona, who I think has also given evidence before the Commission.

ADV CHASKALSON SC: Then very briefly because the two Worlds Window entities that we will be focusing on are JJ Trading and Century General Trading. Can you briefly describe to the Chair the relationship between JJ Trading and Century General Trading and the Worlds Window Group?

20 **MR HOLDEN:** Certainly, Chair. The Century General Trading and JJ Trading are both registered in the UAE. The Gupta Leaks makes it very plain that CGT and JJT are both effectively being run by the Worlds Window Group at the direction of, amongst others, Piyoosh Goyal and it was these two companies that were central to entering into

kickbacks with various Chinese rail manufacturers.

ADV CHASKALSON SC: And at page 225 of your report, still bundle 6A, you refer to Ram Ratan Jagati, can you describe to the Chair what you know of Ram Ratan Jagati?

MR HOLDEN: Certainly, Chair. Ram Ratan Jagati appears in the Gupta Leaks on three separate occasions. He is also listed on LinkedIn on various other websites referring to JJ Trading as the managing director or director of JJ Trading.

10 **ADV CHASKALSON SC:** Thank you. Then to move now to the specific contracts involving JJT and CGT of which we are aware, the first is a contract which is attached as annexure A at page 298 of volume 6A. Can you take the Chair to that contract and we have seen it before but if you take the Chair in some more detail now that we are going to be focusing on that contract.

CHAIRPERSON: That is 298?

ADV CHASKALSON SC: 298 at 6A, Chair.

CHAIRPERSON: Okay.

20 **MR HOLDEN:** Chair, this is a described as – styled as an agent agreement which is dated to 13 June 2011. Party A is given as Shanghai Zhenghua Heavy Industries Co Limited which, as I mentioned yesterday, is also referred to by a separate acronym which is ZPMC.

Party B is JJ Trading FCE and it provides a P O Box

address for JJ Trading in Sharjah in the United Arab Emirates and the subject is provided as:

“Contract for two ship to shore container cranes, STS, including repositioning of existing Noell Cranes, an addition 5 number ship to shore cranes for Transnet South Africa.”

And slightly further down on that page under paragraph 1.1 provides the name of the project which then indicates the formal name that was given to the project by Transnet Port
10 Terminals which is given the code iCLMHQ0762.

ADV CHASKALSON SC: And then if you can the Chair to clause 2 of this contract at the bottom of that page 298.

MR HOLDEN: Certainly, Chair. At clause 2 it reads:

“With a view to facilitating the bidding for the project and other relevant matters, party A hereby appoints party B as the agent of party A to assist party A in handling the bidding for the project and other relevant matters as per the terms and conditions of this agreement and party B hereby
20 accepts the appointment of party A.”

ADV CHASKALSON SC: So party B is JJ Trading. Can we look at its obligations under clause 4 on page 299?

MR HOLDEN: Certainly, Chair, at clause 4, 4.1 indicates that:

4.1 “The obligations of party B to be to provide

information about the project to party A, to purchase the tender documents and submit documents to party A, to provide copies of the local laws and safety codes related to the project and information pertaining to local customs.”

- 4.3 To assist the personnel of party A in said country for the duration of the contract including issuing invitation letters, communications with the buyer, hotel reservations, airport pickup and send off.”
- 10 4.4: To communicate with the buyer on behalf of party A and take part in all necessary activities in relation to the project. All declarations, commitments and/or guarantee made by party B to the buyer or any other act of party B that might expose party A to certain obligations shall be approved in writing by party A in advance.
- 4.5 To promote the project in favour of party A.
- 4.6 To provide an interpreter for party A’s personnel in the non-English speaking countries at the stage of
20 bidding, not contract execution.
- 4.7 To ensure that party A’s personnel can legally and uninterruptedly executive this contract. In cases of interruption, such as from union problems, party B shall make positive efforts to eliminate the disturbance and make sure the contract can be

executed smoothly.”

ADV CHASKALSON SC: And then over the page on page 300 clause 5 deals with commission and other fees. Can you take the Chair through – well, how this clause operates?

MR HOLDEN: Certainly, Chair. I should clarify, Chair, that above at 4.8 which I have not read out, which is the other obligation, it reads:

“To protect party A’s interests.”

10 That was party B’s requirements. Chair, this clause establishes a few structure by which party B, which is JJ Trading, would be paid. Under the – there are two methods of payment, that I indicated, at 5.2 the method of payment A. It says:

“Upon satisfaction of all the following three conditions party L shall pay the commission in sum of US dollars of 3% of price A and 85% of price B.”

At 5.1 we indicate that party A’s offer to Transnet is referred to as price A. And party B’s price increase beyond
20 the price A without impact of party is referred to as price B.

CHAIRPERSON: So can you translate that into simpler terms for us or...?

MR HOLDEN: Certainly, as with other contracts we have seen this is an incentive – a contract that incentivises JJT Trading to ensure that Transnet pays an amount over and

above that which had already been – indicated would be the actual cost to the company of providing the contract and any amount that is earned over and above – the contract has already been agreed, 85% of that would be accruing to JJT and 15% would be accruing to ZPMC.

ADV CHASKALSON SC: Thank you, Mr Holden. Is there anything else in this contract that you would want to emphasise?

MR HOLDEN: Not at this moment, Chair.

10 **ADV CHASKALSON SC:** Maybe just to point to the signatories at page 303.

MR HOLDEN: Oh, certainly. We do have, Chair, three signatories. For party B we have a signature there, unfortunately we are not able to identify despite quite extensive investigations.

For party A we have a signature with a handwritten note next to it which appears to read Agwa Shen(?).

ADV CHASKALSON SC: Agwa Shen on behalf of which entity?

20 **MR HOLDEN:** Apologies, Chair. Agwa Shen on behalf of party A, which is Shanghai Zhenghua Heavy Industries Co Limited.

ADV CHASKALSON SC: And have you been able to establish who Agwa Shen is?

MR HOLDEN: I am afraid I have not, Chair.

ADV CHASKALSON SC: That is the first JJT, CGT contract that we have come across. In your report you infer the existence of the Century General Trading contract in relation to the 95 locomotives project, can I take you to Annexure L which is a contract we discussed yesterday. It is at Bundle 6A page 427. And maybe start at 426 and describe to the Chair what it is?

MR HOLDEN: Certainly Chair. At Annexure L we have an addendum to agreement signed between CRRC Hong Kong
10 Company Limited and Regiments Asia Limited and Tequesta Group Limited dated August 2016.

ADV CHASKALSON SC: Now I fear that I have taken you – I may have taken you to the wrong contract, because it doesn't say, if you go to page 4 – I have taken you to the wrong contract, I must apologise for that. It is the earlier addendum that I wanted to – sorry.

CHAIRPERSON: It might be convenient Mr Chaskalson for us to take five minutes while you are looking.

ADV CHASKALSON SC: Thank you Chair, I would
20 appreciate that, my reference is incorrect.

CHAIRPERSON: Ja, let us take five minutes adjournment. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Chair we have sorted ourselves out, I also have a message from Secretariat.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Unfortunately due to leave arrangements there is only one person at Secretariat working with documents today, preparing for the rest of the week and he was stopped by security in this building who searched his car before he came in, which is why he was
10 delayed.

CHAIRPERSON: Oh, okay, no that is fine. It is not something that happens often.

ADV CHASKALSON SC: It does seem to be an extreme situation, I also know from the way in which I had Secretariat running around with my late requests for documents this week that they are short-staffed and being possibly being poorly treated by the Evidence Leaders, myself included.

CHAIRPERSON: No it is just that at least if there is an
20 explanation one can understand if there is a good explanation. It is just that if there is no explanation it allows a situation where things just deteriorate.

ADV CHASKALSON SC: Yes indeed. No, no that is ...[intervenes]

CHAIRPERSON: Ten minutes, tomorrow it is 20 minutes

the next day it is 30 minutes but at least if we know then it is okay and if there must be some interventions then they can be considered. Okay, no that is fine, thank you.

ADV CHASKALSON SC: Thank you Chair. We are on page 427 now, Bundle 6A.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And Mr Holden can you address Clause 1.4 of that agreement, or maybe let us start with the cover page of the agreement so we know what the
10 agreement is, and that is at page 426.

MR HOLDEN: Certainly Chair at page 426 we have the cover page which is an addendum to an agreement signed between CRRC Zhuzhou Locomotive Company Limited and Regiments Asia and that is dated August the 26th, August 2016.

ADV CHASKALSON SC: And Chair you will recall we discussed this agreement last night.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Mr. Holden can you take the
20 Chair to clause 1.4 and show what we can infer in relation to in an anterior agreement involving Century General Trading?

MR HOLDEN: Certainly Chair clause 1.4 reads:

“As for the financial conversation to Century General Trading FCE given as CGT under the consultancy agreement dated 14 April 2012 consultancy

agreement Regiments shall resolve to speak with CGT through amicable consultation and show that there is no further dispute with CRRC ZELC from either side.”

Which I think it is pretty clear that we can identify that there was a consultancy agreement between CGT and CRRC that was originally dated the 14th of April 2012.

ADV CHASKALSON SC: And what is the subject matter of this addendum so that we can then infer what the CGT
10 agreement related to?

MR HOLDEN: Certainly Chair this is in relation to the 95 elective locomotive project.

ADV CHASKALSON SC: Then just to confirm this point if we can go to the workings document that you took to the Chair, that you took the Chair through yesterday that is in Bundle 6A page 420, 420, and can you take the Chair to the parts of that document that confirm that there was previously an arrangement between CSR and CGT in relation to the 95 project.

20 **MR HOLDEN:** Certainly Chair as we discussed yesterday this was a workings document that was distributed eventually to Ashu Chawla and it indicates the amounts of money that were due to be paid under various kickback contracts in relation to the 359,100 and 95 project workings.

As we can see on the fourth column we have the 95

project under the heads, it provides the total value of the contract and thereafter it provides a calculation of the amount to be received by CGT and the rest to be paid to the Gupta Enterprise, that is the entry to the left reads:

“JJT/CJT and expenditures.”

And the 95 project that says:

“Out of 20% receivables CGT receive 15% and expenditures is 85% percent.”

The line above confirms that the total kickbacks on that
10 contract was to be 20%. So reading those two together we understand that CJT was due to receive 15% of that 20% kickback.

ADV CHASKALSON SC: And while we on this workings document. Can you take the Chair to the provisions which show that JJT, that there was an arrangement between China South Rail and JJT in relation to the 359 project and the 100 project?

MR HOLDEN: Certainly Chair again at the heads we have 359,100 project which are treated together in the
20 spreadsheet. It provides as under receivables from CSR 21% as total receivables, 2% advance excess fee and 19% receivables on actual basis when it is due from CSR and the line below that is JJT/CJT and expenditures and that reads out of 2% excess fee, 1% excess fee for JJT and 1% expenditures out of 19% CSR receivables, JJT who receive

15% and expenditures is 85%.

ADV CHASKALSON SC: And then to finish this sort of digging in relation to the 359 contract. Can I ask you to turn to the contract that we discussed with the Chair yesterday, it is a contract between Tequesta and CSR 18 May 2015, it is at page same bundle, Bundle 6A page 365? It is Annexure F maybe if we can just go to the cover page which is on 358 and then come down to 365.

MR HOLDEN: Certainly Chair at page 358 we have cover
10 page which reads:

“Business development services agreement.”

Entered in between CSR Hong Kong Company Limited with Tequesta Group Limited with an agreement date of the 18th of May 2015.

ADV CHASKALSON SC: And then if you go down to clause 3.3 on page 365.

MR HOLDEN: Certainly Chair if I may it might be worth clarifying it at 362 the definition is given for this project as project 359 so that you know it refers to the 359 project. We
20 turn to 365 clause 3.3 reads:

“The company has advised Tequesta that the previous agreement had been signed between CSR Zhuzhou Electric Locomotive Company Limited and JJ Trading FZE hereinafter referred to as JJT. However the company advise us to Tequesta that in an event

that JJT disputes or contest the cancellation or none payment in a court of law and if the court decrees that the agreement with JJT is valid or the mutual agreement is reached between Tequesta and JJT in the financial compensation to JJT which will not exceed the retention amount that is 15% of the total amount payable to Tequesta and this agreement will be deducted from the amount retained from Tequesta as per clause 6.16 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 circumstances the invoices the retention to the company shall not be claimable and returnable to Tequesta. Tequesta shall resolve dispute with JJT through amicable consultation and ensure there is no further dispute with the company from either side.”

ADV CHASKALSON SC: So that clause notes that there has been a previous agreement between CSR and JJT in relation to the 359 project?

MR HOLDEN: That is correct Chair.

CHAIRPERSON: Not so long ago you read a paragraph or a clause in an agreement that seems very similar to this one. Would that have been between other parties? I mean a few

minutes ago I think it was those pages that are not very clear that are very dark.

ADV CHASKALSON SC: Chair if I can assist you that was the clause in Annexure L.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Which that relates to 95 Electrical Locomotives Project and this one to the 359.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So the clauses are very similar.

10 **CHAIRPERSON:** And the parties are?

ADV CHASKALSON SC: The parties are the same.

CHAIRPERSON: Oh okay, thank you.

ADV CHASKALSON SC: Oh sorry when I said the parties are the same. The parties to those the original agreement had different parties because the original agreement on the 95 Locomotives was CGT and the original agreement on the 359 was JJT.

CHAIRPERSON: Yes, like I said there must be some personality, overlapping personality at least if there are
20 clauses that are similar, maybe.

ADV CHASKALSON SC: Maybe Mr. Holden is the one to ask on that.

CHAIRPERSON: Is that something you are able to...[intervene]

MR HOLDEN: Yes Chair CJT is another company that

effectively is directed by the World Window Group another entity that effectively is a sister company to JJ Trading.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: There is another, there is evidence of another possible contract with CGT. Can I take you to page 304 of the bundle which is, this is an agreement between CNR and I think Tequesta. Ja, CNR and Tequesta at page 304 and it is Annexure B, Bundle 6A. Can I ask you to go down to page 306 and there you - can you read to the

10 Chair what it says under agreement date and what you infer from that?

MR HOLDEN: Certainly Chair there is an agreement date that is entered in there which show mean and refer to the 8th of July 2013 being the date of the execution of this agreement which I take to mean that was an agreement that preceded this agreement between CNR and the Tequesta Group.

ADV CHASKALSON SC: Why is that the case? Why do you make that inference?

20 **MR HOLDEN:** Because the date of the agreement is the 8th of July 2013 which is prior to the agreement date of this particular exclusive agency agreement. We also notice that I am sure the Evidence Leader we will get to it but there are scattered references to CGT throughout the document.

ADV CHASKALSON SC: Well maybe if I can take you to

one of those on page 309 clause 7.4, Bundle 6A, 309.

CHAIRPERSON: 609?

ADV CHASKALSON SC: 309 Chair, 309.

CHAIRPERSON: Three zero nine?

ADV CHASKALSON SC: Three zero nine.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And Mr. Holden can you take the Chair to what you see is significant there.

MR HOLDEN: Certainly, clause 7.4 reads:

10 “The success fee of 2% on the total value of the project as stated above were paid by CNR Dalian Locomotive and Rolling Star Company Limited to Century General Trading FZE hereinafter refer to RAL which is actually Regiments Asia Limited which is duly incorporated existing and the company’s ordinance of Hong Kong and having as registered address at P.O. Box 17398 Hong Kong UAE duly authorised and represented by Mr. Salim Essa.”

ADV CHASKALSON SC: Have you been able to trace any
20 payments from CNR to Century General Trading in respect of the 323 project?

MR HOLDEN: No Chair I have not and it appears that by the time that project was finalised with Transnet the relationship with CGT had terminated.

ADV CHASKALSON SC: And earlier you mentioned that

the date of this agreement, the dates, the actual date of this agreement was 20 May 2014. Can I just ask you to go to page 305 to show the Chair were that date is?

CHAIRPERSON: Well I was still trying to sort out what I think you know because the agreement dates there refers to 8 July but earlier on it is given as 20th May so I was still...[intervene]

ADV CHASKALSON SC: Indeed, Chair.

CHAIRPERSON: ...trying to understand what is going on, ja
10 okay alright continue.

ADV CHASKALSON SC: Mr. Holden maybe if you can just explain your thesis or your theory to the Chair in relation to that to correct that or to why you having that.

CHAIRPERSON: Because I have gone to the end of the agreement to see if I would see any dates there but then it says the date written above. So are you able to shed light?

MR HOLDEN: Certainly Chair my theory is that there was a contract that was entered into between CNR and CGT in relation to this contract which was dated July 2013 and then
20 this was superseded by this agreement but in preparing the documentation insufficient care was taken to replace certain key clauses in the original contract such as the agreement date and you see for example CGT appearing and RAL appearing where I think they really mean Tequesta Group. So clearly there was a prior agreement that they then edited

copied and pasted certain things but retained certain elements of the original contract by mistake.

ADV CHASKALSON SC: And just on that date of 20 May 2014 maybe to complete this sequence if one goes to Annexure C...[intervene]

CHAIRPERSON: I have not realised that even the years are different.

ADV CHASKALSON SC: Indeed Chair.

CHAIRPERSON: Yes, okay alright.

10 **ADV CHASKALSON SC:** Annexure C at page 316 we see that there was another contract also concluded on 20 May 2014. Can you tell the Chair what that contract is?

MR HOLDEN: Certainly Chair this is an exclusive agency agreement between CNR Dalian Locomotive and Rolling Stock Company with Regiments Asia and on the following page it indicates the agency agreement is dated the 20th of May 2014.

ADV CHASKALSON SC: Then can we go back to the working documents at page 420. You have taken the Chair
20 through this document in some detail last night and I am not going to ask you to do that again but if you go up to the covering email I just would like us to get those dates refreshed in our memories of how this document travelled over time. The covering emails at page 419 and if you can just take the Chair quickly through those three dates.

MR HOLDEN: Certainly Chair we have three dates appearing in this email chain. The earlier state which seems to initiate the email chain is the 6th of January 2015 and that is the email sent from Rupesh Bansal to Sharma. The following day Sharma forwarded that email to Businessman to whom we understand that to be Salim Essa that was on the 7th of January and then...[intervene]

CHAIRPERSON: Just one second Mr. Holden before you proceed I see that I was making a note here yesterday in
10 relation to Sharma but I did not complete it. You said he is very senior executive at and then I did not put the name.

MR HOLDEN: At CSR.

CHAIRPERSON: At CSR, okay thank you yes you may continue.

MR HOLDEN: And then the final date that is indicated there is that businessman or Salim Essa sends the document to Ashu Chawla on the 22nd of March 2015. So the email chain begins on the 6th of January 2015 and the final one that we see is the 22nd of March 2015.

20 **CHAIRPERSON:** Now I want to just put a question here Mr. Chaskalson and obviously Mr. Holden is listening. Is it difficult to get conclusive evidence as to whose email address Businessman was or who Businessman was because I think the Fundudzi Report said probably it was Mr. Salim Essa. Is that something that has been done somewhere?

ADV CHASKALSON SC: Chair, what we will do in the cause of our – at some stage in presenting evidence is we will produce a collected bundle of all of the Businessman emails that we have.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Our thesis certainly is that it was Salim Essa.

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: It all - everything points to the
10 fact that it was Salim Essa.

CHAIRPERSON: Yes, no that is alright if - because I think from what I read in the Fundudzi Report they just made that statement that it was probably him but I do not remember seeing the factual basis for that conclusion. I would like a factual basis.

ADV CHASKALSON SC: Certainly Chair what we can do is produce the full bundle the businessman letters and show that they are consistent with businessman being Salim Essa and it is difficult to see them being consistent with
20 businessman being anyone else.

CHAIRPERSON: Okay, no that will be helpful. Thank you.

ADV CHASKALSON SC: Sorry Mr. Holden we were talking about the dates. Yesterday we had discussed briefly certain travel arrangements that were made in late February 2015 were Sharma, Salim Essa, Tony Gupta, Aashika Singh and

Anoj Singh were all booked in the Oberoy in the last week of February 2015. And you had also describe the breakdown of the relationship between Worlds Window and the Gupta Enterprise around this period and how on the other side of this period we see the Worlds Window entities being supplanted and replaced in the contracts with CSR and CNR by Tequesta and Regiments, I just wanted to recap that.

What we are going to do now is, is to go back in time to a period where Worlds Window and the Gupta Enterprise
10 were working happily together and look in some detail at what you have described previously as the Hawala Ledgers because that is where we get much of our information about movements of funds between these two groups and also payment of kickbacks to JJT and CGT.

So can I ask you to go to page 213, Bundle 6A where you start describing the Hawala Ledgers. And maybe if you could begin at 167, paragraph 167 on page 230.

MR HOLDEN: Certainly Chair at paragraph 167 I indicate...[intervened]

20 **CHAIRPERSON:** Hang on, hang on you said page 213?

ADV CHASKALSON SC: Two three zero, Chair.

CHAIRPERSON: Two three zero?

ADV CHASKALSON SC: Two three zero.

CHAIRPERSON: Okay, I have got it. It is paragraph 167, is that right?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Ja, okay.

MR HOLDEN: What I indicate there is that on the 19th of August 2013, but Chair I must indicate that that actually the date is incorrect there it is the 19th of August 2015 not 2013 that is a typo.

ADV CHASKALSON SC: No I think it is 2013, it is 2013 well maybe quickly we can go to the document thereafter.

MR HOLDEN: I was reading in the bundle this morning and
10 I think...[intervene]

CHAIRPERSON: Okay we correct the date later?

ADV CHASKALSON SC: The date does not need to be corrected Chair.

CHAIRPERSON: Oh okay.

MR HOLDEN: The point is I have misdirected myself reading the bundle this morning.

CHAIRPERSON: Okay, alright.

MR HOLDEN: So on the 19th of August 2013 Ronica Ragavan sent an email to Ashu Chawla with the subject line
20 SA1(2-XLSX) and wrote:

“Is this what you are looking for?”

ADV CHASKALSON SC: And Chair maybe if we can go to that email and the document underneath it which are at Bundle 6A page 625.1, 625.1.

CHAIRPERSON: Yes.

MR HOLDEN: Is it bundle A or bundle B?

ADV CHASKALSON SC: Bundle A. You missing the point 6A, 625.1.

MR HOLDEN: I appear to be.

ADV CHASKALSON SC: Well I cannot ask you to identify an email that you cannot see.

CHAIRPERSON: I got it this time. So often he has got it and we do not have it.

ADV CHASKALSON SC: Can I ask you then to do it this
10 way. Is 626 the spreadsheets that you call the Hawala
Ledgers and that was attached to the email to which you
referring in your bundle in your report, ah Mr Sello's got
page 65...[intervene]

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: Maybe if you can just confirm
that 65.1 is the email to which you are referring?

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: And then the spreadsheet that
starts at page 626 that was attached to that email is quite a
20 confusing document, can you take the Chair through that
document explain what it is and how it operates?

MR HOLDEN: Certainly Chair it might be easier with
reference to the screen. Is your screen on Chair?

CHAIRPERSON: It is not on. I do not know who needs to
do what to put it on. Our technical team when we need them

the most they are not here. One of the people who normally helps is sick his not here Reverend Stemela and somebody else that is usually helpful is also or does not seem to be there.

ADV CHASKALSON SC: Chair we will be going to these spreadsheets in some detail so might I – I must apologise but can we ask for another five minutes' adjournment because it is not just the one time we will be using the monitor it will be much more Chair.

10 **CHAIRPERSON:** Okay, alright we will adjourn.

ADV CHASKALSON SC: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV CHASKALSON SC: Thank you Chair. So this set of ledgers that starts on page 628 Annexure AA oh sorry 627

MR HOLDEN: 626.

20 **ADV CHASKALSON SC:** 626 I am not going to go any lower than that. We call the Hawala ledgers or you call the Hawala ledgers can you explain to the Chair how this ledger system operates?

MR HOLDEN: Certainly Chair. So what we have is effectively a recordal of transactions of money flows both in cash and as electronic transfers between companies falling

under the Worlds Window Group and companies falling under the Gupta Enterprise. This is all stored on a shared ledger which has a running total balance which indicates at any one time who owes what amounts who which individual and probably the best way to describe the sheet – I should indicate here Chair that there are two sheets of material interest.

The first I have indicated here which reads Account 1 and then in brackets [2] and for your records Chair that
10 begins at 628 of Bundle A and runs to...

CHAIRPERSON: Do you say it begins at 628?

MR HOLDEN: That is correct Chair.

CHAIRPERSON: Okay.

MR HOLDEN: And that includes transactions beginning on the 7 January 2010 and the final transaction is indicated as the 29 August 2012 on that particular sheet.

CHAIRPERSON: Hm.

MR HOLDEN: And then there is an additional sheet which is just referred to as Count – Account 2 which continues the
20 transaction records and that runs from pages 626 to 627 in Bundle A. And the first transaction there is the 26 September 2012 and then it concludes with the final transaction of the 22 February 2013.

CHAIRPERSON: Okay. No I think you were too fast for me.

MR HOLDEN: Okay.

CHAIRPERSON: Okay. Okay. First we were at page 626 and then you said let us go to 628

ADV CHASKALSON SC: Chair I think – I think the confusion is that the document is not structured chronologically.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So to start chronologically one needs to go to 628.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Where there is one spread sheet.

10 **CHAIRPERSON:** Okay.

ADV CHASKALSON SC: And then there is a second spread sheet that is later in time but – which is at page 626.

CHAIRPERSON: Oh okay so let us start at 628 just repeat what you said because you left me behind.

MR HOLDEN: Okay certainly Chair. Apologies.

CHAIRPERSON: Ja.

MR HOLDEN: So what we have at 628 is the Hawala ledger. You may notice at the very top of the Hawala ledger it has in purple Worlds Window which indicates that Worlds Window is
20 the owner of this ledger.

And the first transaction we can see there is on the 7 January 2010 and the final transaction which I think appears on page 630 is the 29 August 2012.

CHAIRPERSON: Yes I have seen that ja.

MR HOLDEN: And then chronologically the – the accounts

continue by going back to 626.

CHAIRPERSON: 626. Okay.

MR HOLDEN: And we can see there the account transactions resume.

CHAIRPERSON: Hm.

MR HOLDEN: With the first date of entry being the 26 September 2012 and then the final transaction which is also recorded on 626 is given as the 22 February 2013.

So reading these two spread sheets together or these
10 two sheets together we were able to track the Hawala arrangement between the Gupta Enterprise and the Worlds Window network between January 2010 and February 2013.

ADV CHASKALSON SC: And can you describe to the Chair what the columns refer to and how the ledger works?

MR HOLDEN: Certainly Chair I am going to choose an example which might be easy to work through which I have indicated on the screen. I will highlight just so that it is a little bit more legible.

ADV CHASKALSON SC: And for record purposes can I –
20 can you just tell me where you are in which – the 22 June 2011?

MR HOLDEN: 23 June 2011 and that is at row 76 and if I was to check the bundle it is the final entry on

ADV CHASKALSON SC: Page 628?

MR HOLDEN: 628.

CHAIRPERSON: Is that the 23 June 2011?

MR HOLDEN: That is correct Chair.

CHAIRPERSON: Hm.

MR HOLDEN: So to do – describe the operation of the Hawala ledger obviously on the left hand side we have the date of a transaction which here is the 23 June 2011. And then we have two parties to the transaction.

In the first column it is JJ for JJ Trading. In the third column it indicated Global Corporation LLC which as we
10 described in relation to the Estina and the Liebherr discussions is a Dubai based company controlled by the Gupta Enterprise.

ADV CHASKALSON SC: Can I stop you there Mr Holden. Is the party in the second column always a Worlds Window party?

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: And then the party in the third column is always a Gupta Enterprise party?

MR HOLDEN: That is correct Chair. Unfortunately what that
20 means is that there are transfers to and from the Gupta Enterprise and the Worlds Window Group so to ascertain the direction of travel of funds we will get to that shortly you have to sort of read the Hawala ledger amounts according to integer but in the – in column D which is the fourth column it provides a method of payment and in this case it says bank

by which we understand to mean a bank transfer. But there are other cases where it refers cash in hand or cash to South Africa or some other mode of payment.

Then it gives the location of the transfer which in this case is Dubai. And then the following columns which run from F to I provide the transaction in a particular denomination where it is a rand amount it is column F and then there is an exchange rate calculation tool there and then if it is in the amount of Indian Rupees that appears in
10 column H over here that also is an exchange rate between the dollar and the Indian Rupee at that particular transaction date.

And then finally it – there is an amount here which is the US Dollar equivalent of any of the transactions if they take place in Rand or Indian Rupees but for our example here the transactions took place in Dollars so it is just reflected in – in column J as \$4 million. And this is where it gets slightly un – slightly unintuitive.

The Hawala ledger is constructed as if from the
20 perspective of the Worlds Window Group. So whenever a payment is made from a Gupta Enterprise company to the Worlds Window Group it is reflected as a positive integer and when an amount is made the other way it is made – referenced as a negative integer which then has an impact on the running total balance here at column K.

ADV CHASKALSON SC: Just hold on. I may be confused but I think I need to correct you there. So if you – that when a positive payment – when a positive number is reflected that is a payment from Worlds Window to the Gupta Enterprise and so the running balance is the amount standing to the credit of the Worlds Window Group as a whole. Is that correct?

MR HOLDEN: That is correct Chair. I – the spread sheet is slightly unintuitive and I tend to get – I have to work through
10 it every single time I look at it but yes the evidence leader is correct here.

So in this case if we read this particular column – oh sorry this row what we understand it to mean is that on the 23 June JJ Trading transferred to Global Corporation via a bank in Dubai \$4 million and that increased the balance in the Hawala ledger to \$4 317 281.00 which we understand to mean that according – at this particular point in time as the – as my evidence leader indicted the Worlds Window Group was in credit to that amount as in if they were to settle up
20 this balance at this point in time and to try [00:10:01] Euro balance the Gupta Enterprise would make – need to make a payment of \$4.3 million to settle it.

ADV CHASKALSON SC: Now you have done a fairly extensive exercise now that we have access to bank statements and bank statements in the Gupta Leaks to

corroborate or to confirm the transactions reflected in the Hawala ledger. Can I take you to Annexure RR which is at Bundle 6B at page 989 – 6B – 989. And can you tell the Chair what Annexure RR is?

MR HOLDEN: Certainly Chair. Annexure RR is an exercise where I extracted payments of interest that were reflected in the HSBC transaction records in relation to both Century General Trading and JJ Trading.

ADV CHASKALSON SC: And if we look at page 989 what –
10 what is that table?

MR HOLDEN: Certainly Chair. This is a table that indicates all of the payments that are made from JJ Trading FZE to Gupta Enterprise companies. The vast majority are made to Global Corporation LLC but as you see on the top line we have an entry for SCS Technologies Limited which is a Gupta Enterprise company based in India and below that is an amount that was paid to Sahara Computer and Electronics.

ADV CHASKALSON SC: And this table is extracted from the HSBC records or from the records that have been furnished
20 to us by HSBC?

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: Can we do an exercise of matching these authenticated JJ Trading transactions with entries on the Hawala ledger? And for this Chair I think what might be easiest – I mean in due course again we will give you this

table with the references and line references but for present purposes Chair it may make sense to keep that page of your file open page 989.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And then Mr Holden will go to the spread sheet and we can visually see the matching transactions.

CHAIRPERSON: Yes. Okay.

ADV CHASKALSON SC: Mr Holden can you take us to the
10 entries on the Hawala ledger that match the entries that we see on the HSBC records extracted at Annexure RR?

MR HOLDEN: Certainly Chair. So the first entry under Annexure R is a transaction for ..

CHAIRPERSON: That is RR ha or is it R? You said R?

MR HOLDEN: Annexure RR – double R.

CHAIRPERSON: Ja okay. I just want to make sure the record does not mislead.

MR HOLDEN: Okay.

CHAIRPERSON: Ja okay. RR we – ja okay.

20 **MR HOLDEN**: And we have an amount that is reflected on the 2 January – it is actually sorry indicated on the – on Annexure RR as the 3 January 2012 and we can see an entry against Sahara Computer and Electronics that is the second entry on Annexure RR page 1. And the transaction date is given as the 3 January 2012 and the transaction amount is

\$2 146 684.46 and that then appears on the Hawala ledger at row 138 of the sheet Account 1[2] and if we scroll to the right here so we have the 2 January JJ and Sahara Computers were the two entities via a bank in Dubai and the amount is then given as 2 146 700.00 US Dollars which is slightly more than the transaction amount indicating here. I think the difference is most likely a transaction fee that has been applied by the bank.

ADV CHASKALSON SC: Next entry.

10 **MR HOLDEN:** On the 9 January 2012 we have an entry in the – in Annexure RR for – let me just mark the decimal points quickly so I do not get this wrong – for a – for a \$100 000.00 is that correct?

CHAIRPERSON: Ja that is 100 000.00.

MR HOLDEN: Yes \$100 000.00 and then if we go to the 9 January it probably appears the 8 January we see at row 145 of the Hawala ledger we see an entry for the 8 January again involving JJ and Global Corporation. The mode of payment is bank. The country is Dubai and the amount here is
20 \$100 000.00.

So we have effectively the same transaction with a slight difference of date one indicated the date of – probably the date of payment and the second is the value date – the amount that – the date it actually arrives in the beneficiary account.

ADV CHASKALSON SC: And if you go up one entry you will get another match?

MR HOLDEN: Certainly. One entry below the entry we just described in the Annexure RR we have a transaction validate of the 9 January 2012 an amount of \$650 000.00 from JJ Trading to Global Corporation LLC and that then appears at row 144 of the Hawala ledger sheet account 1[2] and again we have 8 January as the date the two parties are JJ Trading and Global Corporation. A transfer in a bank in Dubai and
10 the amount is indicated to the far right as \$650 000.00.

ADV CHASKALSON SC: Mr Holden we have done a lot of these exercises over the last few days can I just ask you are there any of these RR entries between JJ and Global that do not appear in the Hawala ledger?

MR HOLDEN: I will have to double check because there was a tracing exercise that I did at Annexure SS. There may be certain payments here that do not reflect in the Annexure SS. I need to double check that.

ADV CHASKALSON SC: Maybe let us go to Annexure SS
20 and you can explain to the Chair what Annexure SS is? It is at page 996 Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: And if you take the Chair through Annexure SS.

MR HOLDEN: Certainly Chair. So Annexure SS is a

corroboration exercise that I undertook using some of the records that were provided to me by the commission and what I attempted to do in Annexure SS was confirm as many of the transactions and the various internal Gupta Enterprise accounting records against bank records.

So at SS page 1 that is my attempt to verify transactions that appeared originally as Annexure O to my Estina – apologies it is Annexure O to the Transnet bundle which is within Bundle 6 and then I indicate where I found a
10 confirmatory bank statement. Annexure SS – page 2 of Annexure SS is the same exercise that I performed in relation to what I called the UAE ledgers that we dealt with extensively in relation to Estina. And Annexure – page 4 of SS – of Annexure SS which appears at 999 of bundle 6A is then the Hawala ledger where I have extracted all the payments in the Hawala ledger where I could find a confirmatory banking record of some description.

ADV CHASKALSON SC: And on Annexure SS 4 how many Hawala ledger entries were you unable to confirm?

20 **MR HOLDEN:** Chair in the Hawala ledger there are a total of 262 transactions that are indicated. Of those 195 transactions were bank transactions rather than cash transactions.

The total bank – the total number of transfers that occurred in India were 31 and the reason I indicate that is

because we do not have documentation that will allow us to verify those source of payments.

So for those transfers where we had a reasonable chance of success in terms of tracing payments the total bank transfers in the Hawala ledger made either in Dubai or South Africa was 164.

There are 67 cash transactions that we cannot trace. So of the 164 potentially traceable bank transfers we can find 86 corroboratory or confirmatory banking records. 10 Partially that is because I believe that JJT and CJT at the time were operating accounts outside of the HSB network where we have bank statements.

Where we have more reliable indication of the accuracy of the Hawala ledger is in relation to transfers that happened within South African where the banking records are far more complete. There I identified 62 different transactions.

Of those 62 transactions I made clarificatory notes in relation to 8 where I indicated perhaps the date might be 20 slightly wrong or the amount is slightly mismatched but only one transaction for which I could find no records. So of these 62 South African transfers we have the most complete bank records who – I was able to identify a confirmed 61 out of 62 transactions.

ADV CHASKALSON SC: You say that you believe that JJT

had a bank statement – was operating bank accounts other than the HSBC account. Can I take you to the HSBC records for JJT. I just want to get the correct reference. It will be Bundle 6B 995.

CHAIRPERSON: Bundle 6B?

ADV CHASKALSON SC: 6B.

CHAIRPERSON: Okay 99?

ADV CHASKALSON SC: 995 bear with me for one moment Chair. It is...

10 **CHAIRPERSON**: Okay.

ADV CHASKALSON SC: 995.19. And Chair the records that HSBC were able to provide us included any records with a counter party to which JJT – involving a transaction to which JJT was a counter party. So it was not just records where JJT had an HSBC – records of the HSBC bank accounts of JJT it also included records where other parties with HSBC bank accounts transacted with JJT at non-HSBC banks but of course where – what HSBC could not give us was records of where a non-HSBC party transacted with JJT at an account
20 other than the HSBC account. But for present purposes Mr Holden can you identify on the JJT records from 995.19 any JJT accounts that are not HSBC accounts?

MR HOLDEN: This is slightly difficult to read Chair. I am afraid I do not know offhand but I can do a quick investigation.

ADV CHASKALSON SC: Let me give you a – let me give you an example for instance. If you look at places where – well maybe we should not do this on the fly but actually come back with a list of the JJT – with the known JJT accounts that are evidenced in this set of transaction records from HSBC where JJT holds banks other than at HSBC. We have a – we have a collection of bank accounts of that nature.

CHAIRPERSON: Okay.

10 **MR HOLDEN:** I have actually now identified a couple of them.

ADV CHASKALSON SC: Maybe if you can do so now can you alert us to one or two?

MR HOLDEN: Certainly Chair. If we refer to the – the spread sheet in relation to the transactions I have quickly just done a filtering of those transactions on the screen here and I have indicated the way I filtered it is so that I am only selecting payments to JJ Trading and then it indicates the beneficiary account numbers here and then the beneficiary
20 banks over here.

And as we can see there is quite a large number of banks outside of the HSBC network that includes Habib bank in Zurich, the Bank of Baroda which is in the UAE. An Emirates bank account which is also located in the UAE that is Emirates MBD Bank.

We also have a National Bank of Ras Al-Khaimah also registered in the UAE and I think that is the last of the banks. So we see at least I think it is by my calculations here it is four separate accounts that do not fall within the HSBC network.

ADV CHASKALSON SC: And of course there may well be transactions into those accounts – if transactions into those accounts are not made by HSBC parties we will have no records of them?

10 **MR HOLDEN:** That is correct Chair.

ADV CHASKALSON SC: Can we now go back to the Hawala ledger and look at kickback payments that are reflected in the Hawala ledger? And can we stop...

CHAIRPERSON: And that is in Bundle?

ADV CHASKALSON SC: Bundle 6A Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: From page 4 – 629 – 629.

CHAIRPERSON: Oh that is – that is where we had opened before we went to Bundle 6B?

20 **ADV CHASKALSON SC:** That is correct Chair. And can I ask you first Mr Holden to go to a transaction that appears on page 629 in the written bundle and is dated 22 December 2011? Can you find that transaction?

MR HOLDEN: Yes I can I have identified here on screen Chair.

ADV CHASKALSON SC: And can you explain that transaction to the Chair?

MR HOLDEN: Certainly. What we have here is a – the date is given as the 22 December 2011 and the two parties are given as JJ Trading and Shanghai Zhenhua Heavy Industries also referred to as ZPMC and as we discussed earlier JJ Trading and this company had entered into a kickback arrangement in relation to the provision of cranes. It indicates a payment was made via a bank transfer via a bank
10 account in Dubai and the amount is listed as \$969 086.00.

ADV CHASKALSON SC: Then can I ask you to go over the page onto 630 and the transaction on the 31 March 2012 and tell the Chair what you see there?

MR HOLDEN: Certainly. Chair at row 178 of the sheet titled Account 1[2] we have a transaction that is dated the 31 March 2012. The two parties are indicated as JJ for JJ Trading and Shanghai Zhenhua Heavy Industries. The mode of payment is given as bank. The location of the bank transfer is Dubai and the amount indicated here is
20 \$969 086.00.

ADV CHASKALSON SC: Then if you go down to page 633, and I think this is duplicate of the 22 December payment but can you just check that?

MR HOLDEN: I am afraid. I am slightly lost.

ADV CHASKALSON SC: So this is a payment also on

22 December 2011. It is reflected at page 633.

MR HOLDEN: 633?

ADV CHASKALSON SC: Ja, that is correct.

MR HOLDEN: And the date? I am afraid I have lost you here.

ADV CHASKALSON SC: 22 December 2011.

MR HOLDEN: At row 134?

ADV CHASKALSON SC: That is correct. The amount... As I read it, that is a duplicate of an earlier transaction. It is on
10 a separate ledger. But I may – I mean, I am not sure if you can comment on that?

MR HOLDEN: No. If you... I will just double check that quickly. I am afraid I do not see that duplication. The confusion may arise Chair because there are three worksheets in this particular – say three spreadsheets to this particular workbook.

And the – one of it is indicated as account 1 which is the third one. Over is exactly the same as account 1(2). So it is not actually duplication.

20 I just think it is in the printing. It was effectively printed two copies of the same ledge sheet.

ADV CHASKALSON SC: Oh. But can I ask you to go to another transaction on page 626, the latest – to the last of the ZPMC transactions, 28 January 2013, page 626.

MR HOLDEN: 28 January, is that correct?

ADV CHASKALSON SC: 28 January 2013.

MR HOLDEN: Certainly Chair. Here at row 38 of the sheet entitled account 2 in the workbook.

CHAIRPERSON: Hang on. Did you 626?

ADV CHASKALSON SC: 626 Chair.

CHAIRPERSON: 626. Okay I am there. The date is 28 ...[intervenes]

ADV CHASKALSON SC: 28 January 2013.

CHAIRPERSON: Oh, okay. Ja, I can see it. Okay you may
10 continue.

MR HOLDEN: We have an amount of – on the 20th of January, the two parties again are JJ Trading and Shanghai Zhenhua Heavy Industries. The motor payment was via bank in Dubai and the payment amount is reflected as 1 245 974 Dollars.

ADV CHASKALSON SC: Now these items when they appear on the Hawala Ledger, appears negative numbers. Can you explain to the Chair why that is the case?

MR HOLDEN: Certainly Chair. My understanding is that
20 because the Hawala Ledger is a recordal of the running balance between the Gupta enterprise and the World Windows Group. This was effectively accounted as a payment that was originally tendered for the benefit of the Gupta enterprise rather than the Worlds Window Groups.

ADV CHASKALSON SC: And why would that translate into

a negative number in the ledger?

MR HOLDEN: Because that would require... I always misdirect myself here. The negative amount is an indication of a deduction from the running total and the running total is the amount that is owed by the Worlds Window Group to the Gupta enterprise where ...[intervenes]

ADV CHASKALSON SC: [laughs] [Speaker unclear.] The running total is the amount standing to the credit of the Worlds Window Group.

10 **MR HOLDEN**: Correct.

ADV CHASKALSON SC: So if they get paid an amount – if they receive an amount that is due to the Gupta enterprise ...[intervenes]

MR HOLDEN: That is ...[intervenes]

ADV CHASKALSON SC: ...then the amount standing to be a credit drops.

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: While we are on these ledgers, can we look at two more payments, still on the same page,
20 626. A payment made by CSR Locomotive on
29 December 2012.

MR HOLDEN: Certainly Chair. This appears at row 23 of the sheet account 2, and again, the date is indicated as the 29th of December 2012 and the two parties are indicated as Century, which I take to mean Central General Trading, and

the counter party is CSR Locomotive. Slightly miss-spelt. The mode of payment is banked or it does not actually give the rejection. And then the amount is indicated as a negative of 5 932 934 Dollars.

ADV CHASKALSON SC: And lower down the page, 9 February 2013.

MR HOLDEN: Certainly Chair. At row 45, we have an entry again reflected as the 9 of February 2013 and the two parties are Century, which I take to mean Central General
10 Trading and CSR Locomotive. The mode of payment is bank.

And the figure that is given is a negative ledger of 351 941 Dollars to which I take to mean that this is an amount that would eventually being accruing to the benefit of the Gupta enterprise.

ADV CHASKALSON SC: Thank you Mr Holden. Now you have done an exercise of adding these two amounts together and reconciling them with the amounts projected as being due on the AmaBhungane spreadsheet. Can you tell the Chair about that exercise?

20 **MR HOLDEN:** Certainly Chair. My calculations indicate that those two payments together provided a total of 6 287 757 Dollars. Apology Chair. I am actually reading from the wrong part of my notes here. The actual total according to that Hawala Ledger is 6 284 876.

ADV CHASKALSON SC: And then if you go to the

AmaBhungane spreadsheet where they project what the kickback should be and that is in Bundle 6B at 885.1 Chair.

MR HOLDEN: Chair, also indicating on the screen here. We have a transaction which is indicated under the 95 Loco spreadsheet. That is 95 Locomotive Project. The date is given as the 21st of December 2012.

It is a payment from Transnet to CSR in relation to the 95 deal. A rand amount that is transferred is R 268 679 00,00. A 20% kickback. That is an estimated
10 Rand value of R 53 735 800,00.

And then at the prevailing exchange rate at the time, that would be for the payment of 6 287 757 Dollars which is almost exactly the same as the total amounts that I have added on the Hawala Ledger occurring roughly the same dates as well.

ADV CHASKALSON SC: Can you just refresh the Chair's memory as to the dates of those payments that we have just looked at on the Hawala Ledger?

MR HOLDEN: Certainly Chair. So the payment from
20 Transnet to CSR, it takes place on the 21st of December 2012. And then... Okay let me look here. The first payment is made on the 29th of December 2012. So it is eight days after they make payment from Transnet and then the second payment is made on the 9th of February 2013.

ADV CHASKALSON SC: We now looked at the payments to the Gupta... Sorry. We have identified payments to the Worlds Window entities on the Dubai Ledgers. Sorry, on the Hawala Ledgers.

Can we now look at payments from the Worlds Window Group to the Gupta enterprise on a different set of ledges which you have assembled on Annexure O?

We have discussed Annexure O before. That starts at page 439. And maybe, let us first go to Annexure O at page
10 439.

And you can just refresh the Chair's memory as to what Annexure O is.

MR HOLDEN: Certainly Chair. Annexure O which is an annexure we addressed in relation to the payments that were made by Liebherr. At a certain date in December 2014, Sanjay Grover was directed to report the transactions in the four offshore entities, that is Global Corporation, Fidelity, Accurate and Gateway in a slightly different format.

According to the bank account each sheet according to a
20 particular company and indicated the transactions appearing in different banks and bank accounts filed by those companies.

I took all of those reports that were made by Sanjay Grover over a period of time and took all of those entries and put them into a single Excel spreadsheet so we can read

all the transaction simultaneously.

ADV CHASKALSON SC: And in your report, do you have extracted from Annexure O four payments that are made into Global Bank of Baroda Dirham account from an entry called JJT Century. Can I ask you to go to page 256 to which and tell the Chair what that table is depicting?

MR HOLDEN: Certainly Chair. What I have indicated here is when I assessed Annexure O, I identified that there were four payments into Gupta enterprise companies in here, in particular, Global Corporation's accounts.

I identified four separate payments which I have indicated in the table here. The first taking place on the 13th of May 2014. Second on the 14th of May. The third also on the 14th of May and a fourth also on the 15th of May.

All of them are made to Global Corporation. Although it is worth noting that the first payment of two million Dirham was made to Global Corporations Bank of Baroda Dirham fixed account.

And the remainder of the payments – remaining three payments went to Global Corporations Mashreq Bank Dirham account. The total value of those four payments, I indicated at the bottom of that table as 8 795 400 Dirham.

ADV CHASKALSON SC: And then if we can go to page 258? You have a similar analyses in relation to payments from JJT and related companies into Gupta accounts.

MR HOLDEN: Certainly Chair. This where m long list of company payments come into relevance. What we have here, is a vast number of payments that are made from entries described as JJ and then another descriptor which I took to mean either one of these subsidiary companies as identified by name into various Gupta enterprise companies.

So my analyses noted that there were 55 payments made into Global Corporations Dirham denominated Bank of Baroda account which were described as JJT Mangalam, JJT
10 BRI, JJT Force Exum, JJT El-sa-bat(?), JJT Mahere(?)
General Trading, JJT World Vision, JJT Double X, JJT
Carlton Coast and JJT Cash Ex-dif.

The payments were all made between the 23rd of April and the 12th of July 2014 and totalled 73 457 494 Dirham.

As you will notice Chair, certain of those JJ entries refer to companies that I can identify.

So one example is JJT Force Exum. Another is JJT Carlton Coast which is a Dubai registered company.

Some of the other entries I cannot identify but which I
20 would probably – which I assume would mean that there are certain other JJT related companies that we are not aware of according to company filings.

Moving on to 248.b at paragraph B. I noticed that 18 payments were made into Global Corporation's US Dollar denominated account at the Bank of Baroda between the

22nd of May 2014 and the 29th of October 2014.

These payments were described either as JJT World Vision or JJT Golden Coast. And the payments totalled 11 118 926 Dollars.

Chair, you will note at footnote 10 it falls within that – falls under those paragraphs. I do indicate why I have come to believe that Golden Coast is a company that is linked to the World Windows network.

For example, on the Golden Coast's website that there is
10 a sister company to Risk Metal FC which is a Worlds Window Group company.

At paragraph C I notice that two payments into Fidelity's US Dollar denominated account at the Bank of Baroda worth 2.48 million Dollars and described as JJT Golden Coast.

These two payments are made on the 19th of July and the 29th of October 2014.

It is worth noting that prior to these two payments, Fidelity transferred 1.8 million to JJT Golden Coast which was the precise value of the first deposit on the 12th of July.
20 This shows that money flowed both ways between the Gupta enterprise and the Worlds Window JJT companies.

I point to Annexure O. At paragraph D, I noticed that five payments were made into a Reliable US Dollar denominated accounts and Reliable is another Gupta enterprise company at Mashreq Bank. They were all made

on the 1st of May 2014.

The payments were described either as JJT Force Exum or JJT Double X. A total of 4 499 836, 44 Dollars.

And under paragraph E, I identified 18 cash payments made by JJT between the 21st of April 2014, on the 16th of July 2014. Total value of the cash transactions was 77 223 769 Dirham.

And then at paragraph 249, calculating of the prevailing exchange rate at the time between the Dirham and the
10 Dollar, the total Dollars value for the above transfers and the cash deposits made into the Gupta Enterprise accounts by JJT and its various subsidiaries was 62 832 549, 25 Dollars.

ADV CHASKALSON SC: And these, of course, only the transactions that we can tract from the record that we see and those records are by no means exhausted.

MR HOLDEN: That is correct Chair.

ADV CHASKALSON SC: We have... There is one last JJT payment that we picked up through the HSBC records because it comes after the closure of the Dubai – Gupta
20 leaks records. Can I ask you to go to your Annexure RR at page 991, Volume 6B, page 991?

MR HOLDEN: [No audible reply]

ADV CHASKALSON SC: And ...[intervenes]

MR HOLDEN: 999?

ADV CHASKALSON SC: 991.

MR HOLDEN: Apologies Chair.

ADV CHASKALSON SC: And can you describe to the Chair what you see there?

MR HOLDEN: Certainly Chair. This is an extract again from the HSBC transaction records where it says JJT. And what we have indicated here is a single US Dollar denominated payment made on the 16th of May 2014 for an amount of 10.5 million Dollars from CSR Zhuzhou Electrical Locomotive company to JJT Trading FCE.

10 **ADV CHASKALSON SC**: Is there any significance to the date and the amounts that you can infer?

MR HOLDEN: Certainly. There are two significant things to notice here. The first is the date which is only a few days prior to CSR and Regiment Asia and Tequesta entering into various Asian agreements and effectively displacing JJT Trading. The ...[intervenes]

ADV CHASKALSON SC: Can I just stop you there? Chair, your reference for that would be the agreement Annexure B at Bundle 6A, page 304 which is the CNR Tequesta
20 Agreement of 20 May 2014. And Annexure C, at Bundle 6A, page 316 which is the CNR Regiments Asia Agreement of the same date, 20 May 2014.

CHAIRPERSON: Will you just repeat just please the page numbers? I looked at the wrong bundle in here.

ADV CHASKALSON SC: It is 304.

CHAIRPERSON: 304?

ADV CHASKALSON SC: And 316 of the two cover pages.

CHAIRPERSON: Okay. Yes, okay I have got that.

ADV CHASKALSON SC: And Chair if you go, the first line of the following page, after each cover page says this agency agreement is dated 20 May 2014.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So those are concluded on 20 May 2014.

10 **CHAIRPERSON:** Yes. And the other one is 316. Ja.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: That is the date that you have spoken to the amounts.

MR HOLDEN: Certainly Chair. The amounts are unusual in relation to the payments that were made by various manufacturers to either JJT/CJT or Regiments Asia or to Tequesta Group, in that, is a round figure and it is an amount that is not repeated anywhere else on the bank statements.

20 I take that to understand, in fact, what I infer from that payment and the context of the contracts that are then entered into thereafter, is that this must have been a payment that is made for a final settlement of the relationship between JJT and CSR or as an inducement from CSR to JJT to rolling the ships. It is claims against the

company as a final payment.

ADV CHASKALSON SC: We talked on and off about how the relationship between the Worlds Window Group and the Gupta enterprise soured in the course of or had soured by, in the first quarter of 2015.

Can I ask you just briefly in amplification of what you have already said in that regard, to go to Bundle 6B, page 869.67 and describe to the Chair what you see there from 869.67.

10 **CHAIRPERSON:** Yes, I have got it.

MR HOLDEN: Thank you Chair. At that page, we see an email that was sent from Griffin Dranath who is a Gupta enterprise employee and employed by Oakbay to Tony Gupta.

And the subject is Arch House Agreement and attaches a number of Word documents. And then the message reads:

“Dear Tony for your interest. The bank has asked Jaftha...”

And I should clarify Jaftha here. He is an accountant
20 employed by the Gupta enterprise.

ADV CHASKALSON SC: If I might correct you there? I think you are talking about Jaftha, an attorney. A W Jaftha and Associates.

“...although he has confirmed that wants the loan to be paid to security shall be released and no need

for any letter from the borrower.

He is confirming it in writing. I am waiting for the email. Marthinus is also preparing the power of attorney. Ronica is in a review meeting. Once she is free, I will discuss the Mccorbit story also. Regards Ravinja(?)”

MR HOLDEN: That is correct. My apologies.

ADV CHASKALSON SC: And then over the page 869.68. It is Volume B6. Is this one of the attachments?

10 **MR HOLDEN**: That is correct Chair.

ADV CHASKALSON SC: And what is that document?

MR HOLDEN: This is a draft of a cancellation of a mining contract ship agreement between Arch House Trading which was the Worlds Window entity and it Idwala Coal (Pty) Ltd which was the Gupta enterprise entity.

ADV CHASKALSON SC: And if you go to down to 869.71, still in Bundle 6B.

MR HOLDEN: That is a cancellation of a mining contract to ship agreement between Arch House Trading and Idwala
20 Coal (Pty) Ltd.

ADV CHASKALSON SC: And down to page 869.74.

MR HOLDEN: This again is a draft cancellation document which cancels the mining contract ship agreement between Arch House Trading (Pty) Ltd and Tegeta Exploration and Resources (Pty) Ltd.

ADV CHASKALSON SC: And maybe if we can also address the document at page 869.77 over the page from that, still Bundle 6B.

MR HOLDEN: Certainly Chair. What we have here is an email from V Singala @Gmail.com sent on the 4th of May 2015 to Tony Gupta with the subject Book 2 and an attachment which is styled as Book2.xlfx.

ADV CHASKALSON SC: And over the page, is that the spreadsheet that was the attachment?

10 **MR HOLDEN:** That is correct Chair.

ADV CHASKALSON SC: And can you briefly tell the Chair what that spreadsheet is describing?

MR HOLDEN: Certainly Chair. As far as I understand the sheet, it is a reconciliation of a contestation about who owes what to whom in relation to Arch House. It is a loss and profit account.

And we see at the second column, it says as per PGD(?) which is understand to mean Priyesh Goyal and as per us which I understand to mean the Gupta enterprise.

20 And if you work through the sheet, there are discrepancies in the amounts. And I believe this to be an attempt to try and reconcile the amount outstanding relation to Arch House so that this relationship can be completed.

ADV CHASKALSON SC: Now Mr Holden, we have come very close to the end but I think it may be worth stepping

back and taking stock of the full amount of the kickbacks that the various Transnet cranes...

Sorry, various Transnet contracts provided for the Gupta enterprise, whether directly or through the Worlds Window Group.

Let us look first at the amounts that went through the Worlds Window Group that we know of. We know from – we are talking Dollars at this stage.

Maybe the starting point is the workings document which
10 we have come to and from several times but just to refresh our memories on that document.

And it is at... Sorry. It is at page 420 in Bundle 6A. Four, two, zero.

CHAIRPERSON: I found it.

ADV CHASKALSON SC: And it has a set of calculations which we have been through several times. For present purposes, let us just look at the number of total receivables which would be the total amount due on the kickback contracts in respect of the 359 and the 100 and 95 Projects.

20 And we can maybe write that down on – as the first entry on our table. Can you tell the Chair what that amount is?

MR HOLDEN: Certainly Chair. That is R5 267 007 200,00.

ADV CHASKALSON SC: So R5 267 007 200,00 [Five Billion Two Hundred and Sixty Six Million and Seven Thousand Two Hundred Rands]?

MR HOLDEN: That is correct Chair.

CHAIRPERSON: I am at 420, is that where you are?
Page? Or did I...?

MR HOLDEN: It is 420.

ADV CHASKALSON SC: That is correct, Chair.

CHAIRPERSON: 420, okay.

MR HOLDEN: It is the column to the far right under total
and it is the fourth entry.

CHAIRPERSON: Oh, 5 267 007 200, is that the number?

10 **MR HOLDEN:** That is correct, yes.

CHAIRPERSON: Okay, how much is that?

MR HOLDEN: That is indicated in million there but we
have rendered it as five billion, two hundred and sixty
seven million, seven thousand two hundred rand.

CHAIRPERSON: Okay, that is the total in respect of what
is in that column, the horizontal column.

MR HOLDEN: Yes, so that is the total in respect of the –
the total kickbacks that were to be paid in relation to
359 195 projects.

20 **CHAIRPERSON:** Oh, okay. Ja.

ADV CHASKALSON SC: Now that, of course, was not the
sum total of the Transnet contracts in which the Gupta
enterprise had an interest.

CHAIRPERSON: Hang on, Mr Chaskalson, you say, Mr
Holden, that is the total kickbacks but is there something

that when I see on this document will tell me that is the total of kickbacks?

MR HOLDEN: Certainly, Chair, the final column under total – if you go from the top line where it reads total, it is the – you have total with a blank cell and then you have a cell that reads ZAR 221 522.32 and in the cell underneath that reads 5 267.007.2 and if you read across to the left, Chair, that is described as total receivables for B from CSR for the whole projects, 20% for 95 and 21% for 259 and
10 100.

CHAIRPERSON: Is receivables the correct word for kickbacks?

MR HOLDEN: That is correct, Chair.

ADV CHASKALSON SC: I think we need to qualify that. There could be receivables for things other than kickbacks but on this spreadsheet, Chair, what it refers to is the total amount that will ultimately be due in terms of the arrangements.

CHAIRPERSON: Ja. Yes, okay.

20 **ADV CHASKALSON SC:** And we know that this is a spreadsheet of kickbacks.

CHAIRPERSON: Ja, okay, okay. Thank you.

ADV CHASKALSON SC: Now, Mr Holden, we have looked at a whole series of contracts. This table just deals with the 100 locos – sorry, 359 locos and 95 locos. Can you

identify the other contracts that it does not cover?

MR HOLDEN: Certainly, there are four other contracts of note. The first was the contract in relation to the supplier by CNR of 232 diesel locomotives to Transnet and the amount of the receivables in that case were R2.088 billion.

ADV CHASKALSON SC: Can you just repeat that figure?

MR HOLDEN: I will actually give the full figure rather than a rounding, it is R2 088 870 974.

ADV CHASKALSON SC: 2 088 870...?

10 **MR HOLDEN:** 974.

ADV CHASKALSON SC: 974. How do you derive that figure?

MR HOLDEN: That is a calculation of 21% of the total contract value and that arrangement is stipulated in the contract.

ADV CHASKALSON SC: And just to get the reference again? Is that contract annexure B?

MR HOLDEN: That is correct.

20 **ADV CHASKALSON SC:** Annexure B on the 232 locomotives and the relevant clause is at page 309 of bundle 6A, clause 7.

MR HOLDEN: That is correct.

ADV CHASKALSON SC: And what else is missing from that contract – our table?

MR HOLDEN: There was the kickbacks in relation to a 12

year maintenance plan entered into between CSR and Transnet which is governed by the contract at annexure H. The total value of the kickback is indicated as R1 298 137 567.23. I will read it out again. 1 298 137 567.23.

ADV CHASKALSON SC: That was annexure H. Chair, the reference for that payment – sorry, how do you derive that figure?

MR HOLDEN: Certainly. That is a 21% commission on
10 the contract value between Transnet and CSR.

ADV CHASKALSON SC: And that arrangement is stipulated in annexure H at clause 6.1.1 on page 398 of bundle 6A.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Then the next missing contract?

MR HOLDEN: We have the contract in relation to BEX, which was the relocation contract for relocation of certain production facilities. The total amount that we are aware of that the Commission had alerted me to that that was
20 paid under this contract was R67.2 million.

CHAIRPERSON: And, Chair, that is exclusive of VAT. The actual amount was just in excess of 76 million but it included VAT. That was a payment that was made onshore and it will be addressed when we bring evidence of the onshore kickbacks and money laundering.

CHAIRPERSON: Yes. Okay.

ADV CHASKALSON SC: And that payment would flow from annexure E at page 346, which is the business development agreement of 25 April 2015 between CNR and Business Expansion Structure Products and Chair, you will recall that the payment terms of that contract gave BEX an interest in any amounts that Transnet could be persuaded to pay over a baseline price.

Mr Holden, you mentioned four additional contracts
10 beyond those reflecting on the workings document. What is the fourth?

MR HOLDEN: The fourth was for the spare parts for diesel locomotives and that indicated a flat payment would be made of 18.12 million dollars.

ADV CHASKALSON SC: And that contract would be annexure C and the relevant payment arrangement is at page 324, clause 7.2.

Can I suggest that there is a fifth contract that we have not included, which is the ZPMC cranes contract
20 because we have just been looking at the locomotives in this table but of course the cranes were also providing kickbacks into the Gupta enterprise. What is the – we know the terms of that arrangement but we cannot translate them into rands and cents because we do not know what the benchmark of ZPMC was but what is the total amount of

kickbacks that we have been to trace there?

MR HOLDEN: In relation to ZPMC using the various internal Gupta accounting ledgers I tracked a total of 4.25 million dollars paid in relation to that contract.

CHAIRPERSON: 4.25?

MR HOLDEN: Million dollars.

CHAIRPERSON: Ja. Oh, this is dollars. The other amounts you gave were also dollars? I wrote them in rands.

10 **ADV CHASKALSON SC:** There is only one other dollar amount, Chair, that is the 18.12 million on the maintenance.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: The diesel maintenance contract.

CHAIRPERSON: Okay, thank you.

ADV CHASKALSON SC: So if you add up your rands – let is add up our rands and our dollars separately. What is the total amount of rands? Can you give us that number?

20 **MR HOLDEN:** Certainly, Chair. The total amount of rand kickbacks that were due to be paid was eight billion, seven hundred and twenty one million, two hundred and fifteen thousand, seven hundred and forty one rand and sixty three cents. For the record that is 8 721 215 741.63.

ADV CHASKALSON SC: And the two dollar amounts?

MR HOLDEN: The two dollar amounts are for 18.12 million US dollars and for the second amount it is 4.25 million dollars, although I will hesitate to add here, Chair, that under the 4.25 billion dollars that is only the number of transactions that we can trace. I do not know for certain whether that was the total amount of transactions. Adding those two together gives us a dollar amount of twenty two million, three hundred and seventy five thousand dollars.

CHAIRPERSON: Please just repeat that number, 22
10 million...?

MR HOLDEN: 22 750 000 dollars.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: And if we were to convert that figure into rands – let us find out what today's rate is. 15.01, call it 15. I get R335 500 000.

MR HOLDEN: That is correct, Chair.

CHAIRPERSON: Just repeat it, please?

MR HOLDEN: 335 500 000. Of course the prevailing rand exchange rate when those kickbacks were paid would have
20 been different.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: But it would be fair to say that the total amount of kickbacks provided for in the various Transnet contracts in relation to trains and locomotives, that we know about, would almost certainly have exceeded

R9 billion?

MR HOLDEN: That is correct, Chair. There is a very quick calculation I have done at the R15 exchange rate, the figure I get is nine billion, fifty six million, eight hundred and forty thousand, seven hundred and forty one rand and sixty three. For the record that is 9 056 840 741.63.

ADV CHASKALSON SC: And just to ...[intervenes]

CHAIRPERSON: I am sorry, it 9 058 404 01...?

10 **MR HOLDEN:** I think we are missing a digit there.

CHAIRPERSON: Oh.

MR HOLDEN: It is 9 056.

CHAIRPERSON: Oh, okay.

MR HOLDEN: 840 ...[intervenes]

CHAIRPERSON: 401.

MR HOLDEN: 741.63.

CHAIRPERSON: Oh, 7 just before the last 4?

MR HOLDEN: That is correct.

CHAIRPERSON: Okay. Okay, thank you.

20 **ADV CHASKALSON SC:** And jut to emphasise, we are talking not about the value of the contracts, we are talking about the value of the kickbacks that were paid in respect of those contracts.

MR HOLDEN: That is correct, Chair.

CHAIRPERSON: It is a lot of money.

ADV CHASKALSON SC: Chair, I think that concludes Mr Holden's evidence for now. We may concede that we will be able to call him back to deal with domestic money laundering as well.

CHAIRPERSON: If we run into problems with some of the figures we will call you back.

ADV CHASKALSON SC: He has got a lot of homework, he has got to conclude his evidence, conclude his tables that he has to prepare for us.

10 **CHAIRPERSON:** Ja, ja. Okay. No, thank you very much, Mr Holden, thank you very much. So that will be that for today,

ADV CHASKALSON SC: That is correct, Chair.

CHAIRPERSON: Okay and tomorrow evening do you have someone? You do not have anything. Okay, then Thursday during the day you have witnesses.

ADV CHASKALSON SC: I do, Chair, Thursday witnesses will be coming from McKinsey.

20 **CHAIRPERSON:** Yes and we will start normal time, ten o'clock?

ADV CHASKALSON SC: Yes, I understand that there is a Transnet witness who is – who will have to very briefly be led before the McKinsey witnesses come.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: I expect the McKinsey witnesses

to start from 11.30 after the tea break.

CHAIRPERSON: Oh, are you talking about Eskom?

ADV CHASKALSON SC: Oh, Eskom, I am sorry, Chair.

CHAIRPERSON: Ja, okay, okay. No, that is fine. Okay, we will adjourn then for today. Once again, thank you, Mr Holden.

MR HOLDEN: Thank you.

CHAIRPERSON: Thank you very much. We adjourn.

INQUIRY ADJOURNS TO 9 DECEMBER 2020