

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

**25 FEBRUARY 2021**

**DAY 350**



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 25 FEBRUARY 2021**

**CHAIRPERSON:** Good morning Mr Myburgh. Good morning everybody.

**ADV MYBURGH SC:** Good morning Chair.

**CHAIRPERSON:** Yes?

**ADV MYBURGH SC:** Chair, as you know. The proceedings today and tomorrow were originally scheduled for the hearing of Bombardier's Rule 3.4 application which you granted, allowing them to cross-examine three  
10 witnesses and to lead two witnesses of their own.

You will know that Bombardier relates to the Transnet stream. They were awarded part of the 1 064 Contract. You had been provided Chair with correspondence that Bombardier wishes to withdraw its application and also to an effect take back the affidavit that was filed at the Commission.

Bombardier is today represented today by counsel. Perhaps I could allow him to place himself on record and then address you in relation to those issues.

20 **CHAIRPERSON:** Ja-no, that is in order. If it is going to be convenient to speak from there, that is fine but otherwise, they can sanitise the podium and you go there. You can choose which one suits you, Mr Van Zyl. But then...

**ADV VAN ZYL:** [No audible reply]

**CHAIRPERSON:** Yes. The mic would need to put on.  
Yes.

**ADV VAN ZYL:** Yes, thank you. I hope to be quick. I am Fred van Zyl. I have been instructed on behalf of Bombardier Transportation. And I confirm what Mr Myburgh has said that the intention this morning of my client is to withdraw the previous application and the right to cross-examine and lead evidence.

And secondly, to request that we – I am not sure  
10 what the right terminology would be but to uplift the intended affidavits. And the reasons for that has been set out in a letter that has been sent to the Commission which I would request permission to hand up formally onto the record.

**CHAIRPERSON:** Yes. The registrar will take that. May I ask you to speak up a little bit. I think your voice is soft. Maybe it is because I think you are not short and the mic is far from your mouth. [laughs]

**ADV VAN ZYL:** Chair, if I may briefly just place on record  
20 then what the circumstances were? Bombardier Transportation had effectively been taken over by Alstom SA as the new mother company and Alstom has the strong principle that it appears to that it will not respond to evidence to any commission or any authority across the world but it has not verified in accordance with its very

strict standards of compliance.

It is in those circumstances that we sincerely apologise for the inconvenience caused and the time taken but my client is simply not in a position to respond to this evidence today and out of caution is withdrawing and to make its own investigations.

And that has been fully explained in these letters and I suppose in light of the recent events, we have to make clear that we are in a very much different position of  
10 not withdrawing or refusing the evidence but simply indicating that we are not in a position to continue.

**CHAIRPERSON:** Yes. No, that is fine. I guess that technically insofar as the right to cross-examine that Bombardier had been granted and the right to adduce certain evidence is concerned, I guess technically what you are asking for is, for leave not to proceed with the cross-examination and not to proceed to adduce evidence.

**ADV VAN ZYL:** As it pleases.

**CHAIRPERSON:** Because if it was before those rights  
20 were granted, the you could withdraw the application ...[intervenes]

**ADV VAN ZYL:** Yes.

**CHAIRPERSON:** ...for leave to cross-examine. You could withdraw the application for leave to adduce evidence. So now that those were granted already, technically, you are

simply asking for leave not to pursue the cross-examination and not to proceed with the leading of evidence in terms of that order.

**ADV VAN ZYL:** Indeed Justice.

**CHAIRPERSON:** Yes.

**ADV VAN ZYL:** That is indeed.

**CHAIRPERSON:** Yes. No, that is fine. In regard to the request not to pursue cross-examination and not to proceed to adduce evidence, I have no difficulty granting  
10 leave.

In regard to whether, as you say, whether the correct terminology, withdraw or abort or whatever the affidavits that had already been lodged with the Commission, that might be more complicated than the other because, to the extent that the affidavits are already in the Commission.

It may well be that one cannot say they should be taken away from the Commission, as it were, but it may well be that the new owners of Bombardier might, before  
20 the Commission completes its work, having had the chance to look at those affidavits, they might communicate with the Commission to say, if that is the position, to say those affidavits should not be seen as presenting the current owners' views or position of the current owners.

So all I am simply saying is. I am not in a

position to immediately say I grant leave for you to take the affidavits away because it might need more thinking. But what I think you might need to do is just reflect on how it should be done.

Maybe you might communicate with the Legal Team of the Commission and maybe, ultimately, there might be, subsequent to publication, to deal with the situation.

10 Then I can apply my mind more fully because in effect that is evidence that has already been placed before the Commission. It is just that it is writing, it is not oral evidence but nevertheless it is evidence that has been placed before the Commission.

So I would say. Reflect on it to the extent that you may need to reflect on it. Communicate with the Commission's Legal Team and at the right stage, then maybe something can be communicated to me and then I can ultimately indicate what my final position would be. Is that fine?

20 **ADV VAN ZYL:** We are clearly taking note of that. Thank you Chair.

**CHAIRPERSON:** Yes.

**ADV VAN ZYL:** I can tell you that my client has already started the process of verification. I do not anticipate from what I have seen so far that that process is going to be

able to be completed timeously but I can assure you Cahir that my client will most certainly take the invitation and what you have said seriously.

**CHAIRPERSON:** Yes.

**ADV VAN ZYL:** It is most unfortunate that we have only the short time had a process but then out.

**CHAIRPERSON:** Yes.

**ADV VAN ZYL:** And then we now found ourselves here. But we will - most certainly, we take the work of the  
10 Commission very seriously and to the extent that we can contribute.

**CHAIRPERSON:** H'm.

**ADV VAN ZYL:** My client has given the assurance that it will.

**CHAIRPERSON:** Yes. No, no. That is fine. It may well be that all that might need to be done is that when the report is prepared, it should be stated on record that these were affidavits that were filed at a certain time.

And that there was a request to – at this time to  
20 take them out or whatever the terminology is, once there were new owners. So that whatever is made of them, is made in the context of whoever were the owners at the time.

So but you will get a chance to reflect and then indicate what your submissions would be.



**ADV VAN ZYL:** As it pleases Chair.

**CHAIRPERSON:** Okay alright. Thank you very much. I think then – I have granted leave in regard to two matters and the other one is just left pending because it needs further consideration. Ja, okay.

**ADV MYBURGH SC:** Thank you Chairperson.

**CHAIRPERSON:** Thank you.

**ADV VAN ZYL:** Thank you Chair.

**CHAIRPERSON:** Thank you. Anyone who wishes to be  
10 excused, is excused.

**COUNSEL:** ...all my things in place and...

**CHAIRPERSON:** Okay. Take this until I am told I need it.

**REGISTRAR:** [No audible reply]

**CHAIRPERSON:** Yes, Mr Soni.

**ADV VAS SONI SC:** Morning Chairperson.

**CHAIRPERSON:** Good morning and good morning  
everybody. Good morning Mr Sacks.

**MR SACKS:** Good morning Chairperson.

**CHAIRPERSON:** Thank you.

20 **ADV VAS SONI SC:** Chairperson, you will recall that  
yesterday we had interrupted Mr Sacks' evidence, dealing  
with the flow of funds and the report he had compiled on  
that.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Chairperson, I have reflected

overnight and I have raised with Mr Sacks that in light of the issues that the Commission is concerned with, there are certain details relating to when payments were made and what the amount was.

In the long run, for the purposes of the Commission, it does not take the matter further  
Chairperson.

**CHAIRPERSON:** H'm, h'm.

**ADV VAS SONI SC:** What we want is the overall picture.

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

**ADV VAS SONI SC:** And – but not only to speed things up but also to ensure that we do not lose focus of what we want.

**CHAIRPERSON:** H'm.

**ADV VAS SONI SC:** So I have raised with Mr Sacks and I want to raise with you Chairperson, that the approach I want to adopt into the rest or most of the rest of the report is for Mr Sacks to confirm the correctness of what is contained in the tables with the commentary.

20 And there are certain matters that are quite important for example who were the directors of the companies in concern, who were the auditors and so on.

**CHAIRPERSON:** H'm.

**ADV VAS SONI SC:** There will be those matters that we will concentrate on and the rest the consideration of his

report.

**CHAIRPERSON:** H'm.

**ADV VAS SONI SC:** And the next matter that I want to raise with Mr Sacks is. You will recall Chairperson that in his evidence Mr Sacks said that there were two emails from Ms Gaza that raised red flags before the contract had been signed. It was after the award had been made.

Mr Sacks has now managed to get those emails. They are contained in the affidavit that Mr Hodge Bauw(?)  
10 in response to what Mr Montana had alleged in his incomplete affidavit.

So I will ask Mr Hodge because I think they are quite reflective of what the contents of those emails – or what – how strong the message was.

Then I leave that part and then I roll onto the EM 100's because as I have indicated to you yesterday Chairperson. The – some of the investigations that Mr Sacks did were based on what was said in the Swifambo affidavit.

20 Now in the CM 100's or notice to the CM 100's that Mr Mashaba lodged with the master's office. He reflects or indicates what the funds were for or where he is not happy about payments that were made by Swifambo. He indicates what that is.

Now Chairperson, for the purposes of the

Commission, in my view, we need not go – we can dispute the correctness of that but we are not in a position to do so at the moment but what Mr Mashaba says in those CM 100's is for the purposes of the Commission quite important.

And that, effectively, if – and I do not mean to be crude but that is from the horse's mouth, as it were, and we can take that as representing his position because the CM 100 is effectively an affidavit.

10 **CHAIRPERSON:** Yes-no, that is fine.

**ADV VAS SONI SC:** Yes. Is that okay?

**CHAIRPERSON:** No, that will be in order. Ja.

**ADV VAS SONI SC:** Mr Sacks, you have heard what I have communicated to the Chairperson about the approach...

**MR SACKS:** Yes, Chairperson.

**ADV VAS SONI SC:** Okay. Now in – you finished at page 902 of Bundle L. That is still your report.

**MR SACKS:** Yes, that is... Yes, Chairperson.

20 **ADV VAS SONI SC:** And ...[intervenes]

**CHAIRPERSON:** I am sorry. Where are we going to resume from on...[intervenes]

**ADV VAS SONI SC:** From page 902 Chairperson.

**CHAIRPERSON:** Nine...?

**ADV VAS SONI SC:** Nine, zero, two.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Of SS-24, Bundle L.

**CHAIRPERSON:** Okay, nine, zero, two. Okay thank you.

**ADV VAS SONI SC:** Now at 14.2.2, you summarise the amounts that Swifambo received and paid but would it be correct that you thereafter in Table 5, summarise how Swifambo had utilised – well, had utilised the funds it had received from PRASA relating to the main beneficiaries and you identified yesterday.

10 **MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And Table 5, if you could just indicate that – right at the top you say the amount received from PRASA was R 2 650 ... R 2 650 207 950,29. And then it made disbursements of – to Vossloh, Mashaba entities linked to these persons. How much is paid to Vossloh?

**MR SACKS:** Chairperson, the amount is R 1 873 474 161,62.

**ADV VAS SONI SC:** And do Mashaba and Mashaba linked entities?

20 **MR SACKS:** Chairperson, the payments linked to Mashaba and Mashaba linked entities is R 102 928 001,75.

**ADV VAS SONI SC:** And Mr Mashele?

**MR SACKS:** Chairperson, the payments linked to Mashele is R 39 54 840,00.

**ADV VAS SONI SC:** And then there were other

disbursements in the region of R 231 million or a little more than R 230 million.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And what was the balance in Swifambo's accounts as at the 30<sup>th</sup> of November 2015?

**MR SACKS:** Chairperson, the balance at 30 November 2015 was R 111 276 943.89.

**ADV VAS SONI SC:** Now just to put the rest of the report in context. The rest of the report actually in respect of  
10 each of those main figures breaks down which way the entities...

In other words, this is the big picture and now in the rest of the affidavit, you indicate that this is the amount that went to Mr Mashaba himself through this entity, that entity and that entity. Is that...

**MR SACKS:** That is correct Chairperson. These are just summaries that... upfront to assist the police in understanding collectively what money flowed. However, as transfers refer, each transaction as is – including the  
20 bank statements is detailed in the rest of the report.

**ADV VAS SONI SC:** Now we will go through those to the extent that they are relevant. Let us then look at Table 6 which is a point you made yesterday that on the 5<sup>th</sup> of April 2013, Swifambo received the first payment from PRASA.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And then you looked at how that money was distributed. Is that correct?

**MR SACKS:** Chairperson, it is standard procedure for these flow of funds analysis specifically in this type of place, is to investigate the timeframe when monies received and monies paid.

And specifically as counsel refers in Table 6 under paragraph 14.3, I noted that, as was discussed  
10 yesterday, there was quite an extensive time-lapse between when Swifambo received the first payment from PRASA into the incorrect account, Swifambo Rail Holdings and when it made its first payment to Vossloh and it was 116-days later.

**ADV VAS SONI SC:** And then the – would the rest of the – of flow interest Swifambo’s account, whether Swifambo Holdings or Swifambo Railing, they – you indicate when the funds were received and how many days later money was sent to Vossloh.

20 **MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And you confirm the correctness of those figures?

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** The one that stands out is the 116-days period between the first payment that Swifambo

received and the first payment made to Vossloh. Is that...

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And the others are in the region of three weeks and sometimes one week and so on.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** Now in regard to the 116-days period between when PRASA received – when Swifambo received R 416 odd million from PRASA to the time it made the first payment to Swifambo. You have done a calculation,  
10 looking at the bank accounts, of what amounts it had distributed to other people.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And that is what is reflected in the first document you presented yesterday. Chairperson, you will remember we had the pictorial representation.

**CHAIRPERSON:** Yes, I still have.

**ADV VAS SONI SC:** Okay we just want to go through that because it may be quite revealing Chair.

**CHAIRPERSON:** H'm?

20 **ADV VAS SONI SC:** Alright. If you just – you just need to give the dates and to whom the payments were made and what the amounts were.

**MR SACKS:** Okay. Chairperson, you are looking, I think, the first diagram, page 1.

**CHAIRPERSON:** Page 1? Okay.



**MR SACKS:** That is titled: Swifambo Flow of Funds, Timing and Utilisation of First PRASA Receipt of R 460 million on 5 April 2013.

**CHAIRPERSON:** H'm.

**MR SACKS:** On the top left corner.

**CHAIRPERSON:** H'm. I've got it.

**MR SACKS:** Chairperson, those guys requested me to explain this documents. As you will – as you can see on the document, on the left-hand side that shows money  
10 flowing in from PRASA on 5 April 2013, R 460 million.

**CHAIRPERSON:** H'm.

**MR SACKS:** And that, as I – I do noted that it is paid into Swifambo Rail Holdings Standard Bank account and I note that this money, in terms of contract, should have been paid into Swifambo Rail Leasing.

**CHAIRPERSON:** H'm.

**MR SACKS:** Then as you see the outflows on the right-hand side. I have summarised per the bank statements, if you were to go to the top, it includes the date, the  
20 recipient of the money and the amounts of the money.

And there is – on this document shows 1,2, 3, 4, 5, 6, 7, 8 , 9, 10, 11, 12, 13, 14, 15, 16... 16 recipients of payments. And the last payment, the 17<sup>th</sup> and 30<sup>th</sup> of July 2013 is Vossloh for R 290 million.

So the point of this document was to explain that

on 5 April 2013, PRASA paid R 460 million to Swifambo. On the 30<sup>th</sup> of July, a 116-days later, Swifambo paid Vossloh R 290 million.

The balance, the difference of approximately R 170 million was in the main paid to the entities, the individuals which have been linked which we discussed yesterday.

So for example, the first payment on 8 April 2013, AMCE which is AM Consulting Engineers, 10 which is Mashaba's company, received R 5 million.

So as I do note on this document that within six days of receipt from PRASA, Swifambo paid R 102 million out of the business to Mashaba, Mabunda, Mashele, WKH Landgrebe in a trust which is Mashaba's – linked to Mashaba, NOH which is linked to Mabunda, Nkosi Sabelo, Moosa Capital.

So Chairperson, without too much detail, just for summarisation purposes, in the bottom left-hand corner, I deal with the totals that all these individuals or entities 20 received.

And the point of this document is trying to say is. That before Swifambo – Vossloh may receive its first payment of R 290 million, a 116-days after PRASA had paid Swifambo, R 150 million was in fact disbursed to Mashaba who received R 30.5 million.

Mashele, through an entity called Bond Wheels, received R 28.32 million. Mabunda, through an entity called NOH, received R 23.68 million. Parish, through an entity called Moosa Capital, received R 13.5 million. WKH Landgrebe, who again were the auditors of many of these linked entities and Swifambo Rail Leasing auditors received R 16.5 million.

Nels Hoosain received R 10.4 million and Nkosi Sabelo received R 28.5 million, which total at  
10 R 151.4 million. These recipients received before Vossloh, is the first payment to Vossloh was made.

And in context of – you will recall Chairperson, the profit that Swifambo was – the margin they should have made of R 180 million, just on the first payments alone for funds received from PRASA, greatly exceeded the profit that Swifambo was ought to have earned over the duration of the entire contracts.

**ADV VAS SONI SC:** Yes. Now I think this pictorial representation starkly represents the point you are making  
20 and if I can put it in a slightly different context. This was the priority of creditors as far as Swifambo was concerned.

**MR SACKS:** Chairperson, the counsel uses the word creditors loosely.

**CHAIRPERSON:** Creditors. [laughs] Ja.

**MR SACKS:** I think the priorities ...[intervenes]

**CHAIRPERSON:** I agree.

**MR SACKS:** ...held by directors or influential people  
...[intervenes]

**CHAIRPERSON:** Certain recipients.

**MR SACKS:** Yes. Yes, Chairperson.

**ADV VAS SONI SC:** Yes. Perhaps that is a better word.

**CHAIRPERSON:** Ja, ja.

**ADV VAS SONI SC:** Yes.

**MR SACKS:** Yes.

10 **CHAIRPERSON:** Yes?

**ADV VAS SONI SC:** Yesterday, I said to you one of the figures that stuck in my head was a payment of R 10 million to Landgrebe. In fact, it is R 8.8 million on the 9<sup>th</sup> of April and then further payments of R 1.2 million and then for R 1.3 million and then R 2.2 million.

**MR SACKS:** That is correct Chairperson.

**CHAIRPERSON:** They were quite busy on the 9<sup>th</sup> of April, right?

**MR SACKS:** Yes, Chairperson.

20 **CHAIRPERSON:** [laughs]

**ADV VAS SONI SC:** Yes. Then at page 906 in paragraph 14.4, you indicate the payments that were made to Vossloh for the locomotives, and you have already indicated that it was a little more than R 1.8 billion.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** I – this though is – there is something I want you to explain to the Chairperson, what is the source of this information?

**MR SACKS:** Chairperson, the ultimate source is possibly themselves confirmed to the South African Reserve Bank, I stand to be corrected, they in fact received this money and using that confirmation from Vossloh themselves I was able to marry up the payments out of Swifambo bank accounts even though I was missing one or two pieces of information  
10 but because Vossloh had confirmed the amounts I knew that those amounts had indeed been paid.

**ADV VAS SONI SC:** So it is Vossloh who would confirm to the Reserve Bank and that is the information you based table 7A upon but you have obviously checked it against withdrawals from ...[intervenes]

**MR SACKS:** Yes, Chairperson, I have confirmed as counsel said.

**ADV VAS SONI SC:** So the other information in contained in your analysis of bank – is derived from your analysis of  
20 bank account. This, though, comes from Vossloh itself.

**MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** Then ...[intervenes]

**MR SACKS:** Sorry, Chairperson, stand to be corrected, actually National Treasury that they confirm the amounts to. Excuse me, I just got confused between the two

sometimes with the detail.

**ADV VAS SONI SC:** Yes, I think you do say that in paragraph 14.4.2 of your presentation.

**MR SACKS:** Yes, Chairperson.

**ADV VAS SONI SC:** Alright. Then at 14.4.8 on page 908 you look at the payments that Vossloh made to Swifambo and you say that that totalled R811 508.59 and you break down the different payments that were made. Can I ask you, where these came – the concern – or not the concern  
10 but what stood out for me is Vossloh is doing things for which Swifambo needs to pay it in terms of Swifambo contract with Vossloh, is that correct?

**MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** Now this seems to suggest that it was Vossloh, the worker who was paying Swifambo the actual paymaster event.

**MR SACKS:** That is correct, Chairperson. As I stated in my report, initially as I stated in my report that 811 000 which we discussed yesterday, which these amounts that  
20 were flowing into Swifambo's bank accounts prior to that PRASA received the receipts and as I stated in my report, these funds were ostensibly used to fund the setup costs of the Swifambo office. I did state in my report that obviously these are subject to confirmation and will have to be investigated further.

**ADV VAS SONI SC:** Now you also said yesterday, and you can just confirm it, but it is in your report, where you say that Vossloh's contract with Swifambo was signed on the 4 July 2013.

**MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** Now if you look at these payments, all except the fifth one were made to Swifambo before the contract was done.

**MR SACKS:** That is correct, Chairperson.

10 **ADV VAS SONI SC:** And those were the smaller amounts. The bigger amount on the 17 April 2014, that is almost a year after PRASA had been paying Swifambo, Vossloh makes a payment to Swifambo of R448-odd million – sorry, R488 000.

**MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** Was there any indication what that was?

**MR SACKS:** Chairperson, the description within Swifambo Rail Leasing bank account, which these tables include the  
20 bank statement, account details, received the money, the date and the description and amounts, the description says electronic banking payment FR Vossloh, rent and other payments.

**ADV VAS SONI SC:** Vossloh was paying for the rent in the meantime?

**MR SACKS:** Chairperson, we check with the bank statements as you read them.

**ADV VAS SONI SC:** Yes.

**MR SACKS:** The actual commercial rationale for the payment was subject to confirmation but on face value it appears that Vossloh was paying rent for Swifambo.

**ADV VAS SONI SC:** I tell you why I am intrigued by this and it has only occurred to me now that is why I did not raise it with you earlier. If you turn to table 7A on the  
10 [indistinct – dropping voice] you will see that according to Vossloh it had received money on the 1 August 2013, it had received money on the 2 January 2017, the 17 January 2017, the 19<sup>th</sup> of ...[intervenes]

**MR SACKS:** Sorry, counsel, 14.

**ADV VAS SONI SC:** Sorry, 14. The 19 May 2014 and the 8 July 2014.

**MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** And then it then makes this payment on the 17 April 2014.

20 **MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** Well, obviously you cannot explain, those are not signed off.

**MR SACKS:** Again, Chairperson, at face value it sounds odd, as to counsel's words.

**ADV VAS SONI SC:** But let me ask you a slightly different



question which is not contained in your report. It seems – and that is the reason examining and I take it that is the reason you included the payments that Vossloh made to Swifambo over this period, over the period 2012 to 2014. Is there anything you have uncovered as to the benefit to Vossloh of this [indistinct – dropping voice] besides the money?

**MR SACKS:** I have – Chairperson, in the course of the Werksmans’ investigation intelligence is obviously  
10 performed and when we were looking at – the team was looking at Vossloh as an entity and the contract itself we were looking at the Vossloh financial statements and I am assuming, counsel, that is what you are referring to and, if I may – which I found it quite revealing and it was reported at the time during the course of the Werksmans’ investigation as to how Vossloh themselves, the greater Vossloh Group, because Vossloh Espana, the locomotive manufacturer is a subsidiary of the Vossloh Group at the time. I do understand that there has been a name change  
20 or transactional activity in that group to another entity, I am not familiar with those details but at the time when we were doing the investigation – and, if you would indulge me, I have briefed counsel what those financial statements actually said and if you allow me to I can read them into the record, which is quite revealing in terms of

...[intervenes]

**CHAIRPERSON:** Yes.

**MR SACKS:** ...the value that Vossloh placed on this contract and in light of the funds flowing to Vossloh and as my report will state, money flowing over and above these funds, these payments that we talk about, the R800 000, be it is a lot of money, there was significantly more funds, much more funds that flowed into South Africa from Vossloh not through Swifambo, which counsel will deal  
10 with, but if you bear with me, I will – these are what I call pertinent extracts from the public audited Vossloh AG financial report and ...[intervenes]

**ADV VAS SONI SC:** For what period was that?

**MR SACKS:** This is for the financial period ending 31 December 2013 and they signed the contract with – Vossloh signed the contract with Swifambo in July 2013, so this is six months later. I recall at the time when we were doing the Werksmans' investigation we were not familiar with that contract between Swifambo and Vossloh, that  
20 contract was only revealed later in discovery in the Mashaba affidavit and we were trying to establish what the value was that Vossloh was earning, what was the price that they were earning. We knew what PRASA was paying Swifambo and I will read the actual extracts from the financial statements with reference to Vossloh stock, per

page 8 of the financial statements.

“With the announcement in the beginning of October 2013 of a major order from South Africa, Vossloh gained renewed interest of investors and the stock significantly recovered to the end of November to prices above 70 Euros.”

So obviously the inference is the major order from South Africa has a positive impact on the share price – I am assuming stock price, in South Africa we refer to as share price, has a positive impact on the share price which significantly recovered. The next quote:

“With reference to Africa operations per page 18. In fiscal 2013 Vossloh succeeded in booking a mega order from the South African company Swifambo Rail Leasing for 70 locomotives. The contract is worth a total amount of around Euro 250 million.”

And that was the first indication at the time of what Vossloh was earning, 250. We knew Swifambo – PRASA was paying 267 million Euros. Again, if you recall, Chairperson, it was Euro priced contract even though it titled 3.5 billion. The next quote:

“With reference to [indistinct] 11.04 transportation systems, per page 74. The winning of a major contract from South Africa in the third quarter of 2013 for 70 locomotives are Vossloh Rail vehicles

in the amount of 250 million Euro, contributed significantly to this development.

With reference to Vossloh Transportation Systems per page 75, thanks to the major order from South Africa, the order backlog of Vossloh Rail vehicles as of December 31, 2013, was an extraordinarily high level. The orders received in purely mathematical terms extend well into the year 2016 and prove they have a lengthier location with a positive sales outlook for the coming years.”

10

And the last quote:

“With reference to Vossloh Electrical Systems per page 76, as was already the case in 2012, the largest contribution to sales outside of Europe was in South Africa.”

So, Chairperson, at the time as the Werksmans’ investigation was being performed, this was very revealing in terms of understanding how significant this contract was not only to Swifambo but to Vossloh themselves and when we deal with the flow of funds into South Africa from Vossloh, it puts it into context why it was very important for Vossloh to in fact get this – and to get this contract.

20

**ADV VAS SONI SC:** It may be – and I know it is contained in the different part of your ...[intervenens]

**CHAIRPERSON:** I am sorry, Mr Soni.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Do I have that page that document you were reading from?

**MR SACKS:** No, not, I do not think so, Chairperson.

**CHAIRPERSON:** I think we should get it, Mr Soni, and it could be admitted as an exhibit.

**ADV VAS SONI SC:** As you please.

**MR SACKS:** And I will forward the Commission the financial statements for Vossloh AG as well, where these  
10 quotes come from.

**CHAIRPERSON:** Yes, ja.

**ADV VAS SONI SC:** We will do it in a separate supplementary affidavit, so it does not [indistinct – dropping voice]

**CHAIRPERSON:** Ja, that is fine.

**ADV VAS SONI SC:** Chairperson, I must apologise, I only found out about this a couple of days ago.

**CHAIRPERSON:** Yes, yes, no, no, that is fine. I think it is important.

20 **ADV VAS SONI SC:** Absolutely.

**CHAIRPERSON:** Ja, ja.

**ADV VAS SONI SC:** It puts the whole picture in perspective.

**CHAIRPERSON:** Yes. Ja, ja, ja.

**ADV VAS SONI SC:** But I know, Mr Sacks, you deal with

that later but maybe it is a good time just because we are dealing with the issue of Vossloh payments because you have mentioned then they made payments to Swifambo. I would like you to turn to page 953 of your report. Page 953, Chairperson.

**CHAIRPERSON:** 953.

**ADV VAS SONI SC:** Now you do not have to read this. Would you indicate to the Chairperson what you deal with in the context of what you have just been saying. You  
10 were saying there were major other inflows into South Africa from Vossloh. So will you tell the Chairperson what this is.

**MR SACKS:** Chairperson, the Werksmans' investigation team, at the time we again we performed investigations, provided with a report which was styled:

“Provisional report on the Passenger Rail Agency of South Africa Matter.”

This report was prepared by the compliance and enforcement division of the financial surveillance  
20 department dated 15 February 2017 and I stand to be corrected, I think that is of the Reserve Bank and in summary ...[intervenes]

**ADV VAS SONI SC:** Sorry, just for the record. What is the compliance and enforcement division? I am sorry, the financial surveillance department. To which department

does it belong?

**MR SACKS:** Chairperson, again I think it is to the South African Reserve Bank. It is a department within the Reserve Bank and they were obviously in a position to ascertain money flowing into South Africa as – or money flowing in and out goes through the Reserve Bank.

**ADV VAS SONI SC:** And generally what is the purpose of monitoring?

**MR SACKS:** It is compliance – and foreign exchange  
10 compliance and enforcement, I would understand.

**ADV VAS SONI SC:** Would it not also be to monitor if there are suspicious inflows or outflows of money which all countries in the world, just given the world we live in now, are required to do.

**MR SACKS:** I confirm with counsel, Chairperson, on that view. So, in summary, this report confirmed that an amount of R88 991 209.38 – 39 cents, excuse me, flowed into South Africa from Vossloh and my report includes extracts of this said report and if you indulge me,  
20 Chairperson, I can say that an entity with the name Vossloh Kiepe which I understand is an Austrian division of Vossloh AG made six payments to Siyaya Rail infrastructure solutions and technology between December 2011 and September 2013 totalling R13.6 million. The category for these payments is reflected as legal,

accounting, management consulting and proceeds for management consulting and my report includes the details of these payments and, Chairperson, Vossloh Espana, which we understand is obviously the Spanish subsidiary which manufactured the locomotives, made six payments to an entity S Investments (Pty) Ltd between February 2014 and September 2015 totalling R75 328 121.57. Category of these payments is reflected for proceeds for management consulting service and architectural engineering and other technical services and, as I state in my report:

“Considering the material nature and amounts of the payments listed above specifically as the payments were ostensibly made to Mabunda companies, this report and the content therein...”

Being the Reserve Bank report.

“...needs to be investigated further.”

But ultimately this report confirmed that approximately R89 million was paid by Vossloh into South Africa to Mabunda linked entities and which - I understand which counsel will examine further that the liquidator’s report deals with this aspect as well.

**ADV VAS SONI SC:** Now you say the last paragraph of your report:

“Considering the material nature and the amounts



involved R75 million being paid by a person who receives, in their words, a mega contract from South Africa to an individual who you say is significant.”

And why do you say in this context Mr Mabunda is significant?

**MR SACKS:** Chairperson, as we have explored, Mabunda – Mr Mabunda and his entities, linked entities, received significant funds from Swifambo. Not only that, Mr  
10 Mabunda’s linked entities were significantly involved in the tender. If you recall, Chairperson, one of the first items in the tender was to pick up the tender documents and someone from S Group collected the documents themselves and that was the start of the flow of Mabunda-linked entities through the whole – from inception of the tender to the awarding of the tender to ultimate outflow of funds and further to these flows from Vossloh into South Africa of R89 million.

**ADV VAS SONI SC:** And in terms of the analysis you did  
20 of the major – I do not want to call them creditors anymore because – but the major beneficiaries of the outflows from Swifambo, Mr Mabunda and his company are a major beneficiary.

**MR SACKS:** Chairperson, the flow of funds analysis shows that Mabunda-linked entities received from

Swifambo over the course of the time of analysis R54 651 981 and the entities include names such as Inawaste(?) the Siyaya Group entities and Sovo S Group.

**ADV VAS SONI SC:** So that would mean that in respect of this contract Mr Mabunda and his companies received more than R140 million, take the 88,4 plus 54 that you were talking about.

**MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** That is more than the profit that  
10 Swifambo was going to make out of the entire deal.

**MR SACKS:** As per the contract, yes, Chairperson.

the entities include names such as Inawaste(?) the Siyaya Group entities and Sovo S Group.

**CHAIRPERSON:** And I think you said yesterday but you will tell me if I misunderstood, I think – and you said yesterday for really doing nothing.

**MR SACKS:** Yes, Chairperson.

**CHAIRPERSON:** Other than being the middleman.

**MR SACKS:** You are correct, Chairperson.

20 **CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Now adopting the approach that we indicate that we would just deal with the big amounts ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Soni. Can I ask this question? And your being an account and a forensic might

enable you to answer it. What are the chances that the price for the locomotives that was quoted to PRASA was inflated in order to make provision for amounts that would have to be paid to the middleman by Vossloh? In other words, I do not see that if I am going to manufacture trains to sell to him if their true price is R100 then my profit is provided there, that if I allow you to be middleman, I am going to still quote R100 especially if your commission is going to be quite substantial, it looks like I would have to  
10 inflate the prices so as to accommodate what I must pay and still make a reasonable profit. In terms of your own experience, in terms of your analysis, is that something you are able to answer even if not definitively but in terms of probabilities based on your experience?

**MR SACKS:** Chairperson, it is really a question – I think the first thing that you can say is if PRASA secured the trains directly from Swifambo themselves, assuming Swifambo qualified to provide, they will have paid significantly R120 million less when is a significant  
20 amount. It appears to me without knowing the information and in fairness to Swifambo themselves, we have not asked them the question, we have not investigated did you charge a fair price to Swifambo, did you give them a discount to enable them to make a mark-up? That obviously we would have to – those conversations would

have to take place and that is why we were reporting – the Werksmans’ investigation team was reporting this very fact to go to Vossloh, just ask those questions to Vossloh. It looks like based on how this contract – as we have seen how this contract evolved, it did not seem to be a concern on the PRASA said, PRASA management side, at the very least, what they were paying. And seeing that once the contract price of an amount of R3.5 billion was fixed, that is the number, however many locomotives we get for R3.5  
10 billion, initially it was 88, then the rand weakened, now we are getting 70. It seems like PRASA was irrelevant, really, in a sense, on a per unit price. It was just a contract price. I think you ask a very good question and I would certainly think did PRASA pay more than the going rate for a locomotive? I cannot – I was not privy to what the other tenderers bid for their locomotives and that is certainly something that would have to be looked at in context of the whole – the whole – the whole – I hope I answered your question.

20 **CHAIRPERSON:** Ja. No, no, no, that is fine. It may well be that trying to establish what similar trains may have been sold for are elsewhere by Vossloh or by its competitors at that time may help to say – because, as I see it, if Swifambo had no previous experience of in this sector or maybe in any sector, in this sector, maybe

whatever prices they quoted were based on what Vossloh may have told them because they just – they knew they were going to get them from Vossloh.

**MR SACKS:** So, in other words, Chairperson, it was not – they did not act in the best interests of PRASA, they just accepted the price that Vossloh was quoting, ja.

**CHAIRPERSON:** Yes but obviously the responsibility to act in the best interest of PRASA started with the people who agreed to the price at PRASA.

10 **MR SACKS:** That is correct.

**CHAIRPERSON:** What homework did they do before they agreed to the price, was this the going rate, you know, did they compare with other manufacturers internationally or whatever or did they just take whatever price was quoted to them by Swifambo? So it would interesting – I mean, I do not know if you have worked out what percentage of the whole amount paid by PRASA for these trains went to Swifambo in terms of all these amounts including those that may have gone to Siyagena and so on. What  
20 percentage in the end ...[intervenes]

**ADV VAS SONI SC:** Swifambo, Chair.

**CHAIRPERSON:** Sorry?

**ADV VAS SONI SC:** Swifambo.

**CHAIRPERSON:** Ja, Swifambo, I think I saw in one of the pages some money that came from Vossloh Kiepe or

something.

**MR SACKS:** Yes.

**CHAIRPERSON:** Going to Siyagena.

**MR SACKS:** No, it was Siyaya.

**CHAIRPERSON:** No, ja, I mean Siyaya. Well, Mr Soni knows that for quite some time I kept on confusing Siyaya and Siyagena. Ja, so it would be interesting to see what percentage went to – ended up with Vossloh, what percentage ended up with Swifambo or Mabunda and other  
10 people connected with Swifambo.

**MR SACKS:** I think, Chairperson, it is fair to say that the majority of the R3.5 billion was going to end up in a foreign company. R1.8 billion was paid to them for the delivery of 13 locomotives and I know during the Werksmans' investigation, we were looking at that aspect in terms of how PRASA – the delivery of locomotives did not accord with the money that was being paid, it was almost like PRASA was paying upfront. It was not a favourable contract to PRASA, they took on tremendous risk,  
20 performance risk. I understand there were issues with the performance bond which I understand to be that if the supplier fails to deliver, how does PRASA recoup their money and – so the whole contract itself was not focused to PRASA's best interest and - so in terms of just 13 locomotives coming for R2.6 billion being paid of which the

majority of it went to Vossloh, I think it just stands on its own in terms of well, PRASA was heavily exposed just on that basis alone in not getting what eventually – never mind that the locomotives were not suitable for the South African rail network, as it was dealt with in Popo Molefe's – or the application judged by the SCA.

**CHAIRPERSON:** Ja, it would be interesting to know what price Vossloh would have quoted if they were dealing with PRASA directly.

10 **MR SACKS:** I think it is a very good question, Chairperson.

**CHAIRPERSON:** Ja, ja, ja. Okay, alright.

**ADV VAS SONI SC:** Into that mix though, Mr Sacks, one must also put this because you raised a question, well it looked an unfavourable contract, at the time PRASA contracted with Swifambo, Swifambo had not yet contracted with Vossloh because PRASA's contract with Swifambo was concluded on the 25<sup>th</sup> of March and Vossloh's – Swifambo's contract with Vossloh was  
20 conducted three months later.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** So even if PRASA had asked Swifambo what is Vossloh going to charge Swifambo could not give an answer because there was no contract between them?

**MR SACKS:** Yes Chairperson it was dealt with extensively in the Popo Molefe affidavits as well.

**ADV VAS SONI SC:** But I mean it just reinforces the point you made that PRASA just didn't care.

**MR SACKS:** To put it bluntly Chairperson that is probably a fair summation by counsel.

**CHAIRPERSON:** It is very worrying when people are appointed to important State Entities like PRASA, they are in high positions, they get paid quite well to look after the  
10 interests of the entity, but by the way this contract was handled it does look like the interest of PRASA were subsidiary to something else.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** It is very worrying.

**ADV VAS SONI SC:** So sorry Chairperson.

**CHAIRPERSON:** No, no I am done.

**ADV VAS SONI SC:** In regard to the payments that Vossloh made to Siyaya which were flagged by the financial surveillance department, when your report was  
20 finished did you send a report to them to say look you flagged this, should you not look at this further, or whose job, so what I am asking really is whose job is it to pursue such information when you get more damning information or more suspicious information?

**MR SACKS:** Chairperson I think the obvious answer



would be law enforcement themselves, hence I included this very important finding in my report, again if we look at the Genesis of this report this is just my preliminary findings, you know it was obviously intended to move forward from there, to say well this is what we have got thus far, here is the evidence we have received thus far, these are our findings, these are areas of focus and I would imagine that was these in-flows from a foreign company into South Africa to these individuals and entities  
10 which should have been or would have been a key focus of a law enforcement investigation.

**ADV VAS SONI SC:** So you would have expected the Hawks to take this up and say well look you flagged this, we have now got this further information.

**MR SACKS:** At the very least yes, because that is where my – Chairperson where my report went to.

**CHAIRPERSON:** Do we know Mr Soni whether in the light of the High Court and Supreme Court of Appeal judgments against Swifambo, which have been there for some time.  
20 The Siyaya one is rescinded.

**ADV VAS SONI SC:** The Siyangena one.

**CHAIRPERSON:** The Siyangena one ja. Whether government or PRASA has done anything to try and recover some of the money it has lost through the this conduct from its officials who makes certain decisions which appear

to have either at best for them reckless or grossly negligent or may well have been because of some other agenda. Do we know whether anything has been done by other than attempts to gain from I mean Swifambo was ...[indistinct].

**ADV VAN SONI SC:** Chairperson to the best of my knowledge not because it is not a question that was pertinently asked for example to Ms Ngoye who would have known as the Head of Legal and Compliance, but it is a  
10 question that must expressly be asked to her so I can respond to that at the next sitting or certainly in an email to you Chairperson and then we can take it up but then you would know formally what the ...[indistinct].

**CHAIRPERSON:** H'm, h'm, because how much of the money that PRASA did pay out at some stage has come back?

**ADV VAS SONI SC:** 63million.

**CHAIRPERSON:** Sorry?

**ADV VAS SONI SC:** R63million, that's what the liquidator  
20 seems to have yes.

**CHAIRPERSON:** Ja, obviously that is a far cry from the ...[intervenens]

**ADV VAS SONI SC:** From the 3,5billion.

**CHAIRPERSON:** From the billions ja, that were paid out. I think that the entity should be looking at investigating the

possibility of suing everyone who may have made decisions that resulted in these losses in circumstances where those individuals are not able to give proper explanations for their decisions.

**ADV VAS SONI SC:** If I could Chairperson, and I just am using the opportunity that has been raised, one possibility is a self review to join some of the officials who were involved so that they cannot hide behind the wing contractor as it were and then we are left in the situation  
10 where the High Court is faced only with the version of the Organ of State and it cannot identify officials because there has been no attempt to say but these are the officials and this is what A did, this is what B did, and this is what C did and that is why we want to use the Court to hold them responsible for it.

**CHAIRPERSON:** That is true, and any of those officials, any of those officials who is able to place before PRASA or before – let's start with PRASA, before PRASA evidence that there was nothing wrong with the decisions they took  
20 and PRASA is satisfied that is fine, they don't have to be sued you know but if they don't put that before PRASA and they are sued they can place that before the Court but they can explain to PRASA to say well I made this decision, these decisions on the basis of this information and it seems to me it was a reasonable decision to make under

the circumstances but if their explanations are not satisfactory then PRASA could consider suing them.

**ADV VAS SONI SC:** Indeed Chairperson.

**CHAIRPERSON:** Ja, because this is a lot of taxpayers' money.

**ADV VAS SONI SC:** It is something that has given me sleepless nights Chairperson.

**CHAIRPERSON:** Yes, I mean I think yesterday Mr Sacks referred to a page in the course of his evidence a page in  
10 the report which reflects that a certain Ms Casa I think  
...[intervenes]

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Wrote emails to Mr ...[indistinct] and Mr Montana warning them about certain datas in relation to computing this contract if I am not mistaken.

**ADV VAS SONI SC:** It is so and Chairperson on reflection and having been advised that those emails are in fact available I have made a copy of each of those two emails, I think one is on the 6<sup>th</sup> of November and the other is on the  
20 20<sup>th</sup>. I have made them available to Mr Sacks and I am going to ask him, because you will recall that was before the contract was signed and those emails certainly it reveals Chairperson the very point you are making that now you are told by a person who is a member of the Board that his is – this is really dangerous waters and you take

your slip into those water, and of course the waters eat the ship up.

**CHAIRPERSON:** Yes, yes. Okay.

**MR VAS SONI SC:** Chairperson I see it is just after 11:15, do you want to take the ...[intervenes]

**CHAIRPERSON:** Let us take the tea break, we will resume, it is twenty past, we will resume at twenty five to twelve.

**MR VAS SONI SC:** As you please Chairperson.

10 **CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Okay let us continue.

**ADV VAS SONI SC:** As you please Chairperson.

**CHAIRPERSON:** I didn't say this when we started Mr Sacks but I just mention it now that the oath you took yesterday continues to apply.

**MR SACKS:** Yes Chairperson.

20 **CHAIRPERSON:** Yes, okay.

**ADV VAS SONI SC:** Now I interrupted the flow of evidence leading to where you identify in detail what each of the beneficiaries and the entities got, because we were dealing with the Vossloh payment to Mr Mabunda and his company.

I want to take you back now, and this shouldn't take us too long Mr Sacks. At 14.5 you deal with the payments that were made to – or you call it payments linked to Mashaba, that's Mr Mashaba personally and to entities that ...[indistinct – dropping voice]

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And if you look at 14.5.5, you set-out the four beneficiaries into which you can divide Mr Mashaba's ...[indistinct – dropping voice].

10 **MR SACKS:** Yes, it's just as counsel says, four bank accounts – the four bank accounts in these entities' names yes.

**ADV VAS SONI SC:** Yes, and the one in regard to AM Consulting Engineers, it appears at table 8 which is on page 913, the one on Amaroko Makolele [?] Trust appears at table 9 on page 914, the one for Mr Mashaba himself appears at table 10 page 915 and the one for Vuyinathi Properties appears at table 11 on page ...[indistinct – dropping voice].

20 **MR SACKS:** That is correct, Chairperson.

**ADV VAS SONI SC:** I just want to ask you for – and I don't want to be finicky but it your report. In 15.5.3 you say there were 9 payments but when you look at table 10 it appears there were 10 that obviously is a typographical.

**MR SACKS:** Yes, Chairperson as I say my – it was a draft

report these little errors were being picked up, on finalisation...[intervenes].

**ADV VAS SONI SC:** I just wanted to make sure...[intervenes].

**MR SACKS:** Counsel is correct there's 10 payments.

**CHAIRPERSON:** Is it possible to have a page somewhere that just records that ...[intervenes].

**ADV VAS SONI SC:** I could lead him on that so that the record will reflect that.

10 **CHAIRPERSON:** No, what I'm thinking is, if you lead him, which you must do, one will see that in the transcript but when one is looking in the Bundle one might not ...[intervenes].

**ADV VAS SONI SC:** Yes, you're quite right.

**CHAIRPERSON:** So, it might be helpful to have a page, maybe even if it's at the end that says, in his report at page what, what, what this is what it says but actually it's not correct, this is the correct position.

**ADV VAS SONI SC:** Yes, as you please Chairperson.  
20 Then we go to the payments and that's 14.6 payments made to Mr – into the bank accounts of Mr Mashele and entities in which he has an...[indistinct – dropping voice].

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And those appear at tables 12 and 13 at pages 919 and 920 respectively, is that correct?

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And you confirm the correctness of what's contained in those tables?

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** Now, I'm sorry I was trying to move on, there are matters that you mention in relation to other interested parties. Can I just take you to paragraph 14.5.7.2 at page 911, where you make the point in regard to AM Consulting Engineers, the auditors are WKH  
10 Landgrebe and Co.?

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And why do you find that...[indistinct – dropping voice]?

**MR SACKS:** Chairperson, again, W.K.H. Landgrebe, the bank account in the name of W.K.H. Landgrebe received significant flow of funds from Swifambo in the amount of approximately R27.9million.

**ADV VAS SONI SC:** And then you note at paragraph 14.5.7.3 that the Directors of AMC Mashaba, a Mr Moloko  
20 Floyd Sibone and Landgrebe Secretarial Services.

**MR SACKS:** In the capacity as company secretary, yes Chairperson.

**ADV VAS SONI SC:** Is that usual to have them or were they just the company secretary?

**MR SACKS:** I think they were just the company secretary,



again, the involvement of WKH Landgrebe was subject to further investigation but as stated they were the auditors.

**ADV VAS SONI SC:** What you ...[indistinct] is there appears to be a link between that firm and Mashaba's entity.

**MR SACKS:** And the flow of funds, yes Chairperson.

**ADV VAS SONI SC:** And the flow of funds yes.

**MR SACKS:** Yes, Chairperson.

**ADV VAS SONI SC:** Alright, then at 14.6 you deal with the  
10 flow to Mashele, we've been through that, tables 12 and 13  
and in regard to Barn Wheels[?] you say their registered  
auditors are Van Wyk Auditors.

**MR SACKS:** That's correct.

**ADV VAS SONI SC:** What is the significance of that?

**MR SACKS:** Chairperson, off the top of my head, if I  
recall, I was just recording all these entities, who the  
Directors and who the auditors were but I can be – I do  
believe that van Wyk Auditors did crop up amongst the  
entities, they weren't specifically beneficiaries of funds but  
20 I was just stating facts because in an investigation if  
further information is required, if I state who the auditors  
are as recorded on CIPC it would give the – I guess, the  
police at the very least or whoever else is involved in the  
investigation, areas of further examination. If we need  
financial statements or we need queries, we can ask the

auditors. So I was just stating this information, just to be factual within my report.

**ADV VAS SONI SC:** Alright, I think their name crops up as auditors of other entities as well in fairness, that's how I read the report.

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** Alright, then at 14.7 you deal with payments linked to Mr Mabunda and his entity.

**MR SACKS:** That's correct, Chairperson.

10 **ADV VAS SONI SC:** Now, I just want to make this point because you may not have been aware of it, at paragraph 14.7.3 you say that the amounts on your investigation, you say this is background, that the Siyaya or different companies in the Siyaya Group received the payments mentioned, R26million, R23million and Siyaya Engineers the amount to be determined. I just want to point out to you, when Ms Ngoye gave evidence about the Siyaya Group, she said they had done - she been asked to do that calculation and she said that from about 2009 they'd been  
20 paid a total of more than a billion rand. Chairperson, you'll recall that evidence from Ms Ngoye.

**MR SACKS:** From PRASA?

**ADV VAS SONI SC:** From PRASA yes.

**MR SACKS:** From PRASA Chairperson.

**ADV VAS SONI SC:** I'm just – you know, there's nothing

wrong with this but...[indistinct – dropping voice] from PRASA...[indistinct – dropping voice]. Anyway at 4.7.9 you set out the amounts there to each of the entities and these are there, detailed at tables 14, 15, 16, 17, 18, 19 and 20 from page 924 to 934.

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And you confirm the correctness of all of those?

**MR SACKS:** Yes, Chairperson.

10 **ADV VAS SONI SC:** Then the person who's name you flagged earlier, Mr Landgrebe, you detailed the payments made to him.

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And then you confirm that that's at table 21 at page 936, you confirm the correctness of what's there?

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And just to, again, indicate why you lightly highlighted van Wyk Auditors earlier at 14.8.5, you  
20 make the point that these things auditors are Landgrebe but the auditors for Holdings are van Wyk Auditors.

**MR SACKS:** Yes, Chairperson.

**ADV VAS SONI SC:** Then at 14.9 you detail payments linked to Musa Capital and obviously through that, Ms Cynthia Parrish, this is the American citizen ...[intervenes].

**CHAIRPERSON:** Sorry Mr Soni you say, at what?

**ADV VAS SONI SC:** Sorry 14.9 on page 937.

**CHAIRPERSON:** Okay ja, if you could just mention the page number together with the paragraphs that will help.

**ADV VAS SONI SC:** Sorry, yes.

**CHAIRPERSON:** Yes, okay, alright.

**ADV VAS SONI SC:** And this appears at table 22 on page 938 and you confirm the details as set out in table 22, Mr Sacks?

10 **MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** Then 14.10 the payments made to Sibenza and you detail these at paragraph 14.10 and table 23.

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** I'm not going to ask about this because in the auditor's – sorry in Mr Mashaba's note in respect to the payment to Sibenza he says that Swifambo in fact, had paid R110million not R99million and so we'll look at that. That's, effectively the head of Swifambo  
20 saying that that's the amount.

**MR SACKS:** Yes, Chairperson.

**ADV VAS SONI SC:** And I'm not saying that your figures are wrong, I'm just saying that if they say they paid that...[intervenes].

**MR SACKS:** We must just remember, Chairperson, at the

time I performed my investigation I wasn't privy to documentation out of Swifambo, I was purely looking at bank statements and obviously...[intervenes].

**ADV VAS SONI SC:** And you didn't have all the bank statements in any case.

**MR SACKS:** Yes.

**ADV VAS SONI SC:** Some of these may have been from those other bank statements.

**MR SACKS:** Yes, Chairperson.

10 **CHAIRPERSON:**

**MR SACKS:** Did you get to know round about when Mr Sifiso Buthelezi seems to be a Director of Sibenza Forwarding or is that something you never got to know?

**MR SACKS:** Chairperson, I don't have that date in my report, I would have obtained this information from CIPC so that it would be readily available but I did note in my report that he was a previous Director at this point in time I didn't...[intervenes].

20 **CHAIRPERSON:** It would be good to get that information to see at what – as from what date he ceased to be a Director.

**ADV VAS SONI SC:** Mr Sacks is going to prepare a supplementary affidavit.

**CHAIRPERSON:** Okay, alright.

**ADV VAS SONI SC:** Then at paragraph 14.11 you deal

with the payments linked to Nkosi Sabelo and you say there were two payments again on account of the fact that Mr Mashaba sets out the payments that he made to this firm of attorneys and the reason for the payment, we will deal with this part – or these payments when we deal with his note on the CM tender relating to these payments.

**MR SACKS:** Yes, Chairperson.

**CHAIRPERSON:** Does paragraph 14.10.5 which is based on Mr Mamabolo's affidavit which says that Mr Buthelezi,  
10 the former Chairperson of PRASA Board, if an essential link is – which has – it says has a 55% in Sibenza Holding does that mean that even though he may have resigned as a Director of Sibenza at some stage throughout the time of this Swifambo transaction, while he was Chairperson of the Board, he had this connection with Hadis that has 55% shareholding on Sibenza, do we know that?

**MR SACKS:** Chairperson, these were allegations made by Mamabolo, I cannot confirm if those allegations are true, however, it was included in my report because it certainly  
20 warranted...[intervenes].

**CHAIRPERSON:** Something further.

**MR SACKS:** Something further but you are correct in saying whereas this individual might not have been a Director he might have had an interest, an ownership interest in Sibenza.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Is it possible to look at CIPC documents and include this in the further...[intervenes].

**MR SACKS:** Chairperson, CIPC doesn't include shareholding that information is not readily available so that's why it had to be performed per subpoena or an investigation.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** Oh, so only the police would be able  
10 to...[indistinct – dropping voice].

**MR SACKS:** That's my understanding, yes, Chairperson.

**CHAIRPERSON:** Ja, and I guess if the police can do it, the Commission could do it as well in terms of issuing a summons to produce documents, ja. Okay, alright, I interrupted you Mr Soni.

**ADV VAS SONI SC:** Sorry, Chairperson, we're at page 945, these are the payments linked to Mezanni Engineering and you say there were 14 payments of ...[indistinct] of R5million they are reflected in table 25, you confirm that  
20 what is set out in table 25 is correct?

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** And the payments linked to Mezanni Investments – I take it these are different entities, Mezanni Engineering and Mezanni Investments because one is at 14.12 and the other is at 14.13?

**MR SACKS:** Chairperson, these are bank accounts with the names I tried to address – in the investigation if I could identify who the company was behind, hence I included auditor and CIPC information but this is a name of a bank account.

**ADV VAS SONI SC:** And, of course, if you look at 14.2.2 you'll see that the auditors are van Wyk auditors for Mezanni Engineers and if you look at 14.13.2 the auditors of Mezanni Investments are also van Wyk.

10 **MR SACKS:** Yes, Chairperson that's correct.

**ADV VAS SONI SC:** So this is the name that kept popping up and this is why, I suppose you flagged it and thought it was something to look at, not that there is something wrong with it.

**MR SACKS:** Yes, Chairperson.

**ADV VAS SONI SC:** Then at 14.14 you deal with a payment made to Knowles Husain Lindsay Attorneys, again, this payment is dealt with by Mr Mashaba in a note to SEM100, I'm going to go through that with you in a little  
20 while, I'm not going to deal with it here and then, of course, the payment linked to SARS, I mean that's not a matter that concerns us at all. Paragraph 15 on page 953 is the matter we've been through already.

**MR SACKS:** Yes, that's correct, the payments from Vossloh, Chairperson.



**ADV VAS SONI SC:** Now, before I go on to the next set of documents I want to refer you to, I want to refer you to page 873 of your report and this is where you make the allegation or you...[intervenes].

**CHAIRPERSON:** I guess, just for the transcript, Mr Soni, for those who read afterwards when you said page 873 of the report, it's 873 of the Bundle.

**ADV VAS SONI SC:** Of the Bundle, sorry.

**CHAIRPERSON:** The page for the report will be, not  
10 that...[intervenes].

**ADV VAS SONI SC:** No, sure, yes, that's at Bundle L.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Now, I did mention it earlier and I said I was going to raise this matter with you, in paragraph 11.38 – sorry I'll just take you back to the context. You were raising matters that had been raised with the key people at PRASA and at 11.37 you made the point that, according to Mr Molefe's affidavit, certain matter had been brought to the attention of Mr Montana but he ignored  
20 them, that's not what I wanted but that's the context. At 11.3.8 you say, Bridgette Gasa, now let's just identify her, what was her position in PRASA at the time?

**MR SACKS:** I – Chairperson, I'm not absolutely familiar...[intervenes].

**ADV VAS SONI SC:** Okay, she was a member of the

Board.

**MR SACKS:** I understand she was a member of the Board yes, that's correct, Chairperson.

**ADV VAS SONI SC:** Now, the point you made though is, based on what had been said in Mr Molefe's affidavit she had raised serious concerns about Swifambo in an email dated the 6<sup>th</sup> of November 2012 to Mr Buthelezi and Montana, let's just deal with that. Have you managed to lay your hands on a copy of that email?

10 **MR SACKS:** Chairperson, the standard procedure in the Werksmans investigation the team – they forensically secure the documentation from the outside investigation and in this case there was about 1.4billion documents and within this – these documents, this email that counsel refers to was located and I'll read the contents of this email...[intervenes].

**ADV VAS SONI SC:** Before you do that, Chairperson, I have a copy for you, it may be easier for you to follow it, may I have leave to hand it up and we will obviously  
20 include it in the further affidavit.

**CHAIRPERSON:** Ja that's fine.

**ADV VAS SONI SC:** But at least for now, you have it informally and then it will formally be part of the record  
Chairperson.

**CHAIRPERSON:** Ja, that's fine, thank you.

**ADV VAS SONI SC:** So, let's just put this in context. Ms Gasa writes on the 6<sup>th</sup> of November 2012 and she writes at 19h25, when I say writes, sends the email at 19h25, is that correct?

**MR SACKS:** That's correct, Chairperson.

**ADV VAS SONI SC:** Who were the recipients of this email?

**MR SACKS:** Chairperson, the recipients of the email was an email address, [Sifiso@makana.co.za](mailto:Sifiso@makana.co.za) and as noted on  
10 the email second recipient was Lucky Montana PRASA Corp.

**ADV VAS SONI SC:** Alright what does she do within this?

**MR SACKS:** Chairperson, this is – this email deals with her raising the serious concerns and if counsel indulges me I can read it into the record.

**ADV VAS SONI SC:** Yes, if you could read it into the record.

**MR SACKS:** So, the subject is, urgent, the attachments to this email states Swifambo Rail docex and Mpumalanga  
20 docex and the email reads as follows,

“Colleagues I know you are both in Cape Town, trying to rescue our organisation from being hijacked, I appreciate your efforts and can only hope the plot will be successfully arrested. Unfortunately I'm not a bearer of good news, I've

just received intelligence information about Swifambo Rail Leasing, the company the PRASA approved R3billion worth of work over 15 years. With all these platforms not being safe I'd like to request that you allow me to dig a little deeper. Failure to follow this up will sink the organisation. Should the intelligence report prove true we need an immediate intervention as the Board, signed off my Dr Brigette Gasa, MD the Elilox Group Pty Ltd”.

10 **ADV VAS SONI SC:** Now, this seems to indicate that there was an attachment to this email do you now – I mean, obviously you picked this up from Mr Molefe's affidavit.

**MR SACKS:** Mr Molefe obtained this document through the Werksmans investigation, through the repository of the forensically secured documents, as I mentioned. I would imagine, to answer counsel's question, if there was an attachment it could be, it would have to be confirmed, that this would also be – if this email was located in the  
20 forensic process then the attachments would also be. I'm not familiar as I wasn't part of that forensic process.

**ADV VAS SONI SC:** Chairperson, I want to deal with the second email and having regard to its contents, make a submission to you on how we can take that issue forward, Chairperson.

**CHAIRPERSON:** Yes, obviously she was very troubled by the intelligence report that she says – intelligence information that she says she had received about Swifambo Rail Leasing and she asked for – to be afforded more time to look into whatever was said in that intelligence information and she says, in effect, if we don't follow up this intelligence information that failure will sink the organisation and should the intelligence report prove true, we need immediate intervention as the Board.

10 **ADV VAS SONI SC:** She makes another important point here Chairperson.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** If we look at this as a contract for so many...[indistinct – dropping voice] if you look at what she says, this is R3billion worth of work over 15 years.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Now that's even more worrying because as I understand it, the State contracts are not to be beyond a certain period, three years or five years. I  
20 recall in one of the – Mr Makwethu's affidavit he flagged

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** I want to come back to how the approach – propose an approach we should adopt  
Chairperson.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** And then there is a reference to a second email and that is from Ms Gasas again, what is the date of that email?

**MR SACKS:** Chairperson, that date is 20 November 2012.

**ADV VAS SONI SC:** And the time?

**MR SACKS:** 10h38am.

**ADV VAS SONI SC:** And who is this email addressed to?

**MR SACKS:** Chairperson, again an email was sent from Bridgette Gasas and it was sent to Chris Mbatha, PRASA  
10 Corp, copying Lindikhaya Zide and siphiso@makana.co.za the subject being follow up on the Swifambo Rail leasing.

**CHAIRPERSON:** Lindikyaha Zide, I assume is the one that at some stage became a company secretary and at some stage Acting Group Chief Executive ...

**MR SACKS:** Yes. Yes, yes.

**CHAIRPERSON:** Officer.

**MR SACKS:** Yes.

**CHAIRPERSON:** And siphiso@makana.co.za that seems to be the same email address that we associate with Mr Sifiso  
20 Buthelezi in the previous email.

**MR SACKS:** Yes. Yes, it is the same email address.

**CHAIRPERSON:** Yes, okay. So it's two, about two weeks after the first email.

**MR SACKS:** That is it Chair.

**CHAIRPERSON:** Okay.

**MR SACKS:** Please that, I read that into the record Mr Chair. Chairperson the email reads:

“Dear Chris, I am once again making an attempt to extract more information from you and the procurement team on abovementioned matter as per our initial discussions of the 8<sup>th</sup> of November. It is imperative ...”

**ADV VAS SONI SC:** Just sorry, one second. She says:

“Our initial discussions of the 8<sup>th</sup> of November.”

10 That is two days after the email to Mr Buthelezi and Mr Montana?

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** That’s the one that you just read?

**MR SACKS:** Yes.

20 “It is imperative that PRASA as an organisation appoints adequately, capable entities to undertake the work under all of its programs, moreover in our contract are high in value and are linked to the strategy of creating new industrialists in the rail sector. There are concerns have been raised around this particular entity and the SCIP is needing you to confirm that indeed a capacity check was properly done in relation to this contracts and that you have satisfied yourselves with the necessary checks and balances have been done.

Please proceed to provide me with the information I requested from you as time is of the essence and will be an anomaly to proceed to conclude contract negotiations in light of the seriousness of the matter we had raised or which we have not received a response from you on. Kind regards, Dr Zanele Bridgette Gasas.”

**CHAIRPERSON:** So in terms of the last part of her email, it would appear that he had not, she had not, that is Dr  
10 Bridgette Gasas, she had not received information that she had requested with regard to this transaction.

Whether she is talking about information she may have previously requested from Mr Chris Mbatha or she is talking about the information that she may have requested from Mr Montana or Mr Buthelezi.

One might not be sure. But it’s clear that she was, she had been seeking confirmation. She of, she had been seeking certain information about this transaction.

**MR SACKS:** Yes.

20 **CHAIRPERSON:** And she says she had not received a response. And it is clear from this email that her concerns include the capacity of Swifambo in terms of this project. Is that right?

**MR SACKS:** Yes.

**CHAIRPERSON:** Because I think in the email she refers to



capacity does she not?

**MR SACKS**: She does.

**CHAIRPERSON**: Yes she does.

**MR SACKS**: She does.

**CHAIRPERSON**: Second paragraph of the second email, there are concerns that have been raised around this particular entity and the subject is the follow up on the Swifambo Rail Leasing.

10           “There are concerns that have been raised around this particular entity and the FCIP is needing you to confirm that indeed a capacity check was properly done in relation to this contract. And that you have satisfied yourselves that the necessary checks and balances have been done.”

That is an important issue she was raising and of course now that we know what we know, if they had taken heed of her concerns, maybe PRASA and ...[indistinct] would not have lost the kind of money they lost, but obviously.

20   **MR SACKS**: Yes.

**CHAIRPERSON**: So that, that is quite important. Well it's, it's, it may well be that it might be important to explore the possibility of calling her. Because she might be able to tell the Commission much more in terms of ...

**ADV VAS SONI SC**: Absolutely Chair.

**CHAIRPERSON:** What were other issues that she raised in the discussions at board level. And again of course Mr Montana should be coming in due course. But Mr Buthelezi looks like would need to come as well.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** [Indistinct] or how, what he did or didn't do in response to these concerns when we now know that Swifambo had not checked records. And ...[indistinct] deal with these matters. Yes.

10 **ADV VAS SONI SC:** Chairperson, this is what I was going to propose and that is just to expedite the outcome that you want. There's we sent, instead of sending a Rule 33 to her, because there is no implication in respect of her, is to send her a 10/6 Directive.

**CHAIRPERSON:** Ja. That ja.

**ADV VAS SONI SC:** To say we have these two emails.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** These are the concerns that appear to be raised.

20 **CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** Would you please prepare an affidavit by whatever date that deals with it, with the matters you have raised. The reaction to these emails. We don't know if there was a reaction. And as you have pointed out Chairperson what was the board's approach. And did you

raise it at the board and what was the board's ...  
(indistinct).

**CHAIRPERSON:** Yes. But slightly different. But same thing, but slightly different approach. Rather than saying will you tell us, I would say somebody must try and reach her over the phone and say, this is what emerges and we would like to you, would like an affidavit for you and we would like to prepare it for you.

And have a zoom consultation. You will tell us all  
10 that you can share with the Commission about the concerns you had, that you raised, how did everybody respond to them?

The discussions at board level and on the day that it was approved by the board, what were the discussions? I take it if we do not already have minutes of the board meetings at value when they approve ...

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** We should try and get there.

**ADV VAS SONI SC:** Yes.

20 **CHAIRPERSON:** So as to see whether the whole thing just was point of emotions or whether there was a serious and proper consideration of the, of the issues that she may have been there and she could know.

So if she gives all the information she knows, then somebody within the legal team can prepare that affidavit

then send. It might be a matter of – within a week we might have ...

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** An affidavit from her. So ja, it is the same thing, just ...

**ADV VAS SONI SC:** Yes, absolutely.

**CHAIRPERSON:** Ja. Ja, okay.

**ADV VAS SONI SC:** But what we now know based on those that certain persons at least aren't claiming  
10 ignorance that they were not aware, they were not alerted and in law Chairperson, is if you have a duty and you, you are asked to investigate and you don't investigate, that's a breach of the duty.

**CHAIRPERSON:** Ja, no, no. These email are very critical. Or all those that – ja, they were directed to him and it may well be that in ordinary things, certain board meetings, she raised the same issues so everybody who was a board member knew what the issues were.

**ADV VAS SONI SC:** Yes.

20 **CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** And, and therefore the net might spread wider in terms of ...

**CHAIRPERSON:** Yes, yes.

**ADV VAS SONI SC:** Implicated persons Chair.

**CHAIRPERSON:** Yes. I mean one of the, one of the things

that the Commission is going to, is looking at with regard to SOEs is where boards of SOE did not do their job, or what must be done, and was it a matter of incompetence or it be that the board or some members of the board were party to some agenda which was against the interests of the entity.

But also its, it's important because it may well be that I could consider that subject to issues of prescription and so one, and you know the entities should seal them.

10 **ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** [Indistinct] whatever they can recover of the tax payer's money.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** And also the Commission will have need to look at what qualities should people who get appointed as directors of these SOEs have.

And because it must be people who have integrity and it must be people who are prepared to make decisions that are in the best interest of the entity and not other  
20 decisions.

I mean an obvious thing with regard to this is, when the board approved this, what information did they have before them which indicated that Swifambo was an entity that could be given this kind of contract.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** What did they know about this entity?

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** You know you cannot just make a decision without doing, getting certain, certain amount of homework to be done.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** But clearly when it is not your money ...

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** You are supposed to look after the  
10 public, after public money. So we have got to look at all  
those things, because there ought to be some change in  
how things are done in these SOEs going forward.

And this Commission is in a position to come up with recommendations to say, going forward these are the things that should take. Then it is up to the President if ...[indistinct] the recommendations or not, but the Commission has a duty to look at why certain things happened at SOEs and what should be done to make sure they don't happen again.

20 **ADV VAS SONI SC:** Absolutely.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** Now Mr Sacks we have dealt with your report and I know, and this was a long time ago now, you indicated what the purpose of the report was. You handed this report and we've dealt with the issues that

arise from it even if one does not know all the facts.

What did you expect would happen next, after you had submitted the report? And also you had make a presentation, what did you expect would happen next?

**MR SACKS:** Chairperson, I think it goes without saying that I expected the investigation to continue for, it is, it is as simple as that. Obtain information I required, be in a position to perform a second level of analysis required.

Ultimately what the objective of concluding, forming  
10 an opinion and advising law enforcement to had engage me on what my view, the report in itself speaks volumes as to what the findings were already.

And I guess the remaining information would just confirmed further and pointed to other areas that needed to be, to investigate, or criminal proceedings to, to proceed.

**ADV VAS SONI SC:** If you had been asked after the presentation or shortly after your report, or any time after your report, do you think any purpose is going to be served by continuing these investigations that you've largely, well  
20 not fulfilled, but you have started this process. What would have been your ...[indistinct]?

**MR SACKS:** Chairperson, Advocate Soni my approach in performing the investigation?

**ADV VAS SONI SC:** No, no, no. What would have been your reaction to a question of that nature? In other words

should this matter proceed?

**MR SACKS**: Chairperson ...

**ADV VAS SONI SC**: Is it worth it in terms of money, time and possible outcome?

**MR SACKS**: Chairperson I think the record, the reports or the information contained in the reports stands for its, on its own and that's the investigation, I certainly should have proceeded.

**ADV VAS SONI SC**: Now of course it didn't and you were  
10 not even briefed on the Siyangena matter which was going to be the next brief from the Hawks to you, is that correct?

**MR SACKS**: That's correct Chairperson.

**ADV VAS SONI SC**: Either than that obviously is the question who should be held responsible for – you could see the outcome? We see where PRASA – well I mean the PRASA the ...[indistinct] contract is and the accrued losses that have been incurred.

Plus the liquidator will come in after Mr Sacks to explain what the position is at the moment, but, but  
20 whatever the position is, from the position of good governance somebody ought to be held responsible for not acquiring, not on the allowing, but the acquiring Mr Sacks to pursue to the logical conclusion, this investigation that he had stopped.

**CHAIRPERSON**: I have noted ...[indistinct].



**ADV VAS SONI SC:** Now Mr Sacks, after you presented your report, you didn't, you have not heard from the Hawks since?

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** Now we, you have heard what I have indicated to the Chairperson should happen about that. I'm going to take you to something else.

You have now been shown a report prepared by the liquidator of Swifambo Holdings and Swifambo Rail. Do  
10 you – a report to stakeholders dated the 18<sup>th</sup> of February 2020.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And in asking you to prepare for the presentation of your evidence, I have indicated to you, I would like you to just consider having regard to the flow of funds that he sets out in comparing it to what yours are.

What, what, or the general impression created by the flow of funds? What, what is the difference in views if any?

20 **MR SACKS:** Chairperson, the liquidator's report corroborates the findings contained in my report with regards to the flow of funds. As simple as that.

**ADV VAS SONI SC:** Not necessarily in every detail, because you didn't have all the information. Would the further information he has, it reinforces the, the

correctness of the conclusions that or the correctness of what you have set out in your report.

**MR SACKS**: That's, that's correct Chairperson.

**ADV VAS SONI SC**: And all one would need to do is just add the, the further investigations that have been done since as a result of the powers that be.

**MR SACKS**: That's correct Chairperson.

**ADV VAS SONI SC**: Now but there is nothing in his report that raises concerns about the cogency of your ...

10 **MR SACKS**: That's correct Chairperson.

**ADV VAS SONI SC**: Now then can I ask you, I also said to you that after the liquidator had submitted ...

**CHAIRPERSON**: Maybe before you proceed, let me just get this qualification Mr Sacks. Is it correct to say when one looks at what one can call your findings in your report, one should limit one to the flow of funds section, because whatever came before that was just the background that would make the flow of fund, transaction understandable. Is that correct?

20 **MR SACKS**: Chairperson you are correct. I include as you correctly state, I included all that background information, but my actual mandate ...

**CHAIRPERSON**: Ja.

**MR SACKS**: Was the flow of funds and that was ...

**CHAIRPERSON**: Yes.

**MR SACKS:** I guess the – as I detailed, that was my detailed findings.

**CHAIRPERSON:** Yes. Yes. And of course part of that is why I am raising that, is that you will remember yesterday we – I tried to establish what was preliminary and what was not preliminary in your report.

And you, you did say the report was a draft preliminary report. But you did say there are parts of the report which reflect your findings. And I think what you are  
10 saying is that your findings are only those that relate to the flow of funds.

And I guess that because if the, if, if money did leave account A and went to account B, there's not going to change as that is final.

**MR SACKS:** That's correct. That's, that cannot ever be disputed.

**CHAIRPERSON:** Yes, yes. Okay. Alright.

**ADV VAS SONI SC:** As you please. Now sorry, before I deal finally with the report, I have been told that there is a  
20 report in the Swifambo application, which deals with a comparison between what the tenderers, the different tenderers had tendered. Are aware of that?

**MR SACKS:** Chairperson, I, I am aware of that what was contained in that Popo Molefe affidavit.

**ADV VAS SONI SC:** Now in light of the fact that the

Chairman has indicated that is a matter that must be taken into account, I am going to ask that you look at the report and indicate in the supplementary affidavit precisely what is contained in that report to, as a comparator between what Swifambo was charging and what other tenderers were charging.

**MR SACKS:** Chairperson I will attend to that.

**ADV VAS SONI SC:** The background to that Chairperson is, apparently it is, it is, it is said by Judge Francis that the  
10 tender if, if the specifications imposed by Mr Mthimkulu had not been taken into account, another tenderer would have won.

But apparently there is a report which sets out precisely what that is. And we just don't want to be talking without all the, all the relevant facts. But it, it may also then raise further questions about the bona fides of the decision making.

But that we will get Mr Sacks to, but I thought before he leaves, you ought to note Chairperson that that  
20 would be a further matter that he will address neither.

**CHAIRPERSON:** No, that's fine.

**ADV VAS SONI SC:** Alright. Now in his report, oh sorry. The liquidator filed his report to stakeholders on the 18<sup>th</sup> of February 2020. Thereafter in July Mr Mashabo filed a thickened CM100 in each of – in respect of each of

Swifambo Holdings and Swifambo Rail.

Now the – I just want to ask you if you've had an opportunity to look at the new CN10s – CN100s, sorry.

**MR SACKS:** Yes Chairperson I have.

**ADV VAS SONI SC:** Chairperson I just want to – I know Mr Sacks is not the, the – was not the recipient of ...[indistinct] but obviously when you see what the CM10 deals with or some of the matters it deals with, it, it goes into some of the issues he has raised in his report.

10           And I thought it is only fair that Mr Sacks be given an opportunity and I see that and I accept that to the extent that Mr Mashaba says this, and it's, it's consistent with the bank accounts.

I cannot have any difficulty with it, having regard to the fact that I didn't have regard to – I didn't have all the information that the police should have provided me with.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** So I am going to ask you – sorry Chairperson, we are now dealing with Bundle E1 and it is  
20 EXHIBIT SS4. That's the liquidator's report to stakeholders.

**CHAIRPERSON:** Are we using red numbers here?

**ADV VAS SONI SC:** Red numbers on the right-hand side as you ...

**CHAIRPERSON:** Okay. Yes you may proceed.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Page 159 hey.

**ADV VAS SONI SC:** No, page – I'm not going to – the liquidator will deal with the report. It's just those matters that concern Mr Sacks. And they are dealt with starting at page 214.1.

**CHAIRPERSON:** 214.1.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Okay, alright. I have got it.

10 **ADV VAS SONI SC:** Chairperson I should just indicate by way of background why that numbering is like that. The liquidator when he filed his report, obviously didn't have the 3M, the revised ...[indistinct], the new CM10 – 100s.

They were included after our consultation with the liquidator because we indicated to him the importance of tying up the two reports, the liquidator's report and ...[indistinct].

Now section, page 214.1 is the first page of the new CM100 in respect of Railpro Holdings. You see that?

20 **MR SACKS:** Yes Chairperson.

**ADV VAS SONI SC:** Do you know why it's now called Railpro Holdings?

**MR SACKS:** Chairperson I am not familiar why Railpro Holding or I don't know why it's called Railpro Holdings. I'll answer that question directly.

**ADV VAS SONI SC:** Okay, you can take it for granted that refers to Swifambo, what was Swifambo Holdings.

**MR SACKS:** Yes, and I, I have seen that same back account as Swifambo Holdings.

**ADV VAS SONI SC:** Okay. Okay. But the name has been changed to Railpro Holdings.

**MR SACKS:** Yes, yes Chairperson.

**ADV VAS SONI SC:** Now in regard to that CM document, the CM100 the date of that document is the 6<sup>th</sup> of  
10 December 2018.

**MR SACKS:** Yes Chairperson on page 214.3.

**ADV VAS SONI SC:** Right. Then at 214.18 is a so-called replacement CM100.

**MR SACKS:** I see that Chairperson.

**ADV VAS SONI SC:** Now that was, that is dated and you'll see it on page 214.20 that is dated the 13<sup>th</sup> of July.

**MR SACKS:** That's correct Chairperson.

**ADV VAS SONI SC:** Now it is this that – I don't want to go too much into Railpro Holdings, but except in note 2 which  
20 appears at 214.35. Sorry, can I just ask you in respect of notes to CM are you familiar with that or would I or should I rather leave it?

**MR SACKS:** No, I'm not familiar with it. Okay I will say to me in my view it is just additional information that is being provided.

**ADV VAS SONI SC:** But what is said there is at all material times, Holdings was a non-trading entity. Two, at all material times Holdings permitted leasing to deposit amounts into its account on the basis where such amount where the property of Swifambo Rail Leasing and for reasons that are unclear, Holdings entered into contracts with certain service providers including its auditors on the basis and understanding that all liabilities therefore, all liabilities arising there from were payable by and or with the  
10 account of Leasing, and Holdings accordingly is entitled to recovery from, I mean Leasing is entitled to, Holdings is entitled to recovery from Leasing.

**MR SACKS:** I see that Chairperson.

**ADV VAS SONI SC:** That is what, I just thought that I will tell you that that is the relationship that is now said to have existed between Swifambo Holdings and Swifambo Leasing.

**MR SACKS:** Okay.

**ADV VAS SONI SC:** Now for present purposes we need not go much further then to say that on page 214.38 the original  
20 CM100 in respect of Swifambo Rail Leasing was filed and then if you look at page 214.56 the new CM100 in respect of Swifambo Rail Leasing was filed.

**MR SACKS:** I see that Chairperson.

**ADV VAS SONI SC:** And that is dated about the same time as the, the, the second CM100 in respect of Holdings.



**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** Now I just so that we all know what we are looking at, I want to ask you if you could just please turn to note 1, which appears at 214.70. Oh sorry, before you go there. Can I just ask you to look at page 214.63 and 214.64. This lists the creditors of Leasing. Would that be correct? 214.63.

**MR SACKS:** 214.63 yes, because debts due to the company, so it is assets.

10 **ADV VAS SONI SC:** Yes.

**MR SACKS:** Debtors.

**ADV VAS SONI SC:** Sorry, the ...[intervenues]

**MR SACKS:** Debtors.

**ADV VAS SONI SC:** Debtors of leasing.

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** Now in respect of each of them, there is said to be a note.

**MR SACKS:** That is correct Chairperson.

20 **ADV VAS SONI SC:** I want you to look at page, at note 1 which appears at page 214.70, because this deals with what Mr Mashaba now says or is the basis on which Leasing has claims against the various debtors that are reflected in those pages I have referred you to, and if I could just quickly go through, I just want to ... he says on the 6<sup>th</sup> of December Oswald Mashaba purported to sign, purported to

sign a CM100 statement of affairs and then in the second paragraph he says AM has been advanced by attorney Cameron that Oswald Mashaba has been advised by Mr Cameron a course to prepare a new statement in order to comply with the sections of 366 of the Company's Act and he has engaged the previous auditors of leasing to perform a forensic audit and he says this is the outcome of the audit.

**MR SACKS**: I see that Chairperson.

10 **ADV VAS SONI SC**: Okay. Then can I ask you to go to page 214.108.

**CHAIRPERSON**: Please just repeat the page Mr Soni?

**ADV VAS SONI SC**: 214.108 Chairperson. So if you could keep your finger on page 214.63 while we are looking at this, because you will see that note 19 refers to its claim or its alleged claim against PRASA and you will see that at the top of page 214.64.

**MR SACKS**: I see that Chairperson.

20 **ADV VAS SONI SC**: Alright. Now he says at paragraph 3, and remember you have indicated the amounts that Leasing and Holdings have received from PRASA. He has indicated the link between Leasing and Holding. Now in paragraph 3 he says:

“Oswald Mashaba has been advised that the sum of a 109 million rand remains to be

recovered by Leasing from PRASA and ought not to be offset against any claim that PRASA may have against Leasing.”

**MR SACKS**: I see that Chairperson.

**ADV VAS SONI SC**: What is your reaction? I mean it is not for you to, I am not asking you to comment but just looking at the flow of funds as you have outlined and as you say is more or less confirmed by the liquidators report on the same issue, what is your reaction to that?

10 **MR SACKS**: Chairperson, this is a claim regarding payments that Mashaba said that Swifambo paid to Sibenza. Other than confirming the bank records of Swifambo in my analysis that Sibenza received 99 million rand. Mashaba purports or claims to have provided supporting documentation for those payments. If you recall Chairperson, the contract between Swifambo and PRASA says the costs of shipping and falling is for the cost of PRASA. So other than this paragraph 3 confirms that Swifambo made some payments to Sibenza that is claiming  
20 from PRASA.

**ADV VAS SONI SC**: But he goes further and he says PRASA must pay this before its claim against Swifambo can be determined.

**MR SACKS**: Chairperson, based on what I see in my reports, these are Mashaba’s claims. I do not know if

credence could be given to his claims, based on his other claims contained in this document which I have read. It is, I understand where counsel, what counsel is asking but it needs to be seen in context of the bigger picture. I think simply put he is saying that, Mashaba is saying that well Swifambo made payments to Sibenza and those payments must be paid, Swifambo must be reimbursed by PRASA. I am not sure on the legalities of whose claim supersedes whose, but that is how I read this document.

10 **ADV VAS SONI SC:** Maybe the liquidator because he is the person who is looking after PRASA's interests, will deal with that.

**MR SACKS:** Ultimately Chairperson, that is a point that you so put as to what was the, for 13 locomotives a 100 million rand. How much money was PRASA paying to bring one locomotive into South Africa. Here is, which was not available to me at the time before my analysis, here is internal documentation from Swifambo that talks to these payments and this would be a starting point for an  
20 investigation to say here is Sabena's purported tax invoices as provided by Mashaba in his affidavit. That will be my first point of investigation. Let us go analyse this documentation which myself, perhaps the liquidator has, which the liquidator would in the ordinary course of assessing claims, this documentation would be investigated

further.

**ADV VAS SONI SC:** Then can I ask you to look at note 22, and keeping an eye on what 22 refers to, this refers to the claim of Mr Mabunda.

**MR SACKS:** On page 241.130?

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Sorry, ja.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** And I am saying that is confirmed by  
10 the fact that at page 214.64 ...[intervenes]

**MR SACKS:** Yes.

**ADV VAS SONI SC:** He flags it as note 22.

**MR SACKS:** Yes.

**ADV VAS SONI SC:** Now what does he say about this claim? Can you read that, Mr Mabunda's claim please?

**MR SACKS:** Chairperson, what Mr Mashaba says about payments in the amount of 28.8 million rand that is reflected on the schedule on 214.64, sorry.

**ADV VAS SONI SC:** No, no, no that is page, it is 214.130.

20 **MR SACKS:** 130. So with reference to those payments, Swifambo made or Mr Mashaba claims that Swifambo made payments of 28.8 million rand to Mr Mabunda and in Mashaba's view on note 22 he stated:

“Mr M Mabunda, although having offered advice and having made available consultancy

services through a number of entities forming part of the S group, was never employed by Leasing and accordingly it is not understood apparent as to why he received various amounts and in aggregates in the amount in the excess of 20 million rand. By virtue of the foregoing it is contended that Mr MM being Mr Mabunda is indebted to leasing unless Mr Mabunda is able to furnish information and or documentation indicating the legal basis upon which he received various amounts from Leasing.”

**ADV VAS SONI SC:** Now when you were identifying the entities from which Mr Mabunda had received money, the Swifambo entity, it is quite clear that all that money came from Swifambo entity, is that correct?

**MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** And those entities were effectively under the control of Mr Mashaba.

20 **MR SACKS:** Chairperson, Mr Mashaba does not state, he just gives a total amount, whereas in my report I detailed which payments make up the amounts that I categorize as a Mashaba payment, linked payment or Mabunda linked payment. In this instance Mr Mashaba just throws the number out. To answer counsel’s question, [indistinct

00:13:06] nonsensical is Mr Mashaba claims to be the managing director of a company, now he is stating I do not understand why he received 28 million rand. This makes no sense.

**ADV VAS SONI SC:** Although the companies that made those, I am the managing director of the companies that made them?

**MR SACKS:** Yes Chairperson.

**ADV VAS SONI SC:** Then can I ask you to look at note 25  
10 which appears at 214.133. This is the payments made to Mr Sibelo and other people and perhaps what I should ask you to look at, is page 214.135 which is the next page where he schedules these claims. You see that?

**MR SACKS:** I see that Chairperson.

**ADV VAS SONI SC:** I am just trying to present the context.

**MR SACKS:** Yes.

**ADV VAS SONI SC:** So if you could tell the Chairperson what he alleges this claim against these individuals is for?

**MR SACKS:** It, in summary ...[intervenes]

20 **ADV VAS SONI SC:** No, no, no it is important that we know what it means.

**MR SACKS:** Chairperson, I will start at the back and work my way, I will work my way back. So on page 214.134 Mashaba contends:

“By virtue of the foregoing the donations by

Leasing for the benefit of the ANC never reached the ANC and MG being Maria Gomez and GS being George Shabeza have unlawfully received and retained the sum of 79.4 million rand and accordingly these amounts are refundable to Leasing.”

So if we, in essence what Mr Mashaba is alleging, is that Leasing, Swifambo Rail Leasing made payments in the amount of as shown on page 214.135, made payments to or the schedule, he calls a schedule of  
10 donations to ANC. He lists payments paid to Nkosa Sabelo Incorporated, NCI, NCI paying into trust accounts of Noels and five payments to Similex which I am assuming he has not totalled it up on his schedule, which I am assuming adds up to 79.4 million rand, saying Swifambo made these payments, but there is no, there is no rational for these payments, even though it is his company and they must be recovered from the recipients being Maria Gomez and George Sabelo, an amount of 88 million rand.

20 **ADV VAS SONI SC:** In the context of why he says these payments were made, it is strictly speaking intimately connected with the award of the contract. That is why I wanted you to read from paragraph 1.

**MR SACKS:** Okay, sorry. Excuse me counsel, so I will read from paragraph 1, note 25:



“Shortly after leasing was awarded, the locomotive tender by PRASA Mr Mashaba and Mr Mabunda were approached by two individuals who held themselves out to be fundraisers for the African National Congress, ANC. The two persons referred to in one, were Mrs Maria Gomez who is MG, an attorney George Sabelo, at that stage a partner shareholder in a legal firm by the name of Nkosi Sabelo and it is GS, George Sabelo.”

**ADV VAS SONI SC:** If you could just stop there. He says here that this was after the award of the tender, you remember that? I mean you note that?

**MR SACKS:** Yes, I see that Chairperson.

**ADV VAS SONI SC:** Now I do not need to go to this, but you will recall that in his affidavit replying affidavit in the Swifambo matter, Mr Molefe had said that Mr Mabunda had approached Mr Mashaba and asked him to be the front of the tender that was, that still had not been issued. You recall that?

**MR SACKS:** I recall that Chairperson.

**ADV VAS SONI SC:** Yes, okay. I just wanted to make the point that this is inconsistent with what he said to Mr Molefe.

**MR SACKS:** That is correct Chairperson. I will carry on

reading, paragraph 3 of page 214.133:

“Under pressure from Gomez and Sabelo, Mashaba on behalf of Leasing agreed to arrange for a donation to the ANC of an amount equal to 88 million rand and which would be dealt with as follows. Mashaba would receive a handling fee in the region of eight million rand and the balance in the sum of 80 million rand will be paid as and when directed by Gomez and Sabelo. At that stage it was indicated to Mashaba that a company owned by Sabelo, being similar to Pty Ltd would generate invoices to Leasing. Arising from the foregoing, payments were effected to Gomez and Sabelo and in aggregate the amounts of 79.4 million rand as indicated in the schedule which is annexed hereto as Annexure A. At the Section 417 inquiry Sabelo testified that he has never been paid a fundraiser for ANC, and the only part that he and MS played in Leasing was to collect amounts invoiced by Similex to Leasing and where after he dispersed amount received, presumably into the trust account of MS as directed by Maria Gomez. By virtue of the foregoing, the donations by Leasing to the

benefit of the ANC never reached the ANC and Gomez and Sabelo have unlawfully received and retained the sum of 79.4 million rand, and accordingly these amounts are refundable to Leasing.”

**ADV VAS SONI SC:** That is his claim now in respect of all those amounts, because you will see that the amounts paid we know Nkosi Sabelo and Similex are all included in this total amount.

10 **MR SACKS:** That is correct Chairperson.

**ADV VAS SONI SC:** Just one thing I thought may be worth pointing out, and that he had agreed to pay 80 million rand, this is Mr Mashaba, but he was going to charge a handling fee. If you look at paragraph 3.

**MR SACKS:** Yes, I see that Chairperson.

**ADV VAS SONI SC:** And so the amount that was going to go to the ANC was 80 million rand. His handling fee was going to be eight million rand. Do you know where that eight million rand was going to come from?

20 **MR SACKS:** The eight million rand came from PRASA, Chairperson.

**ADV VAS SONI SC:** Then can I ask you to please look at note 32 on page 214.149. Now this here refers to if you go back, you do not need to but it refers to the payment made to the S group or Mr Mabunda by Swifambo, I mean by

Vossloh. It is the 75 million rand we were talking about.

**MR SACKS**: That is correct Chairperson.

**ADV VAS SONI SC**: What does he say about that?

**MR SACKS**: Chairperson, if I may read from this page, that 214.149, note 32. Paragraph 1:

10                   “Subsequent to leasing concluding a subcontract agreement with Vossloh for the sale of 70 locomotives, and without the knowledge of Leasing and its consent, Vossloh paid to Mr Mabunda S Group an amount of approximately 75 million rand. It is Mashaba’s contention that this amount should have been paid by Vossloh to Leasing as some form of rebate and according to Leasing liquidators need to recover this amount from Mabunda, the S group.

**ADV VAS SONI SC**: So this money he now wants the liquidators to recover from Mabunda as he wanted the earlier amount that Swifambo had paid to Mr Mabunda.

20 **MR SACKS**: Chairperson, in my mind, this is Mashaba’s contention, his view but the audit confirms to me that Mabunda received the 75 million rand. The commercial rational as Mashaba is talking over here, or I do not know. Any conclusion can be drawn.

**ADV VAS SONI SC**: But does that no reinforce the point

you made much earlier that there did not seem to be any commercial rational for many of these funds.

**MR SACKS**: That is correct Chairperson.

**ADV VAS SONI SC**: Alright, and then the final one I want you to look at is note 33 at page 214.150. Now this you will see are payments, if you look at page 214.65 this relates to payments made to the Siyaya group.

**MR SACKS**: That is correct Chairperson.

**ADV VAS SONI SC**: And what does he say about that?

10 **MR SACKS**: Read from page 214.150, note 33:

“From time to time Siyaya Consulting Engineers was paid amounts totalling R7 243 773-00. See Annexure A hereto. Mashaba bears no knowledge as to the reasons for these payments and accordingly disputes that Siyaya was entitled to these amounts. The only documents that have been located in regard to the alleged services rendered by Siyaya to Leasing are annexed hereto. In regard to the

20 the alleged scope of work detailed in Annexure B4, Mashaba disputes that the consulting services indicated therein, were ever rendered by Siyaya to Leasing and accordingly the liquidators of Siyaya one of them is Mula who is a co-liquidator of Leasing should be called

upon to investigate whether his services were rendered by Siyaya to Leasing. In addition to the foregoing, the Leasing liquidators should lodge a claim against the insolvency estate of Siyaya.”

**ADV VAS SONI SC:** The Siyaya too is under liquidation or has already been liquidated.

**MR SACKS:** I have been informed of that Chairperson.

**ADV VAS SONI SC:** Well, he is talking about the  
10 insolvency.

**MR SACKS:** Yes, yes sorry Chairperson.

**ADV VAS SONI SC:** So what is quite clear from these, the main payments that were made to Mr Mabunda and his company, either by Swifambo or by Vossloh, he is, Mr Mashaba is saying, must be recovered from Mr Mabunda.

**MR SACKS:** That is what Mashaba is claiming Chairperson.

**ADV VAS SONI SC:** And he is also saying that the money that was paid purportedly for the benefit of the ANC which did not receive the benefit according to him, must be  
20 claimed back from those whom he gave the money to, because he believes it was for the ANC.

**MR SACKS:** I agree with that contention Chairperson.

**ADV VAS SONI SC:** And again, come back to your report. As you were going through your report you said but it does not look like they did anything in respect of the contract

that we see, the contract that PRASA or the locomotive contract, ja and in respect of what he says now these are, what is your, how do you feel about what you have said earlier?

**MR SACKS:** Chairperson, Mashaba confirms that all these amounts dispersed by Swifambo were of no benefit at the very least to Swifambo had no purpose. He is even claiming that he will be paid back, even though he was the one I would imagine as the managing director, if not made  
10 the payment, approved the payment but in summary these payments have no commercial rational.

**ADV VAS SONI SC:** Chairperson, I see it is one o'clock. I, that is those are the issues I wanted to raise with Mr Sacks. I do not know whether we, you have any issues that you want to raise with him.

**CHAIRPERSON:** No, I wanted to make sure that if possible, we adjourn for lunch only when you are done with him.

**ADV VAS SONI SC:** Yes, yes, I am done.

20 **CHAIRPERSON:** You are done, ja. Thank you very much Mr Sacks for coming to assist the Commission. Should the need arise we will ask you to come back, but we hope that or you will, you may have to come back because you have some homework to do for us. So but some of the homework maybe might be supplementary after this is filed with the

Commission without the need for you to come back for oral evidence, but I have no doubt that we have, if we do need you, you will avail yourself.

**MR SACKS**: Thank you Chairperson.

**CHAIRPERSON**: Thank you very much for assisting us.

**MR SACKS**: Yes.

**CHAIRPERSON**: We are going to take the lunch adjournment then and then we will resume at five past two. We adjourn.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Good afternoon.

**ADV VAS SONI SC**: Good afternoon Chair.

**CHAIRPERSON**: Again. Are you ready?

**ADV VAS SONI SC**: We are ready.

**CHAIRPERSON**: Okay alright.

**ADV VAS SONI SC**: Mr Muller will be our next witness.

**CHAIRPERSON**: Next witness?

**ADV VAS SONI SC**: And the last witness for today.

20 **CHAIRPERSON**: Okay. Registrar, please administer the oath. Thank you Mr Muller for coming to assist the Commission.

**MR MULLER**: [No audible reply]

**REGISTRAR**: Please state your full names for the record.

**WITNESS**: [mic not switched on] Sorry. Johannes



Zacharias Human Muller.

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

**WITNESS:** No.

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

**WITNESS:** Yes.

**REGISTRAR:** Do you solemnly swear that the evidence you will give, will be the truth, the whole truth and nothing  
10 but the truth?

**WITNESS:** Yes.

**REGISTRAR:** If so, please raise your right hand and say, so help me God.

**WITNESS:** So help me God.

**JOHANNES ZACHARIAS HUMAN MULLER:** (d.s.s.)

**CHAIRPERSON:** Thank you. You may be seated  
Mr Muller.

**ADV JG CILLIERS SC:** I am JG Cilliers (SC). I am  
20 appearing on behalf of the witness, the present witness on the instructions of Mr Schabort Potgieter Attorneys. My instructing attorneys are indeed also present in the hearing.

**CHAIRPERSON:** Thank you Mr Cilliers. Yes.

**EXAMINATION BY ADV VAS SONI SC:** Mr Muller, you are one of the two joint liquidators that have been appointed to

deal with the estate of Swifambo Holdings and... Oh, sorry. Swifambo Rail and Swifambo Holdings, now known as...

**MR MULLER:** Yes, in Swifambo Rail Leasing, we are three liquidators. It is Aviwe Ndyamara, Professor Mandla Matlala and myself. And in Railpro Holdings it is Mr Timco and Aviwe Ndyamara.

**ADV VAS SONI SC:** Alright. But you are one of the liquidators involved?

10 **MR MULLER:** I have been appointed. I have been handling the administration.

**ADV VAS SONI SC:** And in regard to both these entities, although you have co-liquidators, you have – what is the state of your knowledge in regard to the investigations where you are at the moment and the reports that have been prepared.

**CHAIRPERSON:** As you answer, face this side Mr Muller.

**MR MULLER:** Yes. Commissioner, I have been intimately involved with the day to day administration in both entities.

20 **ADV VAS SONI SC:** Now you prepared a report dated the 18<sup>th</sup> of February 2020. It is headed: Re[ort to Stakeholders. Is that correct?

**MR MULLER:** That is correct Mr Commissioner.

**ADV VAS SONI SC:** Chairperson, that report appears at Bundle 3.1, SS-4, PRASA reference 160 – starting at page

161 Chair.

**CHAIRPERSON:** I am sorry. What is the page? 161?

**ADV VAS SONI SC:** It is starts at 161. Yes, Chair.

**CHAIRPERSON:** 161, that is where it starts?

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Okay thank you.

**ADV VAS SONI SC:** Now Mr Muller, you – have a look at the document that starts at page 150 – well, 161 of Bundle 3. Is that the report you prepared?

10 **MR MULLER:** That is the report.

**ADV VAS SONI SC:** And that report ends, the report itself ends at page 171.

**MR MULLER:** That is correct Chairperson.

**ADV VAS SONI SC:** And whose signature is that there which signs on behalf of the joint liquidators?

**MR MULLER:** Oh, that is my signature.

**ADV VAS SONI SC:** Now you can confirm that what is contained in this report is true and correct?

**MR MULLER:** That is so.

20 **ADV VAS SONI SC:** Now Mr Sacks, and you must be aware of it because you have been – you came in yesterday as well and you came in earlier today, not while he was testifying but you are aware.

**MR MULLER:** H'm.

**ADV VAS SONI SC:** He is a Forensic Investigator who did

investigations into the affairs of Swifambo but that was before it was liquidated. Are you aware of that?

**MR MULLER:** I am aware of that, yes.

**ADV VAS SONI SC:** Now can I ask you. Did you see his report, the reports that he presented to the Commission?

**MR MULLER:** No, I have not seen it. It only came to my knowledge very recently.

**ADV VAS SONI SC:** But I mean, you are aware of the report?

10 **MR MULLER:** I am aware of it, yes.

**ADV VAS SONI SC:** Are you aware of the general conclusions that he talked...?

**MR MULLER:** I am aware of the general...

**ADV VAS SONI SC:** Now I raise that with you Mr Muller in this context. Mr Sacks told the Chairperson that in 2017, he prepared that report. He made a presentation to the Hawks on that report. And he left the report with them on the understanding that they would come back and assist him to finalise the report.

20 I am just putting that, the context. He says...  
Sorry, just to indicate to the Chairperson verbally that you understand that ...[intervenes]

**MR MULLER:** Yes, I understand.

**ADV VAS SONI SC:** Now he says in addition, that from the time he presented his report in 2017 up to now, a

period of maybe four years, the Hawks never came back to him.

**MR MULLER**: [microphone not switched on.]

**ADV VAS SONI SC**: That is his evidence, okay? I am just placing that on record. Now as I understand it. Mr Mashaba in a 10.6 – or in an affidavit that he submitted to the Commission, having been directed to do so in terms of 10.6 Directive, indicated that you had laid charges against him. Is that correct?

10 **MR MULLER**: That is correct Chairperson.

**ADV VAS SONI SC**: Now when were those charges laid?

**MR MULLER**: In May 2020.

**ADV VAS SONI SC**: And could you just indicate to the please that: Look, I believe Mr Mashaba should be charged with the following offences? Or, did you give them a set of documents that justified why he should be charged?

**MR MULLER**: ...background, it was a comprehensive report and all the figures were detailed in that report.

20 **ADV VAS SONI SC**: As I understand it, that report was your affidavit and annexed to that were a series of supporting documents confirming what – confirming why, in your view, he should be charged.

**MR MULLER**: That is correct Chairperson.

**ADV VAS SONI SC**: And who had prepared that

Chairperson? I mean, Mr Muller.

**MR MULLER**: I was assisted by senior counsel, Mr Jaap Cilliers who prepared the charge.

**ADV VAS SONI SC**: Now that you say was in May 2020.

**MR MULLER**: That is correct Chairperson.

**ADV VAS SONI SC**: About eight months ago.

**MR MULLER**: That is correct.

**ADV VAS SONI SC**: May I ask you? Have you heard anything from... Oh, sorry. When did you lay the charge?

10 **MR MULLER**: It was the Hawks in Pretoria at their offices.

**ADV VAS SONI SC**: Have you heard from them since?

**MR MULLER**: Yes, we had a follow-up. After the charge was made, we had a follow-up meeting. I cannot recall the date and then early December, I visited their offices again and where the – I had to sign an affidavit, containing all the evidence and all the information I gave them in May.

**ADV VAS SONI SC**: But I am not understanding you. You gave them an affidavit with supporting documents.

20 **MR MULLER**: That is correct.

**ADV VAS SONI SC**: In support of why Mr Mashaba should be charged.

**MR MULLER**: That is correct.

**ADV VAS SONI SC**: But as I – was it only Mr Mashaba or did you ask for other individuals as well?

**MR MULLER:** Yes-no, there were other individuals  
...[intervenes]

**ADV VAS SONI SC:** It does not matter. I am just...

**MR MULLER:** Yes.

**ADV VAS SONI SC:** But you... Now, you then say you had  
a meeting with them. How did that meeting come about?

**MR MULLER:** Chair, it was just a follow-up meeting to get  
more information. I was assisted by my senior counsel,  
just to give them a more comprehensive background.

10 **ADV VAS SONI SC:** Who asked for that meeting?

**MR MULLER:** It was on the request of the Hawks.

**ADV VAS SONI SC:** Of the Hawks?

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** They wanted more information from  
you?

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Did you give them that information?

**MR MULLER:** Yes, we did.

20 **ADV VAS SONI SC:** And then you say there was a  
meeting in December.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** What happened in December?

**MR MULLER:** In December... I think throughout they had  
consultations with the forensic investigator that we  
appointed which was not Mr Sacks. And they compiled a

comprehensive affidavit which I then signed mid-December.

**ADV VAS SONI SC:** Okay. And since then, what has happened?

**MR MULLER:** I have not heard from them since.

**CHAIRPERSON:** Did you sign one affidavit in December or did you sign two?

**MR MULLER:** Uhm ...[intervenes]

**CHAIRPERSON:** I understood you earlier on that one, you lodged the complaint with the Hawks in May 2020. Is that  
10 correct?

**MR MULLER:** That is correct.

**CHAIRPERSON:** And then the Hawks initiated a meeting that they wanted more information and this was in December.

**MR MULLER:** That is correct.

**CHAIRPERSON:** And then you have told me that the Hawks were contact with the forensic investigator that you had used and the comprehensive affidavit was prepared. I think you say in mid-December if I am not mistaken.

20 **MR MULLER:** That is correct. The last affidavit I signed was in December.

**CHAIRPERSON:** Yes. So I just want to find out whether it is one affidavit that you signed in connection with this matter in December or is two affidavits in December?

**MR MULLER:** No, it is only one affidavit, yes.



**CHAIRPERSON:** It is only one?

**MR MULLER:** Yes.

**CHAIRPERSON:** Okay alright.

**ADV VAS SONI SC:** And that affidavit, the Hawks assisted in compiling.

**MR MULLER:** Yes, they used all the information that was given to us to...

**ADV VAS SONI SC:** Has anybody from the National Prosecuting Authority contacted you in relation to your  
10 complaint or your complaints?

**MR MULLER:** Not, as far as I can recall, no.

**ADV VAS SONI SC:** No, no, no. Either they did or they did not.

**MR MULLER:** No, they did not.

**CHAIRPERSON:** And between May 2020 and December 2020 when the Hawks asked for more information, had you been informed who at the Hawks would be responsible for investigating the matter?

**MR MULLER:** We have dealt throughout with  
20 Colonel Trollip. There was regular communication from our and from his side to get more information.

**CHAIRPERSON:** Yes.

**MR MULLER:** And then the affidavit I signed was with Captain Simon(?).

**CHAIRPERSON:** Yes, but in terms of who the – who was

in charge of the docket as well as the investigation, were you told, do you know, between May 2020 and December?

**MR MULLER**: The person I communicated with was mostly with Colonel Trollip.

**CHAIRPERSON**: Trollip?

**MR MULLER**: Trollip.

**CHAIRPERSON**: Oh, okay. You understood him to be the investigating officer or not necessarily?

**MR MULLER**: That was ...[intervenes]

10 **CHAIRPERSON**: He conducted the ...[intervenes]

**MR MULLER**: The communication we had was with him.

**CHAIRPERSON**: Yes. Okay alright.

**ADV VAS SONI SC**: But you cannot identify the person who was an overall control of the investigation from the Hawks in Pretoria?

**MR MULLER**: No, I cannot.

**ADV VAS SONI SC**: Now you said that in December, they compiled a second affidavit which included matters that had been looked at by a forensic investigator that the liquidators have appointed. Is that correct?

20 **MR MULLER**: That is correct.

**ADV VAS SONI SC**: Now in regard to the commissioning of a forensic investigator. How did that come about?

**MR MULLER**: We had to - in our investigation we found that as a liquidator you are only have, you know, limited

resources and you have access to documentation but to have that, somebody had to go through it in detail. Also create the flow of funds for us to have a condensed version on which we can make decisions going forward.

**ADV VAS SONI SC:** Now you have indicated to me and I am just placing it on record so we know what concerns you have. That at present, and it has been ongoing for some time now. There is ongoing litigation between the liquidators and Mr Mashaba and other persons invested in  
10 the Swifambo liquidation.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** One of those persons is Mr Landgrebe.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** He is an auditor for, I think, Swifambo Rail.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Now as a result – and I understand there was going to be an inquiry today in relation to the  
20 Swifambo matter.

**MR MULLER:** Inquiries has been ongoing in the – we have had various, several inquiries in this matter.

**ADV VAS SONI SC:** One – but one of the hearings was today.

**MR MULLER:** There was a hearing this morning, yes.

**ADV VAS SONI SC:** One of the matters that were raised is that you – that liquidator should accuse them.

**MR MULLER:** No, it was asked that the Commissioner in terms of Section ...[intervenes]

**ADV VAS SONI SC:** Oh, sorry the Commissioner.

**MR MULLER:** Act... Ja ...[intervenes]

**ADV VAS SONI SC:** Oh, sorry. I am ...[intervenes]

**MR MULLER:** ...before the Commission can refuse it.

[Parties intervening each other – unclear.]

10 **ADV VAS SONI SC:** But in separate applications, Mr Mashaba has also asked that you be – your firm be removed as the liquidator.

**MR MULLER:** Ja. I am appointed in my personal capacity but he has asked us for the removal of...

**ADV VAS SONI SC:** So you have indicated to me that, having regard to the ambit on matters that I should ask you questions, you would prefer that I stick mainly to the report.

**MR MULLER:** That is correct.

20 **ADV VAS SONI SC:** That is just as though not to give fuel to either the civil litigation or give them fuel to fight you in regard to the civil litigation or in regard to challenging your authority and other matters relating to the liquidation itself.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Okay. Now I am going to do that and

I have given you and your counsel that assurance. I want to concentrate mainly on the main findings you made in regard to who were the beneficiaries of the funds flowing from Swifambo.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** And I will just tell you, and I have already indicated to you that what I found intriguing about this matter is. When the liquidation application – and it was Swifambo which brought the application to liquidate  
10 itself about the Swifambo entities. Is that correct?

**MR MULLER:** It was a voluntarily liquidation by way of a resolution.

**ADV VAS SONI SC:** Yes. And Mr Mashaba on that occasion signed a CM 100 in regard to both Swifambo Rail and Swifambo Holdings.

**MR MULLER:** That is correct Chairperson.

**ADV VAS SONI SC:** You then submitted this report on the 18<sup>th</sup> of February 2020.

**MR MULLER:** That is correct.

20 **ADV VAS SONI SC:** You have since received a new CM 100 in respect Swifambo Rail and a new CM 100 in respect of Swifambo Holdings. Is that correct?

**MR MULLER:** That is correct Chairperson.

**ADV VAS SONI SC:** Now just to get one small matter out of the way. We talk about Swifambo Holdings but it is now

called Railpro Holdings. Is that not...

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** So when the documents in the CM 100's and so on, are referred to the entities, they – the matter in regard to what was Swifambo Holdings is now Railpro Holdings. And the matter in regard to Swifambo Rail is still Swifambo Rail.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Now just to get another matter out of  
10 the way quite quickly. If you look at page 16... Oh, page  
167 in the bundle in which your report is contained, the  
one on the right-hand side. You will see... Well  
...[intervenes]

**CHAIRPERSON:** Did you say one, six, seven?

**ADV VAS SONI SC:** One, six, seven. Yes, Chairperson.

**CHAIRPERSON:** Okay. Yes, you may continue.

**ADV VAS SONI SC:** As you please Chair. Now if you look  
at page 167. It is a continuation of what was started on  
page 166 which deals with the legal proceedings. And then  
20 the second set of items you record there is the inquiry.  
And you itemise the dates on which the inquiry took place.  
What inquiry was that?

**MR MULLER:** That is an inquiry in terms of Section 41. It  
is a secret inquiry in terms of Section 417 and 418 of the  
Companies Act into the affairs of Swifambo Rail Leasing

and Railpro.

**ADV VAS SONI SC:** Now I see that, if you look here, there were several people called whose names are mentioned as people who received money from Swifambo. One of them is Mr Mashaba. The other is Mr Sabelo. The other is Mr Mabunda. And towards the bottom is T Makonzi Mashele. On the 24<sup>th</sup>, the second name on the 24<sup>th</sup> of February 2020.

**MR MULLER:** That is correct Chairperson.

10 **ADV VAS SONI SC:** When in regard to the level or lack of cooperation, will you just tell us what was Mr Mashaba's attitude in regard to cooperating at the inquiry?

**MR MULLER:** We did not receive no cooperation from Mr Mashaba at all. He appeared once. The second time, he came with senior counsel and insisted on a Shangaan translator. And then the third time he came was with his current attorney where he state that he did not recognise the proceedings and he did not recognise – you know, he was not prepared to...

20 **ADV VAS SONI SC:** Well, everybody I suppose has an opportunity to make their own law Chairperson. [laughs] They recognise what they want.

**CHAIRPERSON:** [No audible reply]

**ADV VAS SONI SC:** We are smiling because that is exactly ...[intervenes]

**CHAIRPERSON:** It looks like it does that with recognising and then the recognition gets withdrawn later on because with the Commission too he received Regulation 10.6 Directive. He complied and filed an affidavit. But it was only after he had received a summons that he seized to recognise processes coming from the Commission.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV VAS SONI SC:** Now also, you point out that then –  
10 then Wheels Solution is under liquidation.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** or has been liquidated.

**MR MULLER:** That is correct Chairperson.

**ADV VAS SONI SC:** Alright. Then at 6.8, you say that you have brought an application to confirm jurisdiction against Ms Gomes. This is Maria Gomes. Would that be correct?

**MR MULLER:** That is correct, ja.

**ADV VAS SONI SC:** And what was the purpose -or what  
20 did you want jurisdiction in respect of her to be confirmed for?

**MR MULLER:** To actually was – she is a debtor of Swifambo for money she received and we confirmed that the jurisdiction to attach her house.

**ADV VAS SONI SC:** And you put a figure of



R 40 140 000,00 on that.

**MR MULLER**: That is correct.

**ADV VAS SONI SC**: Is that what the house is valued at?

**MR MULLER**: No, I do not know what the house is valued. I think it is in the region of R 12 million.

**ADV VAS SONI SC**: Oh, I see. So but your claim against her is for R 40 million?

**MR MULLER**: That is correct.

**ADV VAS SONI SC**: Yes. And you needed jurisdiction  
10 confirmed against her because she is a non-South African. She is Peregrine's in terms of law.

**MR MULLER**: That is how I understand it.

**ADV VAS SONI SC**: Alright. So I have got out of the issues that in a sense of peripheral to the matters, I want to ask you about Mr Muller. And if I can ask you to look at paragraph 5 on page 162 of the bundle?

**MR MULLER**: [No audible reply]

**ADV VAS SONI SC**: Now you say from the information obtained a flow of funds can be summarised as follows, at  
20 paragraph 5. Do you see that?

**MR MULLER**: Yes, I see.

**ADV VAS SONI SC**: Now I just want to ask you. Is that after the forensic investigator whom you appointed had done a forensic investigation of the flow of funds?

**MR MULLER**: I think this was – the flow of funds, the

basic flow of funds was done by our legal team and myself.

**ADV VAS SONI SC:** And when he did his investigation, did he confirm ...[intervenes]

**MR MULLER:** [Indistinct] ...[intervenes]

**ADV VAS SONI SC:** ...to a large extent what was contained ...[intervenes]

**MR MULLER:** The figures as contained in the report ...[intervenes]

**ADV VAS SONI SC:** Yes.

10 **MR MULLER:** ...has been confirmed, yes.

**ADV VAS SONI SC:** So I ask Mr Sacks, having – he having done his own flow of funds investigation and he says he came to more or less the same conclusion as you do in your report or you came to the same conclusion as he did. And I just say this because his report is the earlier of all the reports.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Now in regard to the forensic investigator. Were you aware at the time you  
20 commissioned the forensic investigator that the Hawks had asked Mr Sacks to compile a report for them based on a criminal complaint laid against individuals connected with Swifambo.

**MR MULLER:** I was not aware of it at all.

**ADV VAS SONI SC:** And between the time you hired the

forensic investigator and the time he produced his report, what was the time period?

**MR MULLER:** It must close on a year or going for a year.

**ADV VAS SONI SC:** And I do not want to know figures because it is not right to air in this public, you performing a public function. Was it a report that cost a fair amount of money?

**MR MULLER:** It cost a lot of money because all the detail. We would have saved a lot of time if we had known  
10 about the Sacks report. That would have been a very quick basis for what we were after.

**ADV VAS SONI SC:** And at the time, you handed your affidavit to the Hawks and thereafter, they asked you to include what was contained in what the forensic investigator had found or to include aspects of that. Did they tell you that: Look, but we do a forensic report here.

**MR MULLER:** No, Chair I was not told at all.

**ADV VAS SONI SC:** Alright. So those are all the preliminary matters... Can I just ask you? As far as now  
20 the monies – 5.1.1, you record that there are – it is the two entities that is Railpro Holdings and we know that is Swifambo Holdings. And Swifambo Rail Leasing received different amounts of money.

More or less, when you looked at Railpro, that is Swifambo Holdings, how much did they receive if you just

sort of add up those two figures?

**MR MULLER:** That is just over R 900 million.

**ADV VAS SONI SC:** And there is no need to emphasise this point and there is no need to ask you. The first amount was received on the 5<sup>th</sup> of April 2013.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** That was received by Holdings.

**MR MULLER:** That is correct Chairperson.

**ADV VAS SONI SC:** And the first amount received by  
10 Leasing was the 6<sup>th</sup> of December 2013.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** You are looking at about eight months later. Now can I just say to you, and I do not know if it makes a difference to you but the contract between Swifambo and PRASA said that all payments must be made through Leasing, not to Holding. It did not say must not be made to Holdings but in terms of the contract all payments were to made to Swifambo Leasing. Were you aware of that?

20 **MR MULLER:** I was aware of that, yes. Vossloh

**ADV VAS SONI SC:** And so when you look at it from point of view of a liquidator and I know this time it will not make a difference but what – would that raise any concerns that a R3.5 billion contract requires payment to be made to entity A and the very first payment is made to entity B, it

may be a related entity. Will that raise concerns for you?

**MR MULLER:** Yes, that will raise concerns.

**ADV VAS SONI SC:** And what is the nature of those concerns?

**MR MULLER:** The entity that was paid was not a party to the contract, so yes, yes.

**ADV VAS SONI SC:** I mean, you cannot draw a link between the contract and the payment.

**MR MULLER:** That is correct.

10 **ADV VAS SONI SC:** Then you deal at 5.2.2 with the payments made by these two entities.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Now we have been through with Mr Sacks the payments made by the entities and who were the beneficiaries of those payments. I do not want to go through all of them. Can I just ask you, when you look at the first name that appears under the payments list as 5.2.2.1, who is that?

20 **MR MULLER:** It is Mr Landgrebe, he is the auditor of both these companies.

**ADV VAS SONI SC:** And what was the amount he was paid?

**MR MULLER:** R30 554 000.

**ADV VAS SONI SC:** And this he was paid by Holdings?

**MR MULLER:** That is correct, that is how I...

**ADV VAS SONI SC:** And then there is a payment to Mr Mashaba. How much is that?

**MR MULLER:** 1,68 million.

**ADV VAS SONI SC:** And then there you say there are various entities controlled by Mr Mashaba.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Now the total of R146 375 880.16, does that include all the payments made by Holdings including those to Mr Landgrebe and Mr Mashaba?

10 **MR MULLER:** Those are all the payments as per point 5.2.2, that would include Mr Landgrebe, Mashaba, Right Wave Aim Investments. Yes, that would include.

**ADV VAS SONI SC:** Then on the next page, Holdings – you record that Holdings made a payment to Mr Makhensa Mabunda. How much was that payment – how much was paid to him in that regard?

**MR MULLER:** 22,664 million.

**ADV VAS SONI SC:** And then were four entities under the control of Mabunda, as you describe it, and the payment, I  
20 take it, the total reflects the payment to Mr Mabunda and companies under his control.

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** So Holding made payments of 63-odd million – or more than R63 million to Mr Mabunda and his entity.

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** Then the next one you deal with that I am interested in is Musa Capital. Do you know where Musa Capital fits into?

**MR MULLER:** Really, I have not been able to establish that, Chair.

**ADV VAS SONI SC:** Okay. As I understood Mr Sacks' evidence it was one of the directors of Swifambo – I am not sure it is Holdings – I think it from Swifambo Leasing who –  
10 her name is Cynthia Parish who was Musa Capital.

**MR MULLER:** As far as I – yes, it was Mrs Cynthia Parish and a Mr Jameson.

**ADV VAS SONI SC:** Yes, he is the present director, as I understand it.

**MR MULLER:** It think they are both American citizens.

**ADV VAS SONI SC:** Thereafter you deal with payments made under 5.2.8. Will you tell the Chairperson what those are and who the recipients were?

**MR MULLER:** Those were payments made to Similex,  
20 which is Mrs Gomes' company and they were paid to Nkosi Sebela Incorporated, 31 million, and to Noels Hussain, 10.4 million.

**ADV VAS SONI SC:** And that R41 400 000 that you – that is your claim against Mrs Gomes.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** I mean, that is the basis on which you said you were required to find jurisdiction.

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** And then at 5.2.9 there is an entity reflected there which received R500 000. What is the name of that entity?

**MR MULLER:** It is Sanco, sir.

**ADV VAS SONI SC:** Have you investigated what that entity is?

10 **MR MULLER:** No, we have not.

**ADV VAS SONI SC:** And then there are other recipients of money from Holdings and they do not feature in anything that we have looked at or Mr Sacks thought was unusual, though he is not saying the payments were justified.

**MR MULLER:** Ja, it does require further investigation.

**ADV VAS SONI SC:** Right, thereafter at 5.2.3 you deal with payments made from Swifambo Rail Leasing. So this is now Leasing.

**MR MULLER:** That is correct.

20 **ADV VAS SONI SC:** We are going to identify the payments. The first person you I identify there is Mr Mabunda and that would mean in his personal capacity, what amount would he have received?

**MR MULLER:** 1,23 million.

**ADV VAS SONI SC:** Okay and then there were entities



under his control which received monies, is that correct?

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** Now we have come across some of these companies but the one that I am interested in is the one that is listed last and that is 5.2.3.2.6 and that is Sterling Living. Do you see that?

**MR MULLER:** Yes, I see that.

**ADV VAS SONI SC:** Now, Mr Muller, I just want to say that you have presented us with an update to your report, is  
10 that correct?

**MR MULLER:** That is correct, Chairman.

**ADV VAS SONI SC:** May I have leave to hand up – it is not a very – it just effectively says this is what happened since February last year in relation to this, it does not change the picture but the reason it is important in regard to this question is reflected in this.

**CHAIRPERSON:** Okay, thank you.

**ADV VAS SONI SC:** Perhaps – sorry, before I do anything with this, these notes, as you call them, were compiled by  
20 yourself, Mr Muller?

**MR MULLER:** That is correct, together with the input from my legal team.

**ADV VAS SONI SC:** But I mean you take responsibility for them.

**MR MULLER:** Yes, I do.

**ADV VAS SONI SC:** Now you confirm their correctness to the extent that you have been able to investigate and so on.

**MR MULLER:** That is correct, yes.

**ADV VAS SONI SC:** Chairperson, I am just wondering – because it is directly concerned with the report itself whether we should not include it as an annexure to the report at the end of the report.

**CHAIRPERSON:** I do not think we can include as an  
10 annexure to the report but I think what you mean is put it immediately after the report.

**ADV VAS SONI SC:** Immediately and call it ...[intervenes]

**CHAIRPERSON:** It would still be a standalone document.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** But it will be immediately after the report.

**ADV VAS SONI SC:** As you please, yes.

**CHAIRPERSON:** Ja, ja.

**ADV VAS SONI SC:** And then it will be headed Notes on  
20 Matters Raised in the Report.

**CHAIRPERSON:** Ja, ja.

**ADV VAS SONI SC:** As you please, Chairperson. And if you take the numbers, 171.1 to 5.

**CHAIRPERSON:** Ja, okay, that is fine.

**ADV VAS SONI SC:** Now in regard to the issue of Sterling

Living, you refer to this matter on the last page of the notes, Mr Muller, and it is at note 3. You do not have to read there but will you just tell the Chairperson why this is significant, that this amount was paid, what it was paid for and how you came to know that it is connected with Mr Mabunda?

**MR MULLER:** Sterlings Living, when we instituted action against Mr Mabunda, Sterlings Living informed us that they concluded various agreements with Mr Mabunda in his  
10 personal capacity. So it was paid from Swifambo but Sterlings Living, this payment was made for kitchen cupboards in a house which we later established was registered, a notarial deed of extension of a lease term in November 2014.

**ADV VAS SONI SC:** The amount reflected here is R5 million.

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** Now correctly or not, Sterling Livings justify ...[intervenes]

20 **CHAIRPERSON:** I am sorry, Mr Soni, I thought I heard where you were but I think – I thought you went to page 3 of the notes.

**ADV VAS SONI SC:** No, it is still page 5, Chairperson.

**CHAIRPERSON:** Page 5 of the notes?

**ADV VAS SONI SC:** Yes, of the notes, yes.

**CHAIRPERSON:** Oh, okay.

**ADV VAS SONI SC:** That is where note 3 is dealing with Sterling Living.

**CHAIRPERSON:** Hang on, I must also clarify, you said the first page of these notes would be 171.1?

**ADV VAS SONI SC:** 171.1.

**CHAIRPERSON:** Okay and then it goes on.

**ADV VAS SONI SC:** And this will be 171.5.

10 **CHAIRPERSON:** Ja, okay, alright, so you are on the last page.

**ADV VAS SONI SC:** Yes. So effectively for the record, 171.5.

**CHAIRPERSON:** Ja. Let me just get that one. So the property you were talking about is – I think you might have to just go back to that question about I think the property and 5 million.

20 **ADV VAS SONI SC:** So you were saying, Mr Muller, that you uncovered this payment quite by accident because you had made a claim against Mr Mabunda and then it emerged that this payment which had been made by Swifambo had been made in respect of kitchen cupboards to his house in Waterfall, Equestrian Estate in Midrand, is that correct?

**CHAIRPERSON:** Let me start - start by identifying the payment you are asking him about.

**ADV VAS SONI SC:** Oh, sorry.

**CHAIRPERSON:** Which payment?

**ADV VAS SONI SC:** Sorry, Chairperson, if one goes back to the report itself.

**CHAIRPERSON:** Report, ja.

**ADV VAS SONI SC:** It is at page 163 and it is a payment that is reflected as 5.2.3.2.6.

**CHAIRPERSON:** 5.2.3.6?

**ADV VAS SONI SC:** No, .2.6 Chairperson. These are entities under control of ...[intervenes]

10 **CHAIRPERSON:** 5.2...?

**ADV VAS SONI SC:** .3.2.6.

**CHAIRPERSON:** You know when you have got so many things they got confusing. I have got 5.2 and then I have got ...[intervenes]

**ADV VAS SONI SC:** At page 163.

**CHAIRPERSON:** Oh what is the page number of the bundle first, to make sure I am ...

**ADV VAS SONI SC:** 163.

**CHAIRPERSON:** 163?

20 **ADV VAS SONI SC:** 163, yes.

**CHAIRPERSON:** Okay, right and the ...[intervenes]

**ADV VAS SONI SC:** And then you will see it is 5.2.3 as the big number and it says Payment from Swifambo Leasing.

**CHAIRPERSON:** I can that, ja.

**ADV VAS SONI SC:** That is to Mr Mabunda. Then in the

second set of entities it is the last entity, Sterlings Living.

**CHAIRPERSON:** Oh, that is – I thought that is the last one on the first set of ...[intervenes]

**ADV VAS SONI SC:** No, no.

**CHAIRPERSON:** Ja. Okay, alright, but that is the one you are talking about.

**ADV VAS SONI SC:** That is the one we are talking.

**CHAIRPERSON:** So it is a payment of R5 million.

**ADV VAS SONI SC:** Yes.

10 **CHAIRPERSON:** Paid from Swifambo Rail Leasing to Sterlings Living.

**ADV VAS SONI SC:** That is it.

**CHAIRPERSON:** Okay, alright, now I know which payment you are asking about, then you can continue.

**ADV VAS SONI SC:** Yes. Now you then try to identify what this payment was for because it had been made by Mr Swifambo (sic), would that be correct?

**MR MULLER:** That is correct, Chair.

20 **ADV VAS SONI SC:** And it is in pursuance of that inquiry that you found out what the R5 million payment to Sterling Livings was for.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** And what did you uncover?

**MR MULLER:** This payment was made for kitchen cupboards of the property of Mr Mabunda in Waterfall

Equestrian Estate in Midrand.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** So I was a bit kind, Chairperson, when I said it was for the kitchen, it was just, as I understand it, for the cupboards.

**CHAIRPERSON:** Yes, yes. Ja, no, no. Yesterday I think we understood that it was for the kitchen.

**ADV VAS SONI SC:** That is what I thought.

**CHAIRPERSON:** Ja.

10 **ADV VAS SONI SC:** So even more...

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** Now can I just ask you, in regard to – and it is Sterling Livings confirm that that is what Mr – well, that is what they had charged and had been paid for in respect of those cupboards.

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** Now in regard to that house, did you make any enquiries? I know it is a trust but did you make any enquiries?

20 **MR MULLER:** Yes, we did, Chairperson. We noticed that Mr Mabunda and his wife Cindy Mabunda registered a notarial bond of extension of a lease term on 13 November 2014 in terms of the property. On the same day a notarial deed of cession of the lease was also – wherein the lease was ceded to the Makhensa Family Trust.

**ADV VAS SONI SC:** And have you been able to ascertain what the value of that house is or what the cost was?

**MR MULLER:** No, we have heard numbers but there is nothing I can confirm on the numbers. The numbers we heard was R75 million.

**CHAIRPERSON:** The house, the property itself, is it owned by Mr Mabunda or by an entity controlled by him or is it a rented house?

**MR MULLER:** Chairperson, no, as I understand it, it is a  
10 99 year lease.

**CHAIRPERSON:** Oh, okay, okay. Alright.

**ADV VAS SONI SC:** But in whose name – okay, so it looks like the lease in the name of the Makhensa Family Trust but who is the owner of the property?

**MR MULLER:** I do not know.

**ADV VAS SONI SC:** But what you do know is that the trust has a 99 year lease over that property.

**MR MULLER:** That is correct.

**CHAIRPERSON:** I assume that that means you have not  
20 seen the actual lease because otherwise you would know who the lessor is.

**MR MULLER:** I will have to get the advice from my counsel on that, I personally have not seen that lease, no.

**CHAIRPERSON:** Okay, no, that is fine.

**ADV VAS SONI SC:** Alright, now the total amount that



were paid by Swifambo Leasing to Mr Mabunda and his entities is how much, Mr Muller?

**MR MULLER:** R17,552 million.

**CHAIRPERSON:** Okay, Mr Soni, I am trying to make sure we are on the same page.

**ADV VAS SONI SC:** Page 163.

**CHAIRPERSON:** Where is that reflected, is it still 163?

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Okay, alright.

10 **ADV VAS SONI SC:** Then you deal with the payments that were made to entities controlled by Mr Mashaba, is that correct?

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** And there you list five entities. What is the amount paid to them – that figure, Chairperson, it is right at the bottom of page 163.

**MR MULLER:** That is 22,7 million.

**ADV VAS SONI SC:** And then on the following page, page 164, who is the beneficiary of the first amount reflected on  
20 that page?

**MR MULLER:** Mr Chairman, it is the Jacob Zuma Foundation.

**ADV VAS SONI SC:** And to what extent did it benefit?

**MR MULLER:** R150 000.

**ADV VAS SONI SC:** And then you say these two sets of

payments need to be investigated further and they amount to about R727 000.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Right. Then you say payments made to AMCE. Now what is AMCE?

**MR MULLER:** It is AM Consulting Engineers, one of Mr Mashaba's companies.

**ADV VAS SONI SC:** So these were payments that that entity made to different people.

10 **MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** And let us look at the bigger figures there, who is the first major beneficiary?

**MR MULLER:** It is Mr Landgrebe.

**ADV VAS SONI SC:** And what is the amount of the benefit he received from AMCE?

**MR MULLER:** 55 million.

**ADV VAS SONI SC:** Now I just want to look at – if I can ask you, and I am sorry to do this, Chairperson, but there is no other way to do it, to go back to page 162. Now  
20 remember there is ...[intervenes]

**CHAIRPERSON:** 162?

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV VAS SONI SC:** Now at 5.2.2 you identified who had received monies from RailPro Holdings. The first name in

that list is Mr Landgrebe.

**MR MULLER:** That is correct, Chair.

**ADV VAS SONI SC:** And the amount there is R30 million.

**MR MULLER:** That is correct, Chair.

**ADV VAS SONI SC:** And then you have now told us that from AMCE he received 55-odd million.

**MR MULLER:** That is correct, Chair.

**ADV VAS SONI SC:** Is that now a separate amount that is paid to him?

10 **MR MULLER:** That is a separate amount.

**ADV VAS SONI SC:** So he has received payments of about 85 million.

**MR MULLER:** That is correct, Chair.

**CHAIRPERSON:** And interestingly on both occasions namely payments from RailPro Holdings and payments from AMC, Mr Landgrebe gets quite a big amount from that to Mr Mashaba.

**ADV VAS SONI SC:** Yes.

20 **CHAIRPERSON:** And Mr Mashaba on each occasion gets 1, something million. Mr Landgrebe gets many more millions than that.

**ADV VAS SONI SC:** I had not seen that and you are absolutely right.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** I have not see it, Chairperson.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** And you are quite right. Alright, then we have the entities who received benefits from – oh sorry, entities under the control of Mr Mashaba who received benefits and what is the total amount of benefits that they received?

**MR MULLER:** 16,6 million, Chairperson.

**ADV VAS SONI SC:** Then you have got Siyaya Rail and you say that is associated with Mr Mabunda. These are  
10 still payments from AMCE?

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** And what is the amount of that benefit?

**MR MULLER:** 5,999 – call it 6 million, Chairperson.

**ADV VAS SONI SC:** Okay and then at 5.2.4.6 is a person who receives a benefit who is – I mean, an entity that receives a benefit.

**MR MULLER:** That is Similex, Mrs Gomes' company.

**ADV VAS SONI SC:** Then the next payment is to Hover  
20 Dynamics.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** And you have put something in brackets, what is that?

**MR MULLER:** As far as we could establish that was a payment for a helicopter.

**ADV VAS SONI SC:** A what?

**MR MULLER:** A helicopter.

**ADV VAS SONI SC:** And how much was that – what was paid for that?

**MR MULLER:** 11,074 million.

**ADV VAS SONI SC:** And that was paid by – that was a payment made by AMCE?

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** Do you know if the helicopter was  
10 purchased or leased or...?

**MR MULLER:** I do not know, Mr Chair.

**ADV VAS SONI SC:** And what do Hover Dynamics do, do they sell helicopters?

**MR MULLER:** As far as I understand, that is correct.

**ADV VAS SONI SC:** And then there is listed at 5.2.4.8 a payment in respect of motor vehicles. What is the amount paid in respect of motor vehicles by AMCE?

**MR MULLER:** 8,6 million.

**ADV VAS SONI SC:** And then there is a payment made to  
20 Garcia Jewellers. What is that payment?

**MR MULLER:** 445 000.

**ADV VAS SONI SC:** And then you list a number of transactions that need to be investigated.

**MR MULLER:** That is correct, Chairman, that is where we did not have more details.

**ADV VAS SONI SC:** Then you list – you have two sets of figures – or two sets of entries relating to property and the first at 5.2.6 you say that these are properties acquired by Mr Mashaba and entities under his control and you make the point that these were acquired after the payment had been made from PRASA. I take it to Swifambo.

**MR MULLER:** That is correct, Mr Chair.

**ADV VAS SONI SC:** Alright. So you have listed under Zedacore Six (Propriety) Limited three properties, is that  
10 correct?

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** Now before I go on with that can I just ask you to look at the notes that you have now submitted because, as I understand it, all that is reflected on note 1 at page 171.1 is – sorry, note 1 which appears at 171.1 to 171.3, that you have now updated what has happened in respect of these properties, is that correct?

**MR MULLER:** That is correct, Chairperson.

**ADV VAS SONI SC:** So there is no change in respect of  
20 the purchase of the properties, the identity of the properties, there is no change in them.

**MR MULLER:** There is no change except some of the properties were sold.

**ADV VAS SONI SC:** Sorry, yes, they were sold by whoever the purchaser was.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** So in – and what is the link between Zedacore Six and Mr Mashaba?

**MR MULLER:** As far as I can understand, he is one of the directors of Zedacore Six or shareholder.

**ADV VAS SONI SC:** Right and number 33 Sturdy(?) Mews? That is the next set of – that the next entity that purchased the next three properties.

10 **MR MULLER:** That is also one of Mr Mashaba's companies.

**CHAIRPERSON:** Are you still looking at the notes, Mr Soni?

**ADV VAS SONI SC:** No, no, no, sorry, sorry.

**CHAIRPERSON:** Ja, each time you move just let us know.

**ADV VAS SONI SC:** I will, I will, I know it is – I have been through it so many times it is automatic for me, but I apologise.

**CHAIRPERSON:** Okay, so you have gone to page 165?

20 **ADV VAS SONI SC:** 165, number 33 Sturdy(?) Mews. Have you go that, Mr Muller?

**MR MULLER:** I have got it.

**ADV VAS SONI SC:** Now you say that is in business, what does that mean?

**MR MULLER:** It is just a status of a company that is not in any deregistration or something like that ...

**ADV VAS SONI SC:** Oh.

**MR MULLER:** It is with SIPS it's still in business.

**ADV VAS SONI SC:** And that company acquired three properties as well.

**MR MULLER:** That is correct.

**ADV VAS SONI SC:** And you have indentified?

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** What is the total worth of the properties acquired by Mr Mashaba through these two  
10 companies?

**MR MULLER:** Nzetha Cor, it's a 32 – 39 million. And Sterdy Mews, it's 13,7 million or there about.

**ADV VAS SONI SC:** Now 52 million rand in property is acquired by Mr Mashaba after the ...[indistinct] payments done by – after Swifambo received ...[indistinct].

**MR MULLER:** No. There's a further lest, Mr Chair of Clear Bubbles Trading on the updated notes.

**ADV VAS SONI SC:** Oh sorry.

**MR MULLER:** It's quite clear.

20 **CHAIRPERSON:** Okay, no, before you proceed. The figure that you gave earlier on to the question was it 52 million?

**MR MULLER:** Or ...

**ADV VAS SONI SC:** 82 Million.

**MR MULLER:** What I did, I didn't totalled that up. I just



totalled that up now on those two companies.

**CHAIRPERSON:** Yes.

**MR MULLER:** But if you take all the companies that fall under the control of Mr Mashaba, the total properties bought after the is 92,4 million.

**CHAIRPERSON:** Okay. But you, have you got the – on which page do you have that total of 92 or you just added up mentally?

10 **MR MULLER:** I just no. I just added it up just before we started here.

**CHAIRPERSON:** Oh.

**MR MULLER:** Because there were no totals.

**CHAIRPERSON:** But not on the, on the, on the report.

**MR MULLER:** It's not on there. No it's not on there.

**CHAIRPERSON:** Okay. It would help if there is something in writing.

**ADV VAS SONI SC:** What we will do as well, we'll put a note in Chairperson.

**CHAIRPERSON:** Ja.

20 **ADV VAS SONI SC:** That this is what the total is.

**CHAIRPERSON:** Ja, and also just a complete list.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Ja.

**MR MULLER:** I'll provide you with that.

**CHAIRPERSON:** Ja, okay.

**ADV VAS SONI SC:** Now I am a bit, well not including, I just want to make sure that I am not misunderstanding. On page 165 of that's your main report, SS4, right? Mr Muller?

**MR MULLER:** Yes.

**ADV VAS SONI SC:** Page 165. You have been looking at it.

**MR MULLER:** I've got that.

**ADV VAS SONI SC:** 5.2.6 And 5.2.7. Sorry, 5.2.6. You  
10 have got two blocks, fixed property.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** Now in note 1, you say it consists of an update. Are there more properties in note 1 or under note 1 than there are at 5.2.6?

**MR MULLER:** That's correct Chair.

**ADV VAS SONI SC:** Okay, would you just quick – are you able to do it without taking up too much of time, which are the new properties on note 1 that are not reflected at 5.2.6?

20 **MR MULLER:** Okay, we dealt with the Nzetha Cor properties.

**CHAIRPERSON:** Note 1 again being page 171.1 hey?

**ADV VAS SONI SC:** Yes. Yes Chairperson.

**CHAIRPERSON:** Up to page ...

**ADV VAS SONI SC:** 171.3.

**CHAIRPERSON:** Yes, okay.

**MR MULLER:** Then the Nzetha Cor properties it's those three properties as mentioned under 5.2.6. Then the Sterdy Mews is as mentioned in 5.2.6.

**ADV VAS SONI SC:** Oh I see. Okay.

**MR MULLER:** And then there are further properties in Clear Bubbles Trading 100 Pty Ltd. Those are, it's an erf in Waterkloof, 1219 Waterkloof. The evaluation is 6,5 million. It's SS Kylemore of 9,5 million. That property has  
10 since been sold on the 18<sup>th</sup> of February 2020. So it was bought after 2013, but it has since been sold. It was bought for 9,5 million and sold for 12 million. And then further properties that were bought after 2013 was Avras Park, Farm Vleurdeluis for 3,2 million.

**ADV VAS SONI SC:** But isn't there an easier way of identifying them? And I say this with respect to you Mr Muller, if you look at page 171.1 the notes, in the second block you identified the same three properties that you have identified in 5.2.6, in the first block at 5.2.6 at page  
20 165.

**MR MULLER:** Can you just take me to, to 170 – no. I am on 165 and I have got the first three properties.

**ADV VAS SONI SC:** Right, you've got the first three properties.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** Now look at page 171.1. There those are your notes.

**MR MULLER:** I have, I have my bundle does not contain those notes.

**ADV VAS SONI SC:** Okay, will give you some notes then.

**MR MULLER:** I got ...[indistinct]. Okay I have got my notes.

**ADV VAS SONI SC:** You'll see in the first, in the second block on page 171.1 you list three properties.

10 **MR MULLER:** That's correct.

**ADV VAS SONI SC:** Are they the same properties that are reflected in the first block on page, on page 165?

**MR MULLER:** That's correct yes.

**ADV VAS SONI SC:** So then we know that that block corresponds with that block?

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** Okay. If you then look at 33 Sterdy Mews, you have listed three properties there.

**MR MULLER:** That corresponds ...

20 **ADV VAS SONI SC:** On page 171.2.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** And that corresponds with the three properties listed in the second block on page 165.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** Now that means the six properties

that are reflected in 5.2.6 are in those two blocks, all the other property are not reflected.

**MR MULLER**: That's correct.

**ADV VAS SONI SC**: Chairperson, I don't know if I am just trying to show the ...

**CHAIRPERSON**: Ja, no, no.

**ADV VAS SONI SC**: The correspondence between the two.

**CHAIRPERSON**: Ja, no, no. I think ultimately you ...

**ADV VAS SONI SC**: I will do that Chair.

10 **CHAIRPERSON**: You got it. Ja.

**ADV VAS SONI SC**: It's just that ...

**CHAIRPERSON**: Ja, ja.

**ADV VAS SONI SC**: Otherwise it's going to be a time consuming exercise.

**CHAIRPERSON**: Yes.

**ADV VAS SONI SC**: It really is ...

**CHAIRPERSON**: No, no, no.

**ADV VAS SONI SC**: You can just take out two blocks and say everything else is ...[indistinct].

20 **CHAIRPERSON**: No, no, that's fine. Ja.

**ADV VAS SONI SC**: Can I and I am just going by because I've read Mr Sack's report, in fact I can say I studied Mr Sack's. The reason you didn't include some of the properties as, you were not aware of the link between Mr Mashaba and some of the entities that acquired those.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** Like for example we are now Neaty Properties which appears at 171.2. The last property.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** So, so I mean that's, that's the only reason that they are different. You now see that there were other entities connected with Mr Mashaba and you want to then say that when you are looking at 5.2.6 which reflects the properties that he acquired after receiving  
10 payment, add the properties listed in note 1.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** Alright, now in regard to Chairperson I will do that, I have it in my head and it's meant to be an easy ...

**CHAIRPERSON:** Ja, no, no, that's fine.

**ADV VAS SONI SC:** Then at 5. – although you call it 3.2.6 that's, that's error is it not? No, it should be 5.2.

**MR MULLER:** That must be an error.

**ADV VAS SONI SC:** Yes. We will correct that as well  
20 Chairperson. Now in regard to Mr Mabunda in his own name after Swifambo received payment from PRASA he received, I mean he acquired certain property. Is that correct?

**MR MULLER:** That's correct Chair.

**ADV VAS SONI SC:** Let's start off with where you were

before you compiled the notes. He and entities in which he had an interest had, had acquired 10 properties. Is that correct?

**MR MULLER**: That was at the stage that I drew my report ...[indistinct].

**ADV VAS SONI SC**: Your report.

**MR MULLER**: I was, I was aware of, yes.

**ADV VAS SONI SC**: How many, which properties though are new? I'm not looking at those that are sold.

10 **MR MULLER**: There are, in my notes there are two properties in Erf Cosmosdal, Extension 55.

**ADV VAS SONI SC**: Well just tell us who the – under whose name it was bought?

**MR MULLER**: That was bought under the name of Nsobo Holdings.

**ADV VAS SONI SC**: What page is that of the notes?

**MR MULLER**: That's page 3 going over to page 4 of my notes.

20 **ADV VAS SONI SC**: Oh, okay. Alright. And there are two properties there.

**MR MULLER**: That's correct.

**ADV VAS SONI SC**: Okay.

**CHAIRPERSON**: Is that 171.3?

**ADV VAS SONI SC**: That's 1. – 171.3 Chair.

**CHAIRPERSON**: Okay.

**ADV VAS SONI SC:** And when you look at the properties that Mr Mabunda acquired, forget those that were sold, but just the amounts that were paid, seemingly from what PRASA had paid to Swifambo. Just the amount, the total amount in property acquisitions by Mr Mabunda.

**MR MULLER:** The total amount after the contract was 48,7 million of the properties bought.

**ADV VAS SONI SC:** Alright, that to a large extent deals with the Court's report, except for paragraph 10 which  
10 appears at page 169 of the report itself Chairperson.

**MR MULLER:** Right.

**ADV VAS SONI SC:** As the bundle in which the report is contained. Page 169 Chairperson.

**CHAIRPERSON:** Yes, I have got 169, what about it?

**ADV VAS SONI SC:** Yes, paragraph 10.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Mr Muller now as I understand it, Vossloh has been taken over by a German firm called Stadler.

20 **MR MULLER:** It's a Swiss firm.

**ADV VAS SONI SC:** Oh sorry, a Swiss firm I beg your pardon.

**MR MULLER:** Yes, yes.

**ADV VAS SONI SC:** And in regard to – and they have taken over the whole of Vossloh?



**MR MULLER:** That's correct.

**ADV VAS SONI SC:** And without revealing anything that you shouldn't, what is the present State of the dealings between you as the liquidator of Swifambo, which owes those billions to PRASA, what is the state of the negotiations or the communications between you and Stadler? Without revealing anything that can be used this time in the process ...[indistinct]?

**MR MULLER:** We are in an advanced stage of negotiating  
10 with both Stadler and PRASA in order, in terms of which Stadler has, has made certain propositions where they can adjust the trains to suit our local rails, where they will refurbish the local, the unsold trains which we have, or the locomotives. And which were sold by the liquidators, they will supply spares and back up. It will be to the benefit of PRASA, to the extent of over a billion, billion and a half.

**ADV VAS SONI SC:** But at the end of the day, PRASA if it wants to acquire, still acquire these locomotives, is going to have to pay.

20 **MR MULLER:** No, not as, as we currently stand there are, are different options being pursued like in lieu of their claim.

**ADV VAS SONI SC:** But whatever else, it won't be that PRASA will acquire 70 more locomotives without paying any more money. That's more or less what it had paid

Vossloh. In terms of its contract with Swifambo.

**CHAIRPERSON:** Well it may be because there are negotiations.

**ADV VAS SONI SC:** Which ...[indistinct] no, no.

**MR MULLER:** I think ...

**CHAIRPERSON:** Very much.

**ADV VAS SONI SC:** Yes, ja, I think.

**CHAIRPERSON:** Not be to able to answer certain things because then when the negotiations are going on ...

10 **ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** You need to be, to have options to ...

**ADV VAS SONI SC:** Hold your cards to your chest.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** No sure.

**MR MULLER:** We're trying to negotiate a settlement which, which will be beneficial to PRASA.

**CHAIRPERSON:** Yes, yes. Okay.

20 **ADV VAS SONI SC:** Now finally Mr Muller, you might remember I said to you that Mr Mashaba had filed new CM100s.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** And that he did in July, about five months after you file your report to the stakeholder.

**MR MULLER:** That's correct Chair.

**ADV VAS SONI SC:** Now have, how long have you been a

liquidator?

**MR MULLER**: This is my 37<sup>th</sup> years.

**ADV VAS SONI SC**: Are you, have you had a situation in these years, and I'm saying this because I've consulted with you, have you had a situation where a second CM100 is filed?

**MR MULLER**: No never.

**ADV VAS SONI SC**: And can I just, just to show the, the unusual nature, the CM10 – the CM100 is actually an  
10 affidavit by the person in control of the entity to be liquidated.

**MR MULLER**: It's an affidavit stating the assets and liabilities.

**ADV VAS SONI SC**: On of?

**MR MULLER**: Of, the liquidator end.

**ADV VAS SONI SC**: On oath.

**MR MULLER**: That's under oath.

**ADV VAS SONI SC**: And so now what you've got is a new CM100 is filed in respect of each of these entities and if  
20 you had a look at the, the two sets of CM100s?

**MR MULLER**: Yes I have.

**ADV VAS SONI SC**: And how do they compare with one another? Are they relatively reconcilable. Or they are irreconcilable?

**MR MULLER**: They are totally irreconcilable. At the one

hand it is insolvent to the tune of call it 3 billion. On the other hand it is solvent.

**ADV VAS SONI SC:** But, but anyway that's what you are now faced with because that's what you have been given.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** I just want to deal with a – Mr Sacks dealt with most of these matters. And I just want to look very quickly at some of the, the notes that we made. And Chairperson I am aware that we dealt with these in some  
10 detail with Mr Sacks, but the fact of the matter is they were handed to Mr Muller as the liquidator. And it would be important to confirm in fact that that is what he'd received.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** As part of the CM100s.

**CHAIRPERSON:** Ja, that's fine.

**ADV VAS SONI SC:** Now can I ask you to look at the report again and that is the one at 161 of Bundle C1. Sorry that starts at 161. Okay. We can leave out the notes now because we've exhausted the notes, is that  
20 correct?

**MR MULLER:** Okay, that's good.

**ADV VAS SONI SC:** Now can I just ask you to look at page 214.70. .70.

**MR MULLER:** .70?

**ADV VAS SONI SC:** Yes.

**MR MULLER:** I've got it.

**ADV VAS SONI SC:** This is in regards to leasing. There does not seem to be much in regard to ...

**CHAIRPERSON:** I see, I see Mr Soni that we will have to be careful here, for purposes of the transcript. Because in the document that we have paginated as pages 171 and 171.5 where he said to note one note 2 and so on.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** But I see here at page ...

10 **ADV VAS SONI SC:** Oh.

**CHAIRPERSON:** 214.70 That there is note 1 as well and there is no 2.

**ADV VAS SONI SC:** You're absolutely right Chair.

**CHAIRPERSON:** So when we refer to note 1 or note 2 we have got to specify.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Which one.

**ADV VAS SONI SC:** No, absolutely.

**CHAIRPERSON:** Ja.

20 **ADV VAS SONI SC:** This will then and we must make a conscious effort here Chairperson of saying the notes to the CM100.

**CHAIRPERSON:** Yes. Ja, that's fine. Failure, failing which it will ...

**ADV VAS SONI SC:** No absolutely.

**CHAIRPERSON:** Will just say page whatever.

**ADV VAS SONI SC:** Or yes.

**CHAIRPERSON:** Without saying note 1 or note 2.

**ADV VAS SONI SC:** No, yes. Yes.

**CHAIRPERSON:** Because in the end it does not make a difference.

**ADV VAS SONI SC:** No absolutely Chair.

**CHAIRPERSON:** Ja, okay.

**ADV VAS SONI SC:** So and Mr Muller, if we all can just be  
10 conscious of that, that it would be preferable for the  
purposes of the record to refer to page numbers.

**MR MULLER:** Okay.

**ADV VAS SONI SC:** Now at page 214.70, Mr Mashaba  
which is a note to his CM100, Mr Mashaba explains why he  
is filing the thickened CM100 affidavit.

**MR MULLER:** Yes I see that.

**ADV VAS SONI SC:** Yes. And he says that the original  
document that he signed, the CM100 that he signed, or he  
purported to sign fails to completely and accurately reflect  
20 the financial information that the Company's Act requires.  
You're a liquidator. What does that strike you that you do  
not comply with what the Company's Act requires you to do  
on oath?

**MR MULLER:** There, I have got no comment on that.

**ADV VAS SONI SC:** Okay, and that is sharing. Okay. Then

he explains that Mr Cameron, his present attorney – I take it you've, you've had interactions with Mr Cameron?

**MR MULLER:** Yes I have.

**ADV VAS SONI SC:** Alright. He says that based on advice he'd received from Mr Cameron they decided or he's been advised to submit this new one. He says something that quite impressing. He says at paragraph 4, he says:

“From the new statement it is self evident that leasing is factually false.”

10 And that I take it would be part of liquidation process and part of court applications and all that. But I'm just placing it on record that that is his contention in these liquidation proceedings.

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** And then he makes a point that the claim of PRASA which had paid from 2,8 billion rand to Swifambo is not reflected as this would need to be quantified in an action which Mr Mashaba has been advised, needs to be instituted by PRASA against leasing,  
20 that's his position. And I'm not asking you to comment. I am just saying that that is his ...[indistinct].

**MR MULLER:** I understand.

**ADV VAS SONI SC:** And you understand that that is his position?

**MR MULLER:** I do.

**ADV VAS SONI SC:** And, and that's why Chairperson if I can just make this comment, Vals Dickens said:

"The law is an ass."

Because here is a company which paid 2,8 – a public company, 2,8 billion rand in purportedly if I could use that word, forming a public function. And it's told that you don't have a claim, you must go to court and get your, your money back. Anyway, can I now ask you to look at note 19. Oh sorry, page 214. Page 214.108.

10 **MR MULLER:** Can you please repeat that?

**ADV VAS SONI SC:** 214.108.

**MR MULLER:** I've got it.

**ADV VAS SONI SC:** Okay, now these are the claims that Mr Mashaba says Swifambo paid when in fact the obligation to pay for forwarding charges rested on PRASA. You understand that.

**MR MULLER:** I do.

**ADV VAS SONI SC:** These are the claims that are made by Sademzi. He says they paid and the amount they paid  
20 was about 109 million rand so Sademzi. You are aware of that?

**MR MULLER:** I'm aware of it.

**ADV VAS SONI SC:** Now I don't want to make too much of this, I've raised it with your attorney. But there is something odd about some of the amounts reflected here.



If I could just ask you to look at page 214.11. That's an invoice dated the 21<sup>st</sup> of November 2014.

**CHAIRPERSON:** Please just repeat the page.

**ADV VAS SONI SC:** Oh sorry. 214.111.

**MR MULLER:** Is it 110.

**ADV VAS SONI SC:** 111.

**MR MULLER:** 111. Okay.

**ADV VAS SONI SC:** So this is an invoice rendered by Sibenza on the 21<sup>st</sup> of November 2014 to Swifambo. You  
10 see that Mr Muller?

**MR MULLER:** I do.

**ADV VAS SONI SC:** Well let's forget the fact that the contract said, and this is a fact. The contract said that PRASA is responsible for forwarding costs. These amounts on Mr Mashaba's version and it seems to be reasonably correct. Swifambo paid to Sibenza. Okay. And now you keep shaking your head. I need an answer.

**MR MULLER:** Yes.

**ADV VAS SONI SC:** Now I just want you to look at this,  
20 the claim reflected on that invoice. On the first line you will see it says, customs VAT of R7 925 489,32. Now what – I understood VAT is payable on expenses you incur, for goods you buy. Or am I wrong?

**MR MULLER:** I'm not a tax expert, but that is how I understand it.

**ADV VAS SONI SC:** So we've now got a line, a line item of a claim for R8 000 000,00 but it would appear that Swifambo simply paid it against ...[indistinct]. Again I'm just, I don't want you to comment, I'm just pointing it out to you. And all I'd like you to say, that is what is recorded in the document.

**MR MULLER:** That is what I see, yes.

**ADV VAS SONI SC:** Then if you look at the next one on page 213.1.2 you'll see that a similar thing occurs where a  
10 VAT amount is reflected without any expenses being indicated. The expenses for the charges and so on. And you will see also that the VAT amount they claim, that is claimed at the bottom or the second last figure on that page, on page 214.1.1 reflects the VAT on the amounts claimed for the services rendered, plus this R320 000,00. You see that?

**MR MULLER:** Is that page 2 – 214.112?

**ADV VAS SONI SC:** Yes.

**MR MULLER:** Yes, I see that.

20 **ADV VAS SONI SC:** Yes. And if you look I am just going to take one more example. If you look at 214.1.1.4 you will see again customs VAT of R1 230 000,00 and that VAT is added to the VAT for the services. You see that?

**MR MULLER:** I see that.

**ADV VAS SONI SC:** Chairperson I highlight that, because

of the concerns that have been raised about an entity which has no obligation to pay, paying these amounts and it, it as you can see at least one of the amounts is a million rand. I, I've looked at more of them, but I merely make the point to say that that is a matter that needs further investigation. Certainly if the matter, if that's claimed from PRASA, it is a matter that PRASA would need to look, because they are obviously saying now, we paid on behalf of PRASA, pay us back.

10 **MR MULLER:** We will follow that up.

**ADV VAS SONI SC:** Then can I ask you to look at note 20 – oh sorry. To page 214.130. Now this is the claim that Mr Mabunda or one of his companies made for payment of a total of 28 million rand. And Mr Mashaba records that Mr Mabunda did offer advice through various companies, but he was never employed by leasing and it is not understood why he received 28 million rand from Swifambo. But that's what's recorded here. That's all I'm saying. Do you see that?

20 **MR MULLER:** Yes I saw that.

**ADV VAS SONI SC:** But that's something you can respond to, because the payments are made by Swifambo or Swifambo related companies.

**MR MULLER:** We have instituted various actions, including against Mr Mabuda to recover monies that was,

that was spent to him.

**ADV VAS SONI SC:** But the interesting thing though is that Mr Mashaba appears to turn on Mr Mabunda and say, pay this money back. But did your ...[indistinct], I can understand you have an arm's length relationship with all the beneficiaries.

**MR MULLER:** That ...[indistinct].

**ADV VAS SONI SC:** Mabunda has been a beneficiary because we've been through it of the two entities that  
10 received money from PRASA, that's Rail and leasing. No sorry, Holdings and leasing. And now ...

**MR MULLER:** That's correct.

**ADV VAS SONI SC:** Mr Mashaba says, he shouldn't have been paid anything.

**MR MULLER:** I see.

**ADV VAS SONI SC:** Now I want you then to please look at page 214.1.3. Now remember you said ...

**CHAIRPERSON:** 214.?

**ADV VAS SONI SC:** 214.1.33 Chairperson.

20 **CHAIRPERSON:** Okay, thank you.

**ADV VAS SONI SC:** You remember you said you had a claim against Mr Gomez for R41 400 000,00?

**MR MULLER:** That's correct.

**CHAIRPERSON:** Now I am just alerting you to this because it is a matter that we are interested in as well.

And if you look at page 214.135 that is two pages down. Mr Mashaba says this is a schedule of donations that were intended for the ANC. And the amount he reflects here is 79 odd million rand.

**MR MULLER:** I see, I see.

**ADV VAS SONI SC:** Now if you go back to page 133 he explains how that came about. And he says that after the contract was awarded, Mr Mashaba and Mr Mabunda were approached by Ms Gomez and Attorney Sibelo. And under  
10 pressure from mister, from Ms Gomez and Ms Sibelo, Mr Mashaba on behalf of leasing arranged to make a donation to the ANC in an amount equal to 88 million rand. But I, I'm, I want to deal with what I regard as the punch line. Now I want to make a donation of 88 million rand, but I will charge whoever it is a handling fee of R8 000 000,00. That's what he says at 3.4.

**MR MULLER:** I see.

**ADV VAS SONI SC:** And then the amount that was paid, he says was R79 400 000,00. Now in fairness to the ANC  
20 and to Mr Mashaba he then says that Mr Badelo testified at the 417 inquiry and said that these amounts were not distributed to the ANC. You were at that inquiry. Is that what happened?

**MR MULLER:** I can't recall the exact details, I will have to go and double check on that sir.

**ADV VAS SONI SC:** And so he says the amount owing by these two individuals is not R41 400 000,00 but in fact 79,4 million.

**MR MULLER:** That's correct, I see.

**ADV VAS SONI SC:** Well I mean, that's what's recorded here and you will keep that in mind as Mr Mashaba saying that's what Swifambo paid to these people.

**MR MULLER:** I will, I will follow that up.

**ADV VAS SONI SC:** Then finally, well perhaps not finally,  
10 but at page 214.149. This is another claim from – oh sorry, this is the main one that I – but perhaps if I could ask you first to look at 214.150 which is the next page. This is another payment that was made to Mr Mabunda or one of his companies, and it was for 7,2 million rand and Mr Mashaba says no value was obtained in respect, in respect of this payment. Swifambo wants the money back.

**MR MULLER:** Yes I see that.

**ADV VAS SONI SC:** Okay, but now I want you to look at note 32.

20 **CHAIRPERSON:** At page?

**ADV VAS SONI SC:** Oh, sorry. I am sorry Chairperson. Page 214.149 it's the one just before. He says subsequent to leasing concluding a sub contract agreement with Vossloh, and without the knowledge of leasing and its consent Vossloh paid to Mr Mabunda or his companies, an

amount of approximately 75 million rand. It is Mr Mashaba, he continues in the CM100 as it is my contention that this amount should have been paid by Vossloh to leasing as some form of rebate and accordingly the leasing liquidators need to recover this amount from Mr Mabunda for his ...[indistinct].

**MR MULLER:** Chairman I can't see how we can have a cause of action against Vossloh, not being party to that payment. I do not know how, how we are able to recover  
10 that money from Vossloh.

**ADV VAS SONI SC:** Yes. But suppose what he is trying to demonstrate is, the extent to which different people who were not entitled to benefit or produce nothing of value in respect of the contract, received such benefits and now the company is in liquidation, he wants those monies back.

**MR MULLER:** Yes Mr Chair.

**ADV VAS SONI SC:** Now those are all the aspects of the new CM100 relating to leasing that I want to raise with you now Mr Muller.

20 **MR MULLER:** Yes.

**ADV VAS SONI SC:** Chairperson I have raised all the matters that I wanted to raise with Mr Muller and I have deliberately, I did of course stray on the one occasion when you pointed out, but I did try to keep it within the confines of what Mr Muller would be ...[indistinct] Chair.

**CHAIRPERSON:** Yes. Yes.

**ADV VAS SONI SC:** That's the evidence we want to lead from Mr Muller.

**CHAIRPERSON:** Yes, no, no. That's fine. Thank you very much Mr Muller. I have no reason to think your counsel was to re-exam now, re-examine. Mr Cilliers?

**ADV CILLIERS SC:** Nothing from our side.

**CHAIRPERSON:** Thank you. Thank you very much Mr Muller, we appreciate that you came to assist the  
10 Commission. You are now excused.

**MR MULLER:** Thank you Chairperson.

**CHAIRPERSON:** Thank you.

**ADV VAS SONI SC:** That is the evidence that we intended leading this week.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** And we've gone through all the witnesses that we eventually thought were necessary.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** We've taken note of the matter that  
20 have been raised. We may require perhaps a day or two more for PRASA.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Depending on, on what happens next.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** It may be one more day. But it won't



be more than that.

**CHAIRPERSON:** Yes. Ja you may, you may require time for some of ...

**ADV VAS SONI SC:** Those investigations.

**CHAIRPERSON:** The witnesses you have mentioned today.

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** But in terms of, in terms of others that you may have lined up from the beginning, you have covered more or less all except maybe one or two?

10 **ADV VAS SONI SC:** Indeed Chairperson.

**CHAIRPERSON:** Ja.

**ADV VAS SONI SC:** But we just want to consider our position without giving any names at this stage.

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** If you will recall we had the Siyagena and the Swifambo contracts ...

**CHAIRPERSON:** Yes.

**ADV VAS SONI SC:** Before you. We just need to consider really we've exhausted all the witnesses.

20 **CHAIRPERSON:** Ja, okay, no that's fine. It's 15:50. I am going to – I think for you that's the end of the, the day at the hearing. I'm supposed to hear the evidence relating to the law enforcement agency for my evening session, but it was meant to start at 17:00. I don't see the evidence leader around. Because if he was around we would not

wait for 17:00, we would start ...

**ADV VAS SONI SC:** Yes.

**CHAIRPERSON:** Earlier. But I'm going to adjourn and if it's possible to start before 17:00 we will start before 17:00 failing which then we start at 17:00. So we are going to adjourn so that the – I will return later for the evening session.

**ADV VAS SONI SC:** As you please Chairperson.

**CHAIRPERSON:** We adjourn.

10 **ADV VAS SONI SC:** And we are excused Chairperson, the PRASA team?

**CHAIRPERSON:** Yes, you are excused.

**ADV VAS SONI SC:** Thank you Chair.

### **INQUIRY ADJOURNS**

### **INQUIRY RESUMES**

**CHAIRPERSON:** Thank you Mr Soni for staying. Ja, no, no it appears that although I initially may have thought we would again be hearing the evidence relating to Mr Joubert today, apparently ultimately it was adjourned to next  
20 Tuesday. So there is no evening session for today.

Yes so we will adjourn and tomorrow I will hear evidence relating to Eskom. That is for the benefit of the public. One must welcome every opportunity to have only one session yes.

We adjourn.

**INQUIRY ADJOURNS TO 26 FEBRUARY 2021**