

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

24 MAY 2021

DAY 401



Gauteng Transcribers
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 21 MAY 2021

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

ADV CHASKALSON SC: Good morning, Chairperson.

CHAIRPERSON: Are we ready?

ADV CHASKALSON SC: We are, Chair, but before we get to the evidence for today, there is an issue relating to Rule 33 which I need to address and I have ...[intervenes]

CHAIRPERSON: I have seen the letter from DM5
10 Incorporated.

ADV CHASKALSON SC: Indeed, Chair.

CHAIRPERSON: Yes?

ADV CHASKALSON SC: Chair, I would ask that we do not mention the name of the client of DM5 Incorporated, because that is part of the potential harm that they speak to.

Chair, the report of Mr Holden to which he will testify today exposes sophisticated money laundering networks that are operating inside South Africa, some of
20 which networks were subject to ongoing South African Reserve Bank investigations, even before Mr Holden became aware of the.

The Commission shared an advanced copy of Mr Holden's report with the Reserve Bank. After this happened or after this took place it became clear that

premature disclosure of the report might prejudice the South African Reserve Bank investigations and potential additional regulatory action that the Reserve Bank may have wanted to take flowing from the report, and so at the request of the South African Reserve Bank the investigation team undertook not to release the report through the Rule 33 process until after close of business on Friday 21 May, so as to allow the Reserve Bank to take whatever action it could to prevent the possible prejudice.

10 That meant that the Rule 33s were sent out only over this last weekend, in fact most of them went out on Saturday morning. So the affected parties would have notice of the allegations against them in advance, so that were going to be made in the report and did not hear about these allegations for the first time in the press or on television today, that was the purpose of sending the notices out on Saturday morning.

 Obviously there was no sufficient time for the affected parties to bring applications to cross-examine or
20 for other relief. We have had a complaint from one or from DM5 in the letter that you referred to, to represent one of the named parties who take issue with an allegation made against them in the report and have indicated that they intend to furnish an affidavit in respect of those allegations.

I would ask, Chair, that at this stage of the proceedings that until that entity has had an opportunity to respond, as it indicates that it wants, its name should be redacted from any copy of the report that is published and it should not be named in evidence, so no one will know of the allegation, at least no one will know if it until they have had an opportunity to respond.

I have spoken to Mr Holden about this and we have arranged redacted pages of the report so that if he ever
10 shares a screen today MS Team question will not appear in public or will not be named or shown.

I would ask that subject to that qualification that Mr Holden's evidence should proceed and that any of the Rule 33 parties who want to apply for Mr Holden to be recalled for cross-examination should be given a full period of two weeks, which would be two weeks today, to make such an application, but the potential prejudice to this party that has complained can be addressed by not mentioning the name of the parties or disclosing it
20 inadvertently in any of the tables in the report or alike.

CHAIRPERSON: The difficulty of course which immediately arises if we do that in regard to this particular party is; what about parties who may not have had a chance to notify us that they take the same stance? Because there may be letters that have not reached you,

have not reached us, that maybe are in with the secretary, or that were only seen by those parties this morning and therefore they have not been able to notify us. They may be lucky that they saw this on Saturday and have been able, were able to send the notice yesterday, the letter yesterday, but there may be others who are in the same position who would be making the same request or complaint if there was enough time.

ADV CHASKALSON SC: Chair, I can confirm that as of
10 08:30 this morning this was the only complaint of this nature that had been made.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Other people had corresponded with the Commission in response to the report, but there have been no other complaints of this nature.

CHAIRPERSON: I mean if, in regard to anyone who had received the 33 notice over the weekend and has communicated and has not taken the same stance, that may be fine, but I think the difficulty would arise with
20 regard to somebody from whom we have not received anything, maybe because they only became aware of the letter at 09:00 as we were starting, you know.

Now they say just because DM5's client happened to see it, or to see the 33 notice over the weekend and they were able to send a notice yesterday, they are given a

certain treatment, but they are not given the same treatment just because they only saw the 33 notice at 09:00, they might complain that it is unfair.

ADV CHASKALSON SC: Chair, I take that point. It may be, I mean there are possibly two steps that need to be taken. The first is I can get instructions from the Secretariat as to who, a full list of who has acknowledged the report and it may be that we need to consider standing down at least for a couple of hours, because by Monday
10 morning there is a, if we did not receive, were not aware of the report on the weekend, are much more likely to gradually to become aware of the report.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Can I ask that the matter stands down briefly?

CHAIRPERSON: Ja, yes.

ADV CHASKALSON SC: I will then get instructions from Secretariat. If it turns out that we have acknowledgements from any of the parties that may be potentially named or
20 implicated this morning then we can proceed immediately. If it turns out that there are some who do not, then we will need to decide how much time would be a fair time to ...[intervenes]

CHAIRPERSON: Ja, of course the other complicating factor, and for that I am responsible, is that we are starting

at 09:00, whereas our usual starting time is at 10:00.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: Other parties, those parties, I do not know, the 33 notice might not have told them we start at 09:00.

ADV CHASKALSON SC: I have looked at it, it does not.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: It just mentions the date, not the time.

10 **CHAIRPERSON:** Ja, because it was prepared obviously on the basis of the usual starting time and the idea of starting earlier is something that happened after, so whoever has got the 33 notice might be saying okay, they are starting at 10:00, I am going to make sure that by 09:30 a letter has been sent off to them and to us and so on.

So certainly we can stand down, obviously the idea of starting at 09:00 is just to try and make use of as much time as possible, this being the, as we approach the end of
20 oral evidence, that is the one thing, so we can stand down, we must just look at for how long.

Two, of course as you will be aware there is provision in the rules to the effect that if any party feels that they have not been given a reasonable notice in terms of Rule 33 they can apply to the Chairperson for such relief

as may possibly address whatever prejudice may have arisen out of not being given a reasonable notice.

Of course there might be prejudice that can be addressed, there might be prejudice that cannot be addressed, so I am just saying that there is that provision and of course I think there have been instances where, or I think the Rules have been understood to mean that there may be cases where an implicated party does not get given advance notice in an appropriate case, you know and there
10 can be circumstances where there is justification for giving shorter notice than the notice provided for in the Rules.

So I think we can stand down and such checking as may need to be done will be done by the Secretariat to see which parties may have communicated and then we will, when we resume we can take it from there. In the meantime I think I had, I had indicated to the Eskom works team that at 09:45 I could briefly hear an application for leave to cross-examine one of the Eskom witnesses and I had said I would give Eskom's lawyers about 10 or
20 15 minutes to present their argument and then I will decide, so there is that, so I do not know how, what time you had in mind for us to resume if we stand the matter down now.

ADV CHASKALSON SC: Well Chair, I take your point that it will have to be after 10:00 at the very least.

CHAIRPERSON: Yes ja, ja.

ADV CHASKALSON SC: So if we take 10:00 as the point at which we should take a final look at what the Secretariat has received by way of acknowledgement, can I suggest we stand down until 10:30?

CHAIRPERSON: Ja, I think 10:30 would be fine. How many parties more or less are we looking at who could be potentially affected?

ADV CHASKALSON SC: The number of Rule 33 is close
10 to 200, Chair.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: So it is a, it is a huge number.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: Although in terms of the structure of Mr Holden's evidence the vast majority, we could, we could certainly structure matters so that we could advance Mr Holden's evidence significantly without maybe, without touching on more than maybe 30 of those implicated parties.

20 **CHAIRPERSON:** Yes. Well, during the break you may wish to reflect on whether the circumstances are not such that as long as the implicated parties have been notified that Mr Holden would be giving evidence today that may implicate them, that is not enough even to mention their names on the basis that while that may not be the best

situation, but sometimes given the kind of investigation that the Commission is doing it may well be that there may be justification in proceeding, as long as they know and they are not caught off by surprise with TV or radio, mention of their name without knowing what is happening, but you are much closer to the evidence than I may be and you would be, you may be in a better position to take a view on that, but certainly I think we have had situations where, actually we have had many situations where people
10 who are implicated by witness evidence have received shorter notice which did not allow them to file any affidavit, but were notified that on that day a certain witness would implicate them, would give evidence and then of course condonation is asked for, for the failure to give a full 14 days' notice and of course that is taken into account together with the rule I was talking about earlier about any order that might help address any prejudice.

I do remember that we had at some stage a situation where some implicated parties had to be notified
20 at least by telephone because of the particular circumstances just to make sure that at least if they hear on television that a witness has said something that implicates them they are aware and then of course they could always apply.

So I am just mentioning all of those for you to

reflect on and then when we resume you can indicate what you think should be done. Of course having looked at Mr Holden's report, I am inclined to think that for the benefit of the public it would be important to give Mr Holden as much time as we can give for him to deal with the report properly. Of course I think it is very important for the public to understand what the investigations have revealed in relation to funds and so on, so but reflect on it and then when we resume we can take
10 it from there.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Ja, okay. We are going to stand the matter down until 10:30 and at 09:45 I may come back to deal with another matter. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, Mr Chaskalson?

ADV CHASKALSON SC: Chair, if I can give an update, but I have just noticed that Mr Holden does not seem to be
20 with us, so I wonder if we can ask for him to be connected.

CHAIRPERSON: Yes, the... Oh, there he appears now.
Ja?

ADV CHASKALSON SC: Thank you. Chair, I have an update, which is thee has been one further complaint and I have a list of entities that have electronically

acknowledged receipt of the Rule 33. I am going to propose that we proceed today on a basis which I will outline to you Chair, which is calculated to minimise prejudice to any affected parties.

At the outset I would submit that condonation of a departure from Rule 3 is certainly possible and it has, this Commission has investor funds act condoned such departures on many occasions in the past. In fact, in relation to the evidence of Mr Agretsi, no Rule 33s were
10 sent out until after his evidence because of the particular risk that an advance notice might have posed in that case.

I would submit that in this case we are dealing obviously not with as threatening a situation as that which was presented by Mr Agretsi, but still an extraordinary situation, which is that disclosure of the report would have prejudiced ongoing investigations into money laundering within South Africa. The Reserve Bank specifically requested additional time to take whatever steps it could take to minimise that prejudice and in particular to be able
20 to take those steps until close of business on Friday last week.

In those circumstances I would submit that a departure would be justified and that prejudice to the two complaining parties can be contained by not mentioning their names in this evidence or in any of the pages of the

report that will be displayed in the course of this evidence and I will just refer to them as company A and company B, and of course in relation to all other interested and affected parties nobody loses their right to apply to cross-examine Mr Holden or indeed to put up their version on oath and Mr Holden's evidence will only go, will only be, the report itself will only be put on line when Mr Holden's evidence has been completed.

10 What I would propose to you, Chair, is that we excise from the evidence that we will deal today, deal with today, the section of the report that deals with the largest numbers of interested and affected parties where there would be the greatest potential risk of prejudice to innocent parties and I will tailor this report to deal only with parties, well I think it would be about 30 parties who would be named in that process and those parties will not have report published online that mentions them until after they have had the opportunity to respond.

20 The two that have specifically taken issue with this process and said that they do intend to respond, we will not mention at this stage and for the rest if the parties do choose to respond at a later stage and if they have a version contrary to Mr Holden's, we can put that to Mr Holden if Mr Holden wants to retract his version on the strength of that the version will go out publically. We will

do that. If he does not, then we can possibly post both versions online so that the public can see what the competing positions are and on that basis I would ask if we can continue and it will be necessary for Mr Holden to come back at a later stage to deal with the section that deals with the large, well with the big money laundering networks where there are very many interested and affected parties' names and which I do not propose to address today.

10 **CHAIRPERSON:** No, that is fine. We can proceed on that basis, ja, ja we can proceed on that basis.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Good morning, Mr Holden.

MR HOLDEN: Good morning, Chair.

CHAIRPERSON: Thank you for coming back. Okay, then shall we do the affirmation or oath now? Then you can proceed.

ADV CHASKALSON SC: Thank you, Chair.

20 **CHAIRPERSON:** Please administer the oath or affirmation.

FEMALE SPEAKER: Please state your full names for the record.

MR HOLDEN: Paul Edward Holden.

FEMALE SPEAKER: Do you have any objection to making the prescribed affirmation?

MR HOLDEN: I do not.

FEMALE SPEAKER: Do you affirm that the evidence you will give will be the truth, the whole truth and nothing but the truth? If so please raise your right hand and say; I truly affirm.

MR HOLDEN: I truly affirm.

PAUL EDWARD HOLDEN: (affirmed)

CHAIRPERSON: Thank you, Mr Holden. Yes, Mr Chaskalson? You might wish to briefly outline the
10 purpose of his evidence, just for the benefit of the public.

ADV CHASKALSON SC: I will do that, Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: In fact that was going to be one of my very first questions to Mr Holden.

CHAIRPERSON: You can do it that way, that is fine.

ADV CHASKALSON SC: But before I do that Chair, may I attend to a few matters of housekeeping?

CHAIRPERSON: Ja.

ADV CHASKALSON SC: The first is just to check that you
20 have the full range of bundles relevant to Mr Holden's evidence. Mr Holden's main point is in FOF bundle 9, it runs from page 124 to 174.

CHAIRPERSON: I have got bundle, FOF bundle 9. You say it goes up to?

ADV CHASKALSON SC: Well, the annexures start on

page 475, the report ends on 474 of bundle 9.

CHAIRPERSON: Okay. On my one the report ends on page 475 and the annexures start on page 476.

ADV CHASKALSON SC: I apologise, Chair. My note was wrong.

CHAIRPERSON: Okay, alright.

ADV CHASKALSON SC: Sorry.

CHAIRPERSON: And then the annexures go up to page what, 900 and something.

10 **ADV CHASKALSON SC:** Well, they go to the end of that bundle and then they carry on, Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: They go all the way to bundle 16.

CHAIRPERSON: Okay, okay no, that is fine.

ADV CHASKALSON SC: Now we will for the most part today not refer to annexures, just because of pressures of time.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** But I just do want to check that you have bundles 10 to 16 as well, which will include the annexures if we do have to refer to some.

MR HOLDEN: Ja, my Registrar says I do have.

ADV CHASKALSON SC: And then Chair, there are a ...[intervenes]

CHAIRPERSON: I have got this green file here which has got DM5's letter on the 12th, but it has got other documents.

ADV CHASKALSON SC: It has an executive summary.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: It should have an executive summary underneath.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: And then two additional
10 annexures, but I will, one of which belongs in the report
and one of which I am going to introduce through
Mr Holden later.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: But if we can deal with those as
we get to them.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Chair, there is a last set of
annexure files which requires specific treatment, that is
bundle 17 to 19 and those are bank statements and now as
20 you will see and the public will see in the course of this
evidence, Mr Holden testified about literally thousands of
individual bank transactions in one way or another linked
to state capture.

Those bundles, FAF17 to FAF19 contains 3000
pages of bank statements which underpin the tables that

you will see in Mr Holden's report. Now the problem with the bank statements is that they are not, on one page you will have possibly one transaction that is relevant to Mr Holden's report, but you will have 40 transactions that are not and within those 40 transactions there may well be private information relating to individuals who are wholly unconnected to anything here, like for instance salary information of individuals and material like that.

Now we thought initially that what we would propose
10 to do is to redact everything other than the individual transaction.

CHAIRPERSON: Ja, yes.

ADV CHASKALSON SC: But that would be a monumental exercise and would achieve very little in the end, because all that one would have is the single transaction that mirrors something up at the, in the report itself and instead what we would propose Chair, is that those bank statements are not made public when the report is published on the internet, but of course if any interested
20 party who sees the tables of transactions that Mr Holden quotes in his report says you say this amount was paid you know, by Transnet to my company on such and such a date, that is wrong, if anyone raises a dispute we will then produce a redacted bank statement in respect of a specific dispute that has been raised.

So if anybody wants to put in issue any of the transactions that are recorded in Mr Holden's report itself, we will produce the bank statement and you, Chair, of course will have sight of all of those bank statements, but in the interest of third party privacy we submit the public should not have access to those 3000 pages of bank statements.

CHAIRPERSON: No, I think that is sensible. We will need, we will not, are we not going to need a properly
10 crafted order to reflect exactly what you say that I can make in due course?

ADV CHASKALSON SC: Chair, I think in terms of the privacy provision the simple order would be to rule that bundles FOF17, FOF18 and FAF19 are not to be made public.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Provided that any interested and affected person who disputes a particular transaction in the report will be entitled to be provided with proof of that
20 transaction from the relevant bank statement in those volumes.

CHAIRPERSON: Ja. No, that is fine. I am just saying maybe if you could in due course prepare a draft order.

ADV CHASKALSON SC: A draft order, I will do that.

CHAIRPERSON: Ja, okay all right.

ADV CHASKALSON SC: Thank you. Then the last issue of housekeeping is, relates to a number of corrections, minor corrections that one needs to, I need to just raise with Mr Holden before we get into the detail of his report. The first is that on page 82 of bundle 9 there is a reference to Mr John Duate as the son of Ms Jessie Duate. Mr Holden, can you just correct, can you identify why that is wrong and what needs to be corrected?

MR HOLDEN: Certainly, Chair. John Duate is actually the
10 ex-husband of Ms Duate, not the son.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And then if one goes to page 440 of the report, sorry of the bundle, 440, bundle 9, there is a heading at 10.1.3 that is described as the Trillian Asset Management loan. Mr Holden ...[intervenes]

CHAIRPERSON: At what page did you say that is, mister?

ADV CHASKALSON SC: 440 Of bundle 9.

CHAIRPERSON: 440, Okay. Yes, I am there.

ADV CHASKALSON SC: Mr Holden, can you just tell the
20 Chair what the correct company's name that should be mentioned there is?

MR HOLDEN: Certainly, Chair. Apologies for the typo there. It should be Trillian Management Consulting and not Trillian Asset Management.

CHAIRPERSON: It should be Trillian Management?

MR HOLDEN: Management Consulting.

CHAIRPERSON: Okay, that is in 10.1.3.

ADV CHASKALSON SC: In the heading to 10.1.3, Chair.

CHAIRPERSON: Yes.

MR HOLDEN: That is correct.

ADV CHASKALSON SC: And just to point out Chair, that if one goes to the body of the text under 10.1.3 it is clear that the entity is Trillian Management Consulting, not Trillian Asset Management, as Trillian Asset Management
10 is not mentioned in the section other than in the heading.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: I do want to, it is quite an important distinction to make Chair, because the two companies are owned by different entities and Trillian Asset Management has in fact been bought out of liquidation and exists as a company today, so its name should not be confused with Trillian Management Consulting, which is the entity that is, to which 10.1.3 relates.

20 **CHAIRPERSON:** Okay no, that is fine.

ADV CHASKALSON SC: And then finally Mr Holden, there are throughout your report references to Tegeta Resources, can you give the Chair the full name of the company that you referred to when the report is in, you know mentions to Tegeta Resources?

MR HOLDEN: Absolutely, Chair. I am referring to Tegeta Exploration and Resources (Pty) Ltd.

ADV CHASKALSON SC: So any reference to Tegeta Resources should be understood as a reference to Tegeta Exploration and Resources (Pty) Ltd.

MR HOLDEN: That is correct, Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Then Mr Holden, can I ask you to go to page 475 of the bundle where there is a signature
10 at the foot of the report?

CHAIRPERSON: What is that page again?

ADV CHASKALSON SC: 475.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And can you confirm that that is your signature?

MR HOLDEN: Chair, it is indeed my signature.

ADV CHASKALSON SC: And can you confirm that subject to the corrections that we have raised with the Chair to the best of your knowledge and belief the contents of this
20 report are true?

MR HOLDEN: That is correct Chair, I do.

CHAIRPERSON: Okay, thank you.

ADV CHASKALSON SC: Then Mr Holden, I understand that, well not I understand, I know that you have prepared an executive summary of your report. That Chair, is the

document, the second document in the file that has been put before you.

CHAIRPERSON: Oh, the green file.

ADV CHASKALSON SC: The green file, indeed Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And I would, Chair, this is a document which will be a much easier document of which to lead Mr Holden in this evidence and I would ask if we could introduce it as an exhibit. It will serve two purposes.

10 One, it will provide a framework for this oral evidence, but two, it also provides not a short, because it is over 70 pages, but it provides a digested account of an incredibly detailed and lengthy report, which would be very useful for the public to see.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So might I ask Chair, that that document be admitted as an exhibit?

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** And having asked that Chair, I do not yet have... Mr Holden's report itself is VV10.

CHAIRPERSON: BB10?

ADV CHASKALSON SC: VV10.

CHAIRPERSON: Yes?

ADV CHASKALSON SC: Can I ask that this be entered as EXHIBIT VV10A?

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Because I think that there is already a VV11 in later flow of funds evidence.

CHAIRPERSON: Yes. Okay, the executive summary of Mr Holden's report would be admitted and will be marked as EXHIBIT VV10A.

ADV CHASKALSON SC: Thank you, Chair. Now Mr Holden, you have testified before the Commission previously in the first week of December last year and in
10 your statement that you confirmed in evidence on 3 December last year there was attached a copy of your CV. I do not want you to go through your CV again, but can you very briefly just remind the Chair who you are and what you do?

MR HOLDEN: Certainly, Chair. I am a South African citizen, I am currently the Director of Investigations at Shadow World Investigations. Shadow World
Investigations is a small non profit entity that is run by myself and my colleague, Mr Andrew Feinstein, who is a
20 former African National Congress member of Parliament.

Shadow World Investigations undertakes detailed investigations into issues of grand corruption and advocacy around that. In terms of my personal experience I have been investigating grand corruption related to the defence sector and other sectors for the better part of 13 years.

I also serve as an investigative methods trainer and I have trained approximately 1000 journalists, mostly from the Middle East and North Africa, but also from Sub Saharan Africa as we will.

CHAIRPERSON: That is fine. Before you proceed Mr Chaskalson, this green file had included in it DM5's letter, I am checking it, is there any reason why it should be in this green file?

ADV CHASKALSON SC: No, green file, the green file
10 merely included documents that I was going to refer to you, Chair.

CHAIRPERSON: Okay, yes.

ADV CHASKALSON SC: So it also includes two additional documents beyond the executive summary that are behind the executive summary, which are, one needs to be added to the annexures to Mr Holden's evidence.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But it will only be addressed when Mr Holden returns.

20 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: The second is a document that should have been in Mr Holden, as an annexure to Mr Holden's report, but we overlooked that and which I would want to introduce as a new exhibit.

CHAIRPERSON: Exhibit, ja.

ADV CHASKALSON SC: But if I can do that when we get to it.

CHAIRPERSON: No, no, that is fine, but you agree I can ...[intervenes]

ADV CHASKALSON SC: The DM5 yes, the letter does not ...[intervenes]

CHAIRPERSON: That is not an exhibit, ja.

ADV CHASKALSON SC: It is not an exhibit, indeed, Chair.

10 **CHAIRPERSON:** Okay, all right.

ADV CHASKALSON SC: Then Mr Holden, can I ask you to give a very, very brief outline of what the purpose of your evidence today and when you return will be, and what matter is traversed in your report? And for that purpose if I might ask you to go to the executive summary, annexure VV10A at page 6, paragraph 1, where you set out in useful form, in neatly summarised form what your report attempts to do?

20 **MR HOLDEN:** Certainly, Chair. To read from the report, this report sets out the known and evidence flow of funds passing to the benefit of the Gupta Enterprise from State Capture. The reports examines a) the total cost estate of contracts affected by State Capture, b) the total amounts paid irregularly and directly to the Gupta Enterprise entities by the state, the total amount paid to Gupta

Enterprise entities by contractors to the state that secured their own income through an irregular relationship with the Gupta Enterprise, d) the total amount paid to the Gupta Enterprise in the form of kickbacks, which has particular relevance to the Eskom 95, 100 and 106 for locomotive procurement contracts and further crane contracts placed by Transnet with ZBMC and Liebherr Cranes, the total amount paid into a complicated and extensive local laundry through first level laundry entities to the benefit of the
10 Gupta Enterprise, and we will outline what we mean by first level laundry entities a little bit later, I am sure.

The operation of a complex local laundromat that receives funds from State Capture anticipated and onwards, usually abroad, into enormous and complex international money laundering operations based in Hong Kong, China and Dubai, g) the operation as far as can be established are vast international money laundering operations that were used by the Gupta Enterprise alongside many other criminal actors to receive and
20 dissipate criminally derived funds. Paragraph 2, evidence leader, should I refer to paragraph 2 as well?

ADV CHASKALSON SC: Please, please do.

MR HOLDEN: Chair, at paragraph 2 further this report sets out the manner in which the Gupta Enterprise made use of funds accruing to it through criminal activity,

including how these funds were recycled and used to purchase significant assets such as Optimum Holdings, and to ensure the liquidity of the enterprise's legitimate businesses, legitimate as in parenthesis.

This includes a discussion of a) the manner in which the majority of funds used by Optimum Holdings, the parent company of Optimum Coal Mine, derived from proceeds of crime, the manner in which the Gupta Enterprise used criminal funds to repay a certain
10 proportion of the loan taken up by Oak Bay Investments and others from the Industrial Development Cooperation to purchase Shiva Uranium, the manner in which funds laundered through Albertine were used to balance Sahara Computers' Books where the company would not be able to, on the basis of its own business and not appearing here sadly, but which we will address in evidence, is also the manner in which Inkonkey Ink was bought with criminal intensive funds.

ADV CHASKALSON SC: Thank you, Mr Holden. Before
20 we get to the detail of the report, can I ask you briefly to outline the evidentiary approach taken to the presentation of the report and what, how you support the, how you will support the conclusions that you draw in the report and what evidence you use?

MR HOLDEN: Absolutely, Chair. In addition to the

annexures from, out of the flow funds bundles and as the evidence leader mentioned, we refer to a very, very, very large number of bank statements and bank transactions, including every single transaction as an annexure was very challenging and certainly would be very challenging to refer to every annexure in evidence.

So the route that we have taken is to concatenate and identify all the key payments in tables in the main report, of which I think there are over 250 tables, and
10 those tables are then referenced against particular annexures that will be attached in bundles, I think it is 17 and 19 if I am correct, and every single transaction in those tables will be cross-referenced to those statements, that is in addition of course to quite a substantial number of supporting documents, that aren't bank statements such as contracts and relevant e-mails and also extracts from what are known as the Gupta leaks.

ADV CHASKALSON SC: Now the contracts that you cover in the report are contracts by organs of state that you
20 characterise as being afflicted by State Capture. There are many of these contracts which have been the subject of extensive evidence before the Commission already and your report does not traverse that evidence at all, it merely takes it as granted, but there are some contracts that you mentioned here for the first time that have not been seen

in evidence in the report. Can you just briefly tell the Chair and the public how you justify your conclusion that those contracts are irregular contracts tainted by State Capture?

MR HOLDEN: Certainly, Chair. So there is a number of tests we applied, the first would be the evidence that had been gathered mostly by the contracts which provided a narrative as to the manner in which contracts were entered and as we will see as we go through the evidence there
10 was a whole number of contracts that were entered into by deviation without competitive bidding, or awarded, very clear and material irregularities, in addition to which we have identified those contracts where there are payments made to what we call first level laundries where those first level laundries cannot be conceived of performing any legitimate business service, but were instead conduits and reflecting payments to the benefit of the Gupta Enterprise and where that was the case we also included those as contracts afflicted by State Capture.

20 **ADV CHASKALSON SC:** Mr Holden, you referred to the contracts team, that would be the Commission's team that was investigating contracts afflicted by State Capture.

MR HOLDEN: Yes.

ADV CHASKALSON SC: Thank you, Mr Holden. Can we then start getting into some of the important numbers?

And the first number I want you to ask to report to the Chair is the total amounts paid by the state in contracts that were tainted by State Capture, according to your investigations and it ...[intervenes]

MR HOLDEN: Certainly, Chair.

ADV CHASKALSON SC: If you can just give us that number.

MR HOLDEN: The number is R49 157 323 233.68, and to make that easier for the people making the transcriptions,
10 that is R49 157 323 233.68.

ADV CHASKALSON SC: Thank you, Chair. Thank you, Mr Holden. Now I am going to ask you to turn to page 152 where there is a very lengthy table which explains how you reach that number of R49 billion and a bit, but before I do so I want to remind you that there are two entities whose names are on the original version of that table and who have raised objections to the late delivery of Rule 33s. Now I just want to confirm that you have redacted from that table, which I am going to ask you to display, the names of
20 both of those entities.

MR HOLDEN: Chair, I have done so.

ADV CHASKALSON SC: And we can refer to them, because we will be referring to them at various points, we can just refer to them as company A and company B. So can I then ask you to take the Chair to page 153 of flow

funds bundle 9? Sorry, table 73 at page 152 of bundle 9.

MR HOLDEN: Chair, I have just shared the screen. I just want to make sure that it is showing up on your screens.

CHAIRPERSON: Yes, it is showing up. I am just double-checking.

ADV CHASKALSON SC: Chair, I have given you the wrong reference, I must apologise.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: It is 73.

10 **CHAIRPERSON:** Ja, but that is ...[intervenes]

ADV CHASKALSON SC: Page 153, it is at the foot of 153.

CHAIRPERSON: Yes, okay I have got it, ja. That is what I was trying to check, whether it was the same as what I had. Yes okay, alright. Yes, we have got it, Mr Holden.

ADV CHASKALSON SC: And can I ask you to go literally line by... I think we will need that a little bit larger, because I am not sure the people will see it from there.

CHAIRPERSON: Ja, they will struggle. That is better.

20 **ADV CHASKALSON SC:** And can you go literally line by line, describing the organ of state, who had paid, what the amount was and what the percentage of the total amount of R49 billion odd is?

MR HOLDEN: Certainly, Chair. So just to describe the table, obviously the far left column describes the

government entity that is making the payment, the second identifies the entity to which the payment was made. The third column identifies the total expenditure by the state, having been able to identify, and then finally in the last column I have calculated the contribution of that particular state expenditure against the total figure of funds we have identified as being paid out in contracts afflicted by State Capture and I should mention Chair, just to clarify, when I say in this evidence contracts afflicted by State Capture,

10 what I am referring to is contracts afflicted by State Capture involving the Gupta Enterprise. I am not sure there is any other contracts that need to be discuss in relation to State Capture, but those are for Gupta Enterprise for the substance of this report. So with that, Chair, the first entry ...[intervenes]

CHAIRPERSON: Just hang on, Mr Holden.

MR HOLDEN: What we state ...[intervenes]

CHAIRPERSON: Hang on, Mr Holden. I do not know whether something can be done, I do not think the

20 reception is the best. Mr Holden seems to be breaking when he speaks. I assume that is technology.

ADV CHASKALSON SC: I think it is, Chair. I am not sure where the problem is, whether it is on our side or his side.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: We might, if we possibly can try

to attend to that at the tea break, we could even do that now if ...[intervenes]

CHAIRPERSON: Yes, I think he can continue, but at least see if the technicians can try and look at that insofar as they are able to while we are continuing. We are five minutes away from the tea break. We could continue, but I also, I was thinking whether we should take the tea break with the delay we had earlier on, but what do you say, Mr Chaskalson?

10 **ADV CHASKALSON SC:** I am in your hands, Chair. I am happy to, I am certain happy to continue.

CHAIRPERSON: Ja, ja.

ADV CHASKALSON SC: Maybe the technicians can try and attend to it in the background.

CHAIRPERSON: Yes, let me find out. Can the technicians attend to it in the background? Okay, they will work on it. Okay, let us continue without taking the tea break for now, then maybe we will see around 12:00 whether we should take a short break or not.

20 **ADV CHASKALSON SC:** Thank you, Chair.

CHAIRPERSON: Okay, alright.

ADV CHASKALSON SC: Mr Holden, can you then go literally line by line through this table?

MR HOLDEN: Absolutely, Chair. So to begin with the first entry, the government entity is the Free State Department

of Agriculture and Rural Development, they paid New Lane Investments 204, the amount that they paid was R24 984 240.00 and the percentage in relation to that, the second entry is the Free State ...[intervenes]

CHAIRPERSON: Okay, hang on Mr Holden, I think you broke. Just repeat that number for the, that first entry. It is R24 984 240.00.

MR HOLDEN: Correct.

CHAIRPERSON: Ja okay, go to the second item, line.

10 **MR HOLDEN:** The second line is the Free State Department of Agriculture and Rural Development which paid to Astina (Pty) Ltd, which you have heard about in previous evidence, and the total state expenditure there was R280 202 652.00 and its contribution to the total funds dispersed by the state in relation to the State Capture is 0.57%.

The third entry is the Free State Department of Education, which paid an entity called Sunbed and the amount that they paid was R28 050 000.00, which
20 contributed 0.06% of the total funds related to State Capture.

The Free State Office of the Premier which paid Sunday Trading in an amount of R4 578 810.00, which contributed 0.01% of the total amount of the State Capture. The Free State Department of house, which paid

Eureva/Mediosa Health R25 111 188.00 and that percentage figure is 0.05%.

The North West Department of Health paid Eureva/Mediosa Health R30 million and that is 0.06% of the total State Capture funds spent by the state. The Free State Department of Agriculture and Rural Development paid Tsebo Business Intelligence an amount of R12 492 500.00 and which percentage is 0.03%.

The Free State Department of Agriculture and Rural
 10 Development paid a company we will refer to as company A an amount of R2 487 480, which is 0.01% of the total State Capture funds. The Free State Department of Economic Development, Tourism and Environmental Affairs paid Innova Management Consulting an amount of R6 972 395.04, which is 0.01% of the total State Capture funds.

South African Airways, SA, paid Regiments Capital an amount of R6 241 500 and that percentage is 0.01%. SA Express paid Regiments Capital an amount of
 20 R8 218 123.20, which amounts to 0.02%. Transnet paid to Regiments Capital an amount of R1 015 051 242.21, which contributes 2.06% of the total amounts paid by the state in relation to State Capture.

The Free State Provident Fund paid Regiments Capital an amount of R2 319 216, which was less than

0.01%, as you can see there. Denel paid to Regiments Capital an amount of R7 980 000, which is equal to 0.02% of the total State Capture funds. SAFCOL paid Regiments Capital R5 711 400, which is 0.01%.

ADV CHASKALSON SC: Sorry, sorry Mr Holden, sorry to interrupt you at that point. Not everyone knows who SAFCOL are. Am I correct that they are the South African Forestry Company Limited?

MR HOLDEN: That is correct, Chair.

10 **ADV CHASKALSON SC:** Can you continue?

MR HOLDEN: Certainly, Chair. This entry is actually, I have used the wrong, it is actually the Transnet Second Defined Benefit Fund which paid Regiments Capital R248 729 210, which is 0.51%. Transnet which paid the Trillian Group R169 859 999.91, which contributes 0.35%.

Eskom which paid the Trillian Group R595 228 913.29, which contributes 1.21%. SA Express which paid the Trillian Group R5 700 000.00, which is 0.01% of all State Capture amounts. Transnet paid to
20 Neotel an amount of R5 581 955 471.63. which contributes 11.63% of the total State Capture funds paid out.

Eskom paid to McKingsey an amount of R1 108 164 558.26, which is 2.25% of the total State Capture funds dispersed by the state. Transnet paid to McKingsey R687 970 961.05. which contributed 1.4%.

South African Airways paid to McKingsey an amount of R6 243 210, which contributed 0.01%.

ADV CHASKALSON SC: Sorry Mr Holden, if I can just interrupt there. We have heard evidence earlier that McKingsey has repaid the Eskom amount and has undertaken to repay the full amount of the Transnet and SAA amounts that you have just quoted, I do not know if they have, well the full amounts that they earned from SAA and Transnet. Technical Support Officer the best of your
10 knowledge, has anybody else on this list repaid the full amount of what you see on this list?

MR HOLDEN: Not to the best of my knowledge, no.

ADV CHASKALSON SC: Thank you. Can you continue?

MR HOLDEN: Certainly. Pertaining to the line item Transnet paid to Combined Private Investigations an amount of R151 698 373.17, which contributed 0.31% to the total State Capture amount. I am sure we will address the reason related to this a bit later in evidence.

Transnet paid to Inkonkey Ink an amount of
20 R5 861 759.16, which is 0.01%. Transnet paid to Deloitte an amount of R236 226 517.93, which contributes 0.48%. Transnet paid to KPMG an amount of R63 280 377.50, which amounts to 0.13%. Eskom Paid to PWC an amount of R107 773 438.56, which is a percentage amount of 0.22.

Transnet paid to Cutting Edge an amount of

R45 984 113.24, which is 0.09%. Eskom further paid to Cutting Edge an amount of R107 773 438.56, which is 0.22%. Eskom paid SAP, which is Systems Applications Products, an amount of R564 733 122.57. which is 1.15% of total funds dispersed.

Transnet paid to SAP an amount of R225 883 124.88, which contributes 0.46%. Eskom paid Zestilor an amount of R13 407 883.18, which amounts to 0.03%. Transnet paid to Zestilor via Innovo Asset
 10 Management an amount of R222 839 809.93, which is 0.45% of total State Capture funds.

Transnet paid an amount to a company we will refer to as company B an amount of R4 529 377 797.46, which contributed 9.21% of total State Capture funds dispersed. Eskom paid Adentin South Africa an amount of R20 892 885.56, which amounts to 0.04% of State Capture funds dispersed. Denel paid Adentin South Africa an amount of R5 997 422.24, which is an amount of 0.01%.

The SABC paid Talona Vision an amount of
 20 R62 733 557.24, which contributed 0.13 to the total of State Capture funds. Transnet paid Tegeta Exploration and Resources an amount of R2 442 523 980.95, which contributed an amount of 4.97%. Eskom paid to Optimum Coal an amount of R1 682 026 066.26, which is 3.42% of total State Capture funds.

Then turning to the following page, which is flow funds 09155. The Industrial Development Corporation or IDC paid to Oak Bay Investments, Oak Bay Resources and Action Investments an amount of R250 000 000.00, it is R250 million, which contributed 0.51% in total State Capture funds.

Eskom paid to the New Age Media, TNA Media, an amount of R3, 5 million 401 246.60, which contributed 0.07% of State Capture funds. Eskom paid to TNA Media
 10 an amount of R144 147 790.00, which contributed 0.29%. The Office of the Premiere of the Free State transferred to TNA Media an amount of R42 062 906.36, that is 0.09%. The Free State Treasury paid TNA Media an amount of R11 331 233.68, which is equal to 0.02%.

The Office of the Premier of Mpumalanga paid TNA Media an amount of R6 581 301.20, which is 0.01% of State Capture funds. The Office of the Premier of the North West Province paid TNA Media an amount of R9 308 888.02, which contributed 0.02% of State Capture
 20 funds.

Denel paid VR Laser an amount of R242 425 736.70, which is 0.49%. Transnet paid to an entity called Global Softech Solutions or GSS in the report an amount of R16 199 400.00, which is 0.03% of State Capture funds.

Transnet on the 95 locomotive procurement paid CSR China South Rail an amount of R3 432 869 565.21, which contributed 6.98% of State Capture funds. Transnet on the 100 locomotive procurement paid CSR an amount of R5 159 831 654.92, which is equal to 10.50%. Transnet in relation to the 359 locomotive procurement paid CSR/CRRC R14 901 751 921.66, which is equal to 30.33%.

Transnet paid in relation to the 232 locomotive procurement, paid CSR/CRRC an amount of
10 R2 823 869 773.71, which is 5.74%. Transnet paid to Liebherr Cranes an amount of R841 098 942.64, which contributed 1.71%. Transnet paid to ZPMC an amount of R877 806 234.00, which contributed 1.79% and in total together we come to an amount of R49 157 343 233.68.

ADV CHASKALSON SC: Thank you, Mr Holden. I must apologise for doing this, but I have, as you were going through those numbers I picked up a transposition error. Can I ask you to go back up to Eskom and Cutting Edge? It is in the middle of page 153.

20 **ADV CHASKALSON SC:** What appears to have happened in respect of that number is that the number for PWC has been copied there inadvertently. Can I ask you to go to table 64 on page 144?

CHAIRPERSON: I am sorry, Mr Chaskalson. You say on 153.

ADV CHASKALSON SC: It is the ...[intervenes]

CHAIRPERSON: Is it the bottom table?

ADV CHASKALSON SC: I beg your pardon Chair, it is 154, it is 154, I apologise.

CHAIRPERSON: Okay. Okay ja, I see it at 154. So the figure of R107 773 438.56 is an erroneous copy for the figure for PWC. Mr Holden has gone to table 64 on page 144 and the correct figure to insert there is about R12 million less. Mr Holden, can you just read out that
10 figure?

MR HOLDEN: The correct figure is R95 598 913.44.

CHAIRPERSON: Is that the figure for Eskom's Cutting Edge or for ...[intervenes]

ADV CHASKALSON SC: Eskom's Cutting Edge, Chair.

CHAIRPERSON: Okay, so the correct figure, just repeat it, Mr Holden.

MR HOLDEN: Certainly, Chair. It is R95 598 913.44.

CHAIRPERSON: Okay I am sorry again, Mr Holden, I went to the Transnet Cutting Edge instead of the Eskom
20 Cutting Edge. So just repeat the Eskom Cutting Edge one, the correct one.

MR HOLDEN: Certainly, Chair. It is R95 598 913.44.

CHAIRPERSON: 44?

MR HOLDEN: Correct, Chair.

CHAIRPERSON: Okay, thank you.

ADV CHASKALSON SC: Chair, what we will do is in the copy of the report that is finally published, we will insert the correct figure and the total of R49, 157 billion will drop to R49, 145 billion. It is not going to affect anything in significant detail. We are talking about less than 0.2%.

CHAIRPERSON: Yes okay, but the Eskom Cutting Edge was the only page where we needed to make corrections.

ADV CHASKALSON SC: As far as Mr Holden ...[intervenes]

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

ADV CHASKALSON SC: Mr Holden, we have now gone line by line through each of these, each of these State Capture contracts.

CHAIRPERSON: Sorry, I am sorry Mr Chaskalson, that will affect the total of R49 billion a little bit.

ADV CHASKALSON SC: Well, it will still be R49 billion.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: It will be R49 145 000 000, not R49 157 000 000.

20 **CHAIRPERSON:** Okay no, that is fine.

ADV CHASKALSON SC: Mr Holden, many of these contracts have not been traversed in evidence in the Commission and I would like to take you to those that have not been traversed in evidence so that you can explain your reasoning for including them on this list, and the first

one is the New Lane Investment contract and for that purpose can I ask you to go to page 34 of low funds bundle 9?

CHAIRPERSON: There was evidence on New Lane, I do not know if this is a different one, in regard to the Free State.

ADV CHASKALSON SC: Oh Chair, I ...[intervenes]

CHAIRPERSON: Yes, when I looked at these entities there are only a few that I thought had not, I had not heard
10 evidence about.

ADV CHASKALSON SC: Chair, if I ...[intervenes]

CHAIRPERSON: Actually my recollection is that it might even be less than six, seven, you know at least those that I picked up. Most entities I thought the evidence was, had been heard. I know, I do not think I heard evidence about the Office of the Premier in Mpumalanga. I know I have not heard evidence I think about SAP and I know I have not heard evidence I think about, is it Liebherr Cranes transaction?

20 So there are only a few that I had heard about outside of the evidence of the Commission, most of them I have heard evidence, so of course ...[intervenes]

ADV CHASKALSON SC: Thank you Chair, well I certainly do not want to duplicate evidence.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Mr Holden has not obviously got firsthand knowledge of the evidence that you have already heard.

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: My knowledge of the record of this Commission is nowhere near as comprehensive as yours, Chair.

CHAIRPERSON: So I think what can be done is that those that you or he has identified, as you mention the entity I
10 will indicate if I have heard, but also it might be that I have heard evidence in relation to a particular entity in regard to one transaction and maybe this is about another transaction, I am not sure.

ADV CHASKALSON SC: The New Lane Transaction that you would have heard evidence about is the same one as we are talking here.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: So we will not traverse the same ground.

20 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: Mr Holden's documents are in his report, they can, we can merely refer you to them from page 34 onwards in the relevant annexures.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But we do not need to duplicate

that.

CHAIRPERSON: Okay no, that is fine.

ADV CHASKALSON SC: Then the first possible transaction which has not been described in the report is the transaction between Innovo and Tsebo and Chair, I am not sure if you are familiar with that one.

CHAIRPERSON: Yes. No, no, I am not, ja.

ADV CHASKALSON SC: And for that can I ask you to go to page 51 of the report? But before you do so, just check
10 that your copy is suitably redacted, because although... Company A is also mentioned on the page, on page 51.

MR HOLDEN: Would you like me to take the visualisation, the paragraph on screen?

ADV CHASKALSON SC: In fact we do not need you to take the paragraph on the screen, so the problem does not, we do not need to share the screen, so the problem does not arise.

MR HOLDEN: Okay.

ADV CHASKALSON SC: Can you briefly describe to the
20 Chair what the Tsebo contract was and where the irregularity was on page 51, paragraph 33?

MR HOLDEN: Certainly. What was discovered was that on the 8th of June 2012 the Free State Department of Agriculture and Rural Development Bid Evaluation Committee awarded a contract to Tsebo Business

Intelligence Service, which I will refer to as Tsebo hereafter, to provide engineering services to the department.

Moving to the following paragraph, I stated the award of the contract to Tsebo that was manifestly irregular, because the Bid Evaluation Committee scored Tsebogo Maloka and Viljoen Civil Engineers (Pty) Ltd considerably higher than Tsebo, but decided nevertheless to award the contract to Tsebo as, and I quote; as this is
10 what the department requires.

ADV CHASKALSON SC: Then can I ask you to go to page 53, paragraph 37 and take the Chair through the movement of funds from the Free State Department to the Gupta Enterprise through Tsebo, through Tsebo and then through Innovo Management Services?

MR HOLDEN: Certainly. I think for that I probably will bring up the screen to make it slightly easier.

ADV CHASKALSON SC: Sorry, I may have taken you out of turn here, Mr Holden, but it seems to me we should
20 probably explain to the Chair who Innovo Management Services are before we get to this movement of funds, even though it appears later in the report. So can I ask you to go to page FOF9, 53 of bundle 9 where you describe who Innovo Management Services are, paragraph 37?

MR HOLDEN: Certainly, Chair. Innovo Management

Services, Innovo was owned by Chwayita Mabude, but appears to be managed by Salim Essa and Ashok Narayan. In that regard we have attached an annexure which indicates an e-mail address for Innovo Management, it is innovomanagement20012@gmail.com and that was used to correspond with the Free State Department of Tourism and Economic Affairs and that was operated by Ashok Narayan and in those e-mails it becomes clear that the department treated Essa as Innovo's representative.

10 I am sure the Chair recalls, but Ms Mabude has I think been discussed in evidence before. She was appointed to the Board of Airport Company South Africa from 2012 to 2017 and served two terms on the Board of Eskom, where I am informed the Commission has heard evidence that she was involved in approving a range of transactions relating to Eskom's support for the acquisition of Optimum Coal by the Gupta Enterprise.

ADV CHASKALSON SC: Can you ...[intervenens]

CHAIRPERSON: This might not be in your report, but it
20 would be interesting to establish who the MEC, the relevant MEC was for that department, in case it is an MEC who has appeared before the Commission in regard to other transactions, but that we can look at later on if it is not dealt with her.

ADV CHASKALSON SC: Chair, I think Mr Holden may be

able to answer that question, because it was the Agriculture MEC who was the same Agriculture MEC who dealt with the Astina Project.

CHAIRPERSON: Yes, that was what I was suspecting, so are you able to confirm that, Mr Holden?

MR HOLDEN: I think you are referring to, that is correct, I assume you are referring to Mr Peter Thabette.

ADV CHASKALSON SC: Well, Mr Thabette was not the MEC, he was one of the officials.

10 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: But the MEC was ...[intervenes]

CHAIRPERSON: Mr Zwane?

MR HOLDEN: No apologies, it was Mr Zwane, apologies.

CHAIRPERSON: He was the MEC for this department at the relevant time.

MR HOLDEN: Correct, Chair.

CHAIRPERSON: Okay, alright.

20 **ADV CHASKALSON SC:** Then Mr Holden, if you can take the Chair to page 52 on the table which shows how the money flowed from the department to Tsebo and then from Tsebo to Innovo and yes, from the department to Tsebo and then from Tsebo to Innovo. We will talk shortly about where it went from Innovo.

MR HOLDEN: That is table 12.

ADV CHASKALSON SC: That is correct, Chair. That is

correct, Mr Holden. If you can share the screen at this point, so it would probably be more convenient.

MR HOLDEN: Yes. Chair, what we can see is that the funds that were paid to Tsebo were almost, once they were received by Tsebo were very frequently paid in a very substantial portion to Innovo Asset Management on the 19th of July 2012.

ADV CHASKALSON SC: Sorry Mr Holden, when I look at this table I realise we have not settled it in a way that
10 makes clear which owns which, who holds which account. So can you tell the Chair, who is the holder of the Standard Bank account 2004 and 363000, and who is the holder of the FNB account 62359091734.

MR HOLDEN: Certainly. The Standard Bank account is controlled by Tsebo Business Intelligence and the FNB account is Innovo Management Services' account.

CHAIRPERSON: Okay, okay I am sorry, STD there stands for Standard Bank.

MR HOLDEN: Correct, Chair.

20 **CHAIRPERSON:** And the 444 account is Tsebo.

MR HOLDEN: That is correct, Chair.

CHAIRPERSON: And the other account you mentioned is FNB, is that the ...[intervenes]

MR HOLDEN: The FNB.

CHAIRPERSON: And whose one is that?

MR HOLDEN: That belongs to Innovo Management Services.

CHAIRPERSON: Sorry?

ADV CHASKALSON SC: Innovo, is what Mr Holden said, Chair, Innovo Management Services.

CHAIRPERSON: Thank you. Ja, you may continue then.

MR HOLDEN: Certainly, Chair. So the first entry we have is on the 19th of July 2012, Tsebo was paid an amount of R1, 5 million by the Free State Department of Agriculture.

10 The following day on the 20th of July of that amount R1, 3 million was paid to Innovo.

On the 26th of July an amount of R2, 035,00 was paid to Tsebo by the department. Four days later on the 30th of July an amount of R1, 835,00 was paid to Innovo by Tsebo. On the 2nd of August 2012 an amount of R2, 165,000 was paid by the department to Tsebo and on the 3rd of August, that is the following day, an amount of R1, 5 million was paid to Innovo.

20 Three days later on the 6th of August drawing from a similar set of funds, Tsebo paid Innovo an amount of R660 000. On the 4th of October 2012 the department paid Tsebo an amount of R1 492 500. Four days later on the 8th of October 2012 an amount of R1 million was transferred from Tsebo to Innovo.

On the 7th of December an amount of R22982.46

was transferred from Tsebo to Innovo. On that same day Tsebo had received a payment of R950 000 from the department. On the 25th of August 2013 the department paid Tsebo an amount of R2 850 000 and then a day later there were two payments from Tsebo to Innovo, the first one was for R519 736.85 and the second amount was for R1, 5 million.

On the 3rd of October 2013 an amount of R1, 5 million was paid by the department to Tsebo of which
10 an amount of R1 052 631.58 was paid by Tsebo to Innovo and we have totals at the bottom here, for which we can see that of the R12 492 500 that was paid to Tsebo, an amount of R9 390 350.89 was transferred from Tsebo to Innovo.

CHAIRPERSON: So is the pattern here that the government department would always make a payment first to Tsebo and then subsequently Tsebo would pay to Innovo?

MR HOLDEN: That is correct, Chair.

20 **CHAIRPERSON:** Okay, thank you.

ADV CHASKALSON SC: And then if we go down to table 14 we see what happened to the money that went to Innovo, and can you take the Chair through table 14, bearing in mind that the report deals with company A above and the Tsebo funds that go to Innovo are mixed with some

funds that come from company A? So you will be, we will not have talked about the company A funds at this stage, but can you take the Chair through table 14 just to show what happens to the funds when they land in Innovo?

CHAIRPERSON: Hang on before that, Mr Chaskalson, I thought we were dealing with the Department of Tourism and Economic Affairs being the one that was making payments, but I see that in table 12 the reference that is made is to Free State Department of Agriculture.

10 **ADV CHASKALSON SC:** No, we have been dealing with Agreement all along, Chair.

CHAIRPERSON: Oh okay, okay. Well, I made, maybe I made a note on the wrong place, in paragraph 37 I think where Mr Holden was explaining Innovo who was involved and so on and I saw the reference to the Department of Tourism and Economic Affairs and I said it would be interesting to find out who the MEC was and we talked about Mr Zwane and I was saying he was Minister of this department, because I know that he moved from Agriculture
20 in March 2013 to Economic Affairs I think, but I may be mistaken.

ADV CHASKALSON SC: You are correct, Chairperson, and in fact if you look at paragraph 37 you will see that the date is 2014 there.

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: And we will come to the context in which ...[intervenes]

CHAIRPERSON: So these are ...[intervenes]

ADV CHASKALSON SC: These are 2012.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: So we will come to what went on between Innovo and Tourism Economic Affairs in 2014, a little later.

CHAIRPERSON: Yes okay, alright. Let me confirm that
10 when Mr Holden said the MEC was Mr Zwane he was referring to paragraph 37, or was he referring to the previous page? Mr Holden?

MR HOLDEN: Certainly, Chair. What I was intending to say was that during the period in which Department of Agriculture was making payments to Tsebo Business Intelligence, the MEC at that point was Mr Zwane.

CHAIRPERSON: Oh, okay.

MR HOLDEN: And subsequent to that we will come to the, at a later stage when Innovo is then contracted by the
20 Economic Department, at that stage Mr Zwane had moved from Agriculture to that department.

CHAIRPERSON: Okay, so he was MEC in both cases.

MR HOLDEN: That is correct, Chair.

CHAIRPERSON: Ja okay, alright, thank you. Thank you, Mr Chaskalson.

ADV CHASKALSON SC: Then Mr Holden, can you go to table 14 to talk about the first stage of what happens to these amounts that are paid from Tsebo to Innovo?

MR HOLDEN: Certainly, Chair. What we have here at table 14, which should be on the screen now, is a description of the way in which a total amount of R8, 9 million was paid to Aerohaven Trading, which is obviously a well-known Gupta Enterprise company, by Innovo Management, and that happened in the course of
10 three separate transfers and the first was on the 15th of August 2012 where R5 million was transferred from Innovo Management to Aerohaven Trading and that amount is drawn from the payments I have described above of R1, 3 million on the 20th of July 2012, an amount of R1 835 000 on the 30th of July, R1, 5 million on the 3rd of August 2012 and an amount of R660 000 paid on the 6th of August 2012 and just to make it entirely clear, that is payments from [indistinct – distortion] to Innovo that funded those payments.

20 **CHAIRPERSON:** Hang on, Mr Holden. You were dealing with table 12, is it not?

ADV CHASKALSON SC: Table 14, Chair.

CHAIRPERSON: I am sorry, table 14. I was looking at the correct table, but I was not seeing the figures that you were mentioning, but I think those would be the figures in

the narration. Is that right, in the middle column?

MR HOLDEN: That is correct, Chair.

CHAIRPERSON: Okay, alright. Okay, continue.

MR HOLDEN: Certainly. The second payment was made on the 12th of January 2013 where Innovo Management paid an amount of R1, 9 million to Aerohaven Trading. That is drawn from a pre-existing balance that was drawn from the previous payments made to Innovo of R295 000 and an additional payment from Tsebo of R1 million on the 10 8th of October 2012, an amount of 22982.46 on the 7th of December 2012, payment of R1, 5 million on the 3rd of August 2012 by company A, and after which there was a balance of R917 982.46 that remained in the account and then two months later on the 5th of March 2013 an amount of R2 million was paid from Aerohaven and that was drawn from the pre-existing balance which I have described.

A payment of 432445 on the 15th of January 2013 and a further one of R50 000 on the 30th of January 2013 and those were paid by company A. An additional Tsebo 20 payment of R519 736.85 paid on the 26th of February 2013 and a further R1, 5 million paid on the 26th of February 2013 which was paid from Tsebo to Innovo and after which the total, as I have just mentioned, is that Aerohaven was paid R8, 9 million by Innovo Management, drawn from funds paid to it by Tsebo Intelligence Services and also by

company A.

ADV CHASKALSON SC: Then can you tell the Chair what happened on the 15th of November 2013 after, several months after Innovo had moved R8, 9 million to Aerohaven and that R8, 9 million had ultimately derived from the Free State Government?

MR HOLDEN: Certainly, Chair. On the 15th of November Aerohaven Trading returned that amount of R8, 9 million and paid it into Innovo's account by means of bank transfer
10 and that payment then joined and mingled with the deposit that had been made in by Tsebo into Innovo's account of R1 052 631.58 that was paid on the 3rd of October 2013.

ADV CHASKALSON SC: Can I just stop you there? That R1 052 631.58 payment, did that derive from the Free State Department of Agriculture too?

MR HOLDEN: Yes it did, Chair.

CHAIRPERSON: Just to, you know in table 14 you have that first date there, 15 August 2012, I think you said 2012, is that right? 2 Is at the bottom, it looks like 201, but I
20 think it is 2012, but the way that date is written causes some confusion, because you normally write your dates by starting with the year and then the month and the day, so this one is written the other way. So I was thinking is it 2015, but I think it is 2012 and I think you did say that, is that correct?

MR HOLDEN: That is correct, Chair.

CHAIRPERSON: Yes, and did I miss somewhere, Mr Chaskalson, the explanation of who Aerohaven Trading is in the scheme of things here?

ADV CHASKALSON SC: Mr Holden briefly mentioned it. But maybe Mr Holden, can you tell the Chair who Aerohaven is?

MR HOLDEN: Certainly. I cannot recall offhand the precise directorship and ownership, but I discussed
10 Aerohaven in quite a lot of detail in relation to the Astina evidence and Aerohaven is a company that is controlled by the Gupta Enterprise and if my memory serves me correctly Aerohaven was effectively controlled mostly by Ranako Raghavan.

In the Astina evidence Aerohaven was one of the companies that was used to establish a loan back through which funds are laundered from Astina in a round tripping exercise.

CHAIRPERSON: Okay, thank you.

20 **ADV CHASKALSON SC:** And if you can go back then to paragraph 43, Mr Holden, to explain what happened to the R8, 9 million that went to Aerohaven.

MR HOLDEN: Certainly, Chair. The R8, 9 million that was paid to Aerohaven, paid from Aerohaven, apologies, back to Innovo Management then co-mingled with the deposit of

R1 052 631.58 which was paid by Tsebo on the 3rd of October 2013 to increase the balance to, my arithmetic is failing me at the moment, but just under R10 million, of which then on the 15th of November Innovo transferred an amount of R9 756 500 and that was an amount of 950 000 Dollars, to Gateway Limited and Gateway Limited was the Gupta Enterprise entity in Dubai and I am sure the Chair will recall and has heard much evidence about Gateway.

CHAIRPERSON: Ja.

10 **MR HOLDEN:** In my evidence on Transnet I discussed it at length.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Then table 15 describes in a table what you have just described in narrative form, I am not going to ask you to repeat it, but can I ask you to go down to page 57 and explain what happened with the Free State Department of Economic Development in 2014 by starting at paragraph 47?

MR HOLDEN: Certainly, Chair. In 2014 Table Business
20 Intelligence was no longer contracted for, instead Innovo was directly contracted by the Free State Department of Economic Development, Tourism and Environmental Affairs. I was provided an unsigned copy of the contract between the parties, which I have attached, and in the, the annexure indicates that Innovo was represented during that

contract by Ms Mabude and Salim Essa.

The contract was for what is referred to as Business Engineering Services, which as far as I can tell from the attached contract referred to developing a series of efficiencies in the way in which the department worked, but to be honest, there seemed to be a series of unrelated efficiencies, if anything. The total value of that contract was then R6 972 395.04.

CHAIRPERSON: No I remember, Mr Chaskalson.
10 Ms Chwayita Mabude, so now I remember. I can put her in context, I can remember, I remember the context in which I have heard evidence about her. I think it is in relation to Eskom.

ADV CHASKALSON SC: That would be correct Chair, because she was an Eskom Board member.

CHAIRPERSON: Yes, she was a Board member, yes. Now I remember, ja. Okay, good.

ADV CHASKALSON SC: In table 17 you describe how those payments aggregating to R6, 972 million were made
20 and can you tell the Chair what happened to these payments with reference to paragraph 49 in table 18?

MR HOLDEN: So I will indicate to you, so in table 17 we see the distribution of funds from the department to Innovo and Chair, I am not going to bring it up on the screen here, because I notice that there is a table at the top which

describes the payments to a certain individual who, I am informed, the evidence leader informed me that a Rule 33 notice had not been given to that individual over the weekend.

CHAIRPERSON: Okay.

MR HOLDEN: So I do not want to relay that name.

CHAIRPERSON: Okay no, that is fine.

MR HOLDEN: Because of privacy of that person.

CHAIRPERSON: Yes.

10 **MR HOLDEN:** So referring to the hard copy then, table 17 shows that there were three payments made. The first was on the 27th of March 2014 and that was an amount of R2 997 096.48. On the 15th of May 2014 an amount of R1 990 440.00 was paid to Innovo by the department. On the 26th of June 2014 an amount of R1 984 858.56 was paid to Innovo by the department, bringing us to a total of R6 972 395.04.

ADV CHASKALSON SC: And what happened to those funds?

20 **MR HOLDEN:** Chair, I think I now can revert back to the table with no fear of revealing any individual. This is table 18, the typo was actually on the start on funds 09057, but then the table runs substantively on 09058 and the funds were almost entirely paid to Homex, of which the Commission has heard a substantial amount of evidence.

Should I go through the table line by line, I would imagine?

CHAIRPERSON: Yes. Yes, I think go line by line, it is fine.

MR HOLDEN: Certainly, Chair. So first to repeat the payments that were made in the previous paragraph, the previous table. On the 27th of March 2014 an amount of R2 997 096.48 was paid by the department to Innovo. On the 27th of March 2014 an amount of ...[intervenes]

ADV CHASKALSON SC: Sorry, I am sorry to interrupt,
10 Mr Holden. Are we talking about the exact the same day the money arrived from the department?

MR HOLDEN: That is correct, Chair.

ADV CHASKALSON SC: Thank you. Please continue.

MR HOLDEN: The exact same, so the exact same date the money arrived in the department, an amount of R2 679 000 was paid from Innovo to Homex and I calculated that the payment from Innovo to Homex was 89% of the funds that were paid by the department to Innovo.

20 On the 15th of May 2014 the department paid Innovo an amount of R1 990 440. The following day on the 16th of May 2014 Innovo paid to Homex an amount of R1 881 000, which means that Homex was paid 94.5% of the funds that were paid by the department to Innovo. On the 26th of June 2014 the department paid to Innovo an amount of R1 984 858.56 and

then the following day Innovo paid to Homex an amount of R1 824 000, which I calculated equals 91% of the funds that were paid by the department to Innovo and in the following, in the bottom-line you can see that in total the department paid to Innovo an amount of R6 972 395.04 and subsequently Innovo made, after receiving those payments, either on the same day or shortly thereafter, an amount of R6 384 000, which means that of the funds paid to the department, paid by the department, apologies, to Innovo,
10 91.5% of those funds were then transferred immediately on to Homex.

ADV CHASKALSON SC: Thank you, Mr Holden.

CHAIRPERSON: I am just digesting. So but Innovo and Homex were basically controlled by the same people.

ADV CHASKALSON SC: Well, one of the same people, because I do not want to suggest that, I do not, well I do not want to be the witness, but we have seen no evidence that Ms Mabude controlled Homex.

CHAIRPERSON: Yes, yes.

20 **ADV CHASKALSON SC:** But we have seen evidence that Mr Essa controlled Homex and we have also seen evidence that Mr Holden has referred to today that Mr Essa represented Innovo in its dealings with the Free State.

CHAIRPERSON: Yes, and of course difficult to, I understand why if you did any work you would take 91.5%

of your fees and send to somebody else, to another entity that you really have nothing to do with.

ADV CHASKALSON SC: Indeed, Chair. Later on in today's evidence when we get to the laundry entities, of which Homex is one, we will see vast amounts of evidence of that sort of phenomenon.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Not always on the same sort of scale of 90% plus.

10 **CHAIRPERSON:** Yes, yes.

ADV CHASKALSON SC: But usually on a scale of 50% plus.

CHAIRPERSON: Yes okay, alright. Thank you.

ADV CHASKALSON SC: Mr Holden, now the next set of payments on the list that I want to take you to or the payments made to the Regiments Group, and we have heard a lot of evidence in the Commission about these payments, so I do not want to go into the details of the individual contracts, but what I would want you to do is go
20 to table 28 on page 75 of the report where you break up that aggregate figure of an amount paid to Regiments and you identify which entities were paying Regiments which amounts.

MR HOLDEN: Certainly, Chair. At table 28 we see the first entry is Transnet, which paid an amount of

R1 015 051 24.21 and if I may I can direct the Chair to the individual payments that make up that amount, are set out in a different table which appears at flow of funds 09, 061, table 20. I have recorded that in the executive summary to make that slightly easier for the Chair to follow.

ADV CHASKALSON SC: Okay, thank you.

MR HOLDEN: The second amount is the Transnet, the Second Defined Benefit Fund is an amount of R248 729 210 and that appears, the full set of payments
10 that underlies that aggregate figure are set out at flow of funds 09, 072, table 26, South African Airways.

ADV CHASKALSON SC: Sorry Mr Holden, I apologise for interrupting, but maybe to make it simpler, if we can just take the Chair or ask the Chair to just insert a cross-reference to page 9, paragraph 5 of the executive summary which will have the detailed table references, the detailed table cross-references so that we do not have to duplicate them in this evidence, so it is page 9, paragraph 5 of the executive summary, as this table with references to the
20 underlying lengthy tables of transactions.

CHAIRPERSON: Ja, I have done so. Thank you.

ADV CHASKALSON SC: Mr Holden, can you for the benefit of, well, the Commission record just go on? You were at SA Airways.

MR HOLDEN: Certainly. South African Airways paid to

the Regiments Group an amount of R6 241 500. SA Express paid an amount of R8 218 123.20. The Free State Provident Fund paid an amount of R2 319 216. SAFCOL paid an amount of R5 711 400 and then finally Denel paid an amount of R7 980 000 and that is a total amount of R1 194 258...

[Mechanical interruption]

CHAIRPERSON: You said 258?

MR HOLDEN: If I....

10 [Mechanical interruption]

CHAIRPERSON: I am sorry, Mr Holden.

MR HOLDEN: Sorry?

CHAIRPERSON: On the total I think in the middle you said 258, I think you meant 250. Do you want to call that number out again?

MR HOLDEN: Certainly. Apologies, Chair. It is R1 294 250 691.41.

CHAIRPERSON: Okay, alright. Mr Chaskalson, would it be the right time to take a 10 minute adjournment?

20 **ADV CHASKALSON SC:** Certainly Chair, yes.

CHAIRPERSON: Alright, let us take a 10 minute adjournment. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay, let us continue.

ADV CHASKALSON SC: Thank you, Chair. Mr Holden, we have been talking about payments to Regiments. One of the line items we have been describing is payments by Transnet to Regiments.

In your report you explain that you have not included all payments from Transnet to Regiments. Can you explain to the Chair why there are some payments that you have left out of your accounting?

MR HOLDEN: Certainly, Chair. The payments that I have
10 not included where those contracts did not involve onward payments to the Gupta Enterprise as supply development fees or other fees. And of particular note here is table 22 which I have brought up on screen.

The most notable additional contracts that were placed with Regiments were what Regiments called the Maputo corridor contract, and under that regiment was paid an amount of R42,151,197.81 but I do not add that figure to the total tally of payments made in relation to State Capture involvement the Gupta Enterprise, because
20 that did not involve the Gupta Enterprise.

ADV CHASKALSON SC: And can I – Chair, if I can just give you the reference to that table, it is page 67 of the bundle.

CHAIRPERSON: Yes thank you, I have got it. Thank you.

ADV CHASKALSON SC: Just to illustrate the scale of the

payments that were subject to State Capture, can I ask you to take the Chair to table 20 on page 61? And I do not need you to read them all off, but maybe if you can just slowly scroll down through that table 20 which lists all of the payments that you have included in your accounting for State Capture.

Or, maybe if you can just explain to the Chair the structure of that table as you scroll down.

MR HOLDEN: Certainly, Chair. What we have here is
10 payments that are made from Transnet - the regiment's group. We have the date of the payment, the amount and then the regiment, the corresponding regiment invoice number which is also then referred in the bank statement descriptions in the payments from Transnet's Regiments.

The table is organised chronologically, that as payments come in, you will start seeing that there are multiple different contracts being – invoices, Regiments gets multiple different contracts over a period of time and the following table like this aggregate by contractors also
20 and we can have a look at that too.

This is just a chronological recording of the total amounts paid over quite a substantial period of time.

CHAIRPERSON: Yes.

MR HOLDEN: As you can see on your far right I have indicated - I have given an indication, a short indication of

what it refers to.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And then table 21, can you explain to the Chair how that table is organized?

MR HOLDEN: May I? Scrolling down, it is quite a long table as you can see. Certainly, Chair. What we have done here is this aggregate the payments made by contract which allows us to establish how much was paid per contract the regiment had with Transnet over a period of
10 time.

So, this one is not organized chronologically, it is organized by contract instead.

CHAIRPERSON: Yes.

MR HOLDEN: And it follows the same pattern as in they come in on the left and not the regiment's invoice number that was raised and then the shorthand reference to what that contract revolves around.

ADV CHASKALSON SC: If I can just interrupt at that point, you also had subtotals for each contract.

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

CHAIRPERSON: Yes, I can see that thank you.

ADV CHASKALSON SC: If we can then leave Regiments and move on to Trillian and again, there has been substantial evidence before the Commission about Trillian so, I would ask you only to go to page 78 of the Bundle,

table 32.

And briefly take the Chair through that table bearing in mind that there is – if I can give Chair a cross-reference to the executive summary, page 11 paragraph 6 has the same table but with all of the sourced tables reference are on it as well.

CHAIRPERSON: You said page 11 paragraph 6.

ADV CHASKALSON SC: Paragraph 6. Indeed, Chair.

CHAIRPERSON: Thank you.

10 **ADV CHASKALSON SC:** For now, Mr Holden can you go to page 78, table 34?

MR HOLDEN: Certainly, Chair. We have an amount that is paid from Eskom to the Trillian Group of R595,228,913.29. From Transnet, a net total of R169,059,999.91. From the Transnet Second Define Benefit Fund, it is an amount of R185,530,350.08.

20 That is actually a figure that is drawn from – originally drawn from an amount that is paid to regiment of R228,983,985 of which the one R185-figure is drawn and paid to Trillian. And then finally we have an amount at SA Express of R5,7 million and the total figure we arrive as a result there is R9,56,319,263.28.

ADV CHASKALSON SC: And then again, Mr Holden in relation to the McKinsey contracts, I am interested only in

the amounts which are set out at paragraph – sorry, at table 33 on page 79. Can you take the Chair through those? Sorry page 80 of the bundle – 80 of the bundle, table 33.

MR HOLDEN: Certainly, Chair. Chair we have on the far left the description of the relevant SOE, then the amount of the relevant contract. The first line Eskom paid to McKinsey an amount of R78,572,059.26. That is an amount including VAT and I give the amount below that, the
10 excluding VAT figure, just R68,922,859 and it was the Eskom-Copco plan.

It was McKinsey work done alongside Regiments that actually Trillian was paid for this particular contract. Eskom then further paid an amount of R1,029,592,499 in relation to the Eskom turnaround plan which are being referred to as the master services agreement which brings us to a subtotal of payments made by Eskom to McKinsey of R1,108,164,558.26.

And then moving along, Transnet paid an amount of
20 R41,684,84.64 which was for the results management office and then there is an invoice number there, GSM12/08/0527 ...[intervenues]

ADV CHASKALSON SC: Sorry, Mr Holden if I can – if I can just interrupt at that point. It is not an invoice number, it is a contract number or a bid – if you can continue?

MR HOLDEN: Oh, is that the contract number. Certainly, the amounts of R120,668,400.56 are on the Swat-One project with a contract number GSM12/10/0578, an amount of R31.5 million paid by Transnet for the iron ore project in relation to which the contract number was GSM14/04/1038.

Transnet paid an amount of R105,289,851.23 paid on a cull contact for which the contract number is GSM14/04/103. An amount paid by Transnet of R163,701, 410.72 paid on the NMT1 and 2 contracts and that is a
10 contract number GSM14/04/104.

An amount of R78,582,492 paid by Transnet in the Manganese contact for which the contract number GSM14/04/1039 by Transnet, then added a further amount of R71,947,581.65 in relation to the Swat-Two contract and that is contract number GSM14/04/1052.

An amount of R74,596,740.25 with the first to the General Freight Business Breakthrough contract which I also refer to in my report as the GSB contract which is against contract number GSM15/03/1255, which brings us
20 to a subtotal of payments made by Transnet of R687,970,961.05.

Followed by a one further amount paid by SAA of R6,243,210 which when added to the rest of the payments, bring us to a total of R1,802,378,729.31.

ADV CHASKALSON SC: Thank you, Mr Holden. We now

move to Neotel and here we are going to need to talk a little bit about why you have categorised these payments as payments tainted by State Capture because I understand that there has not been significant evidence on these payments or on the background of these payments that has come before the Commission.

Can I ask you to go to page 80 of the Bundle, paragraph 81 and take the Chair through the context in which Neotel – well, what brings you to treat the Neotel
10 payments as State Capture tainted payments.

MR HOLDEN: Certainly. Paragraph 81 I set out ...[intervenes]

CHAIRPERSON: I just want to mention – I am sorry, Mr Holden? I just mention quickly, Mr Chaskalson that yes, there was some evidence in relation to Neotel and I see this reference to buy-back – asset buy-back but he can just deal with it quickly.

ADV CHASKALSON SC: Thank you, Chair. Briefly then from paragraph 81, Mr Holden.

20 **MR HOLDEN:** Certainly. Neotel which is now trading as Liquid Telecommunications, received two contracts for Transnet for which payments were then made to the Gupta Enterprise first level laundry entity by the name of Homix. The first was a Cisco equipment contract concluded on 21st February 2014 and a master services

agreement concluded on the 19th of December 2014 to provide network services to Transnet.

In addition to these two contracts in May 2014 and March 2015, Neotel concluded two CCTV contracts with Transnet from which payments are made to a company by the name of TecPro. In relation to the ...[indistinct distortion]

ADV CHASKALSON SC: Sorry, Mr Holden can you just explain who TecPro are?

10 **MR HOLDEN:** Certainly. TecPro is – I am not sure what the full name is. TecPro is an entity that delivered certain of the hardware in relation to the CCTV contract. Effectively a subcontractor of Neotel, a Liquid Telecommunications in relation to this contract.

Funds were paid to TecPro and from TecPro they were paid out to ...[indistinct - distortion] I think the full name is Technology Procurement Holdings if I recall correctly.

ADV CHASKALSON SC: Yes, I seem to recall that too.
20 Can you go to paragraph 82 because I think it touches on an issue which is very important in relation to State Capture which is the role of auditors and in this case we have auditors who did their work appropriately and they should be commended for that.

MR HOLDEN: Certainly, Chair. What we have in relation

to these contracts is that Deloitte identified the payments that were for Homix as irregular and refused to properly certify those final annual reports on that basis.

Indeed it was actually this particular reporting which brought to light - to the public's lights the degree of the Gupta Enterprises involvement in State Capture and effectively began the process and that has ended in this Commission.

ADV CHASKALSON SC: And then can you take the Chair
10 briefly through the total amounts of payments made to Neotel by Transnet that were tainted in this way by State Capture.

MR HOLDEN: Certainly. On the 7th of March 2014 under the Cisco equipment contract and amount of R69,067,039.72 was paid. On the 14th of May 2014 also under the Cisco equipment contract, an amount of R276,268,158.90 was paid.

On the 23rd of December 2014 in relation to the master services agreement asset buy-back fee and amount
20 of R228,000,000.00 – that is R228 million was paid. On the same day, an amount was paid in relation to the master services agreement mobilisation fee for an amount of R256,500,000.00 – that is R256 million,500 thousand.

Between 2015 and 2018 are in relation to the CCTV contract, a very large number of payments were made

totalling R827,441,799.18 and between 2015 and 2019 in relation to the mast services agreement fees, an amount of R3,924,678,473.83 was paid for a total amount paid of R5,581,955,471.63.

ADV CHASKALSON SC: The next entity on your list was Combined Private Investigations. To the best of my knowledge, the Commission has not heard much evidence in relation to combined Private Investigations. Can you explain why you have included them on your list and maybe
10 if you can start with paragraph 84 and then move to paragraph 87.

MR HOLDEN: Certainly, Chair. There are two primary reasons why we focussed on Combine Private Investigations. The first is that between January 2016 and January 2016 – January 2013 and January 2016, Combine Private Investigations was making monthly payments to Gupta Enterprise front companies and actually paid to a number of different of them at the time.

Initially the monthly payment amounts totalled
20 R500 thousand although this increased to R1,459,200 per month in October 2013 and to R1,575,760.37 from the 17th of November 2015, until the final payment at the end of January 2016.

The payments were first made a front company called Chivita, then Homix, then For Sure Consultancy, and

finally Medjoul in the evidence that we will discuss the first level laundry is. All of those entities are effectively controlled by the Gupta Enterprise or alternatively were receiving funds and dissipating them on behalf of the Gupta Enterprise.

In relation to this contract, the financial surveillance department of the South African Reserve Bank made contact with Combined Private Investigations in relation to the discovery that CPI had made payments to
10 Homix, Chivita and Forsure and incorrectly identified payments made to Innova Global.

There were not actually payments made to Innova Global although I do generally deal with that company in great detail at a later stage. In response to that, CPI attorneys, R Tannen replied to the South African Reserve Bank explaining why they were making these payments on a regular basis to various Gupta first level laundry entities.

And what was particularly interesting there in
20 relation to – and I set this out at paragraph 87, is that they were approached – CPI was approached in late 2012 by Salim Essa on behalf – allegedly on behalf of Chivita, and Salim Essa at that time indicated to the CPI that he could secure further business for them as he was - and I quote here, he was well connected.

And a further quote said that he was a deal broker and a further quote was that Salim Essa was a rain maker. Combined Private Investigations further then indicated that Essa worked alongside and with Mr John Duarte who is the ex-husband of Mrs Jessie Duarte and Malcolm Mabaso who as the Commission now knows was a former advisor to Mosebenzi Zwane and that these three members would then provide consultancy services to CPI to help secure its business.

10 In that same affidavit CPI justifies the payments under the very broad explanation that they believe that the payments to made to this - what they call the team of Essa, Duarte, Mabaso would then increase the profitability of CPI.

ADV CHASKALSON SC: Now you are list in your – in your report contracts that CPI concluded with a range of different organs of State and some municipalities, some State Owned Enterprises. In your accounting you have confined yourself to the payments that they received –
20 sorry.

I am talking about payments they received, not payments that they made. In your accounting you have confined yourself to payments received from Transnet. Can I ask you to go to paragraph 90 and explain why you include only the payments made by Transnet to CPI in your

overall accounting.

MR HOLDEN: Certainly, Chair. In describing in CPI's version that was last amicable channels turning, they described the reasoning behind certain contracts but it only in relation to the contracts involving Transnet where they indicated specifically that they Gupta Enterprise Entity was paid as part of the supply development obligation at Transnet.

Which was 20 percent of value from 2013 to 2015
10 and 40 percent of value from 2015 to 2018, which is the same in more straight forward terms, but we can confirm from CPI's own version that the payments that it made to the Gupta Enterprises in relation to the Transnet contract were because – specifically because CPI had contracted with the Gupta Enterprise companies.

But we cannot make that same conclusion - cannot reach that same conclusion in relation to the other contracts that CPI have remunerated. I had imagined that it may be that the Commission would like to find out
20 whether they were further supplied benefit agreements that justified the payments from other entities or whether it was just confined to Transnet.

ADV CHASKALSON SC: And then if I can ask you to go down to page 86, table 36 where you itemised the Transnet payments and just very briefly take the Chair through that

table because the amounts are very similar, I do not think we need to go line by line, but briefly take the Chair through the table and through the total.

MR HOLDEN: Certainly. As the table we have here is reference made to ...[intervenes]

ADV CHASKALSON SC: There is a table – sorry, Chair table 36 indeed.

CHAIRPERSON: Oh, okay alright.

ADV CHASKALSON SC: This is the Transnet payments
10 only.

CHAIRPERSON: Okay, alright.

MR HOLDEN: Chair, table 36 sets out ...[intervenes]

CHAIRPERSON: Yes, I am there.

MR HOLDEN: Payments that
Combined Private Investigations at a specific account
number which I provide there by Transnet from the 23rd of
January 2014 to the 1st of April 2016 and you can see there
are very regular numbers effectively, usually R7,48 million
but sometimes increasing to R8 million and final payment
20 is made on the 1st of April 2016 and the total figure there
was R151,698,373.17.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Then the next line item on which
it may be necessary to go to some explanation of the
contracts is the Sap contract – S-A-P contract that were

rewarded by Eskom and Transnet. And you deal with them at the foot of page 89 of the Bundle, paragraph 91. Can you take the Chair briefly through those contracts?

MR HOLDEN: Certainly, Chair. There were four contracts that were awarded to Sap by SOE's and the South African Revenue Service against which Sap paid commission fees to two Gupta Enterprise companies, Global Softech Solutions and Cad House.

The total contract value of these four contracts was
10 R790,616,247.45 and the commissions paid by Sap I dealt with in detail further on in the report in relation to payments to first level laundry entities and other Gupta Enterprise entities.

First contract was awarded by Sap on the 27h of December 2014 by Transnet. There were contracted to have the service related to a software license support agreement. The total value of the contract including VAT was R111,870,480 against which a VAT exclusive Transnet credit was set-off leaving an amount of R74,100,000 – that
20 is R74 million100 thousand to be paid by Transnet to Sap.

And the invoices and all the forms are attached to the report at Annexure 18. The second contract was concluded on the 30th ...[intervenes]

ADV CHASKALSON SC: Before you leave the ...[intervenes]

CHAIRPERSON: Hang on, I think you have lost me, or I have lost you. What page were – did you refer to, Mr Chaskalson?

ADV CHASKALSON SC: We are on page 90 and Mr Holden has just taken us through paragraph 92.

CHAIRPERSON: Oh, okay. I think I was on 91 and then I moved too much back. Okay, alright – thank you.

ADV CHASKALSON SC: Mr Holden, you recall – you were saying that the amount that had to be paid after the
10 Transnet credit was R74,100. Can you recall off the top of your head, what the amount paid to the relevant Gupta Enterprise sub-contractor was? If you – if you ...[intervenes]

MR HOLDEN: I cannot recall and I have a contract at the top of my head ...[intervenes]

ADV CHASKALSON SC: Well then, let us get to it later and I will take you – I will take you back, I will take you back. If you can go then to paragraph 93.

MR HOLDEN: Certainly. The second contract was
20 awarded to Sap on the 30th of September 2015 by Transnet. Sap were delivering services related to software license support agreements, related to the supplier Hybris and Remix software.

The total contract value was R114,012,644.88 inclusive of VAT and was paid by Transnet on the 1st of

April 2016 and the relevant order form is attached at Annexure 19. The third contract was awarded to Sap on 31st of March 2016 by Eskom.

Sap were contracted to deliver services related to a license support agreement ...[incomplete – 30:00] Contract value was R70,158,284.70 and was paid by Eskom on the 17th of June 2016 and again the relevant Sap order form is attached at Annexure 20.

The fourth contract was awarded to Sap on the 25th 10 of November 2016 by Eskom. Sap was contracted to deliver services related to a further software licences support agreement. The total contract value was R494,574,937.87 and that was paid by Eskom on the 23rd of December 2016 and the relevant Sap order form was attached as Annexure 1 to the report.

ADV CHASKALSON SC: Although I said we will get there later it may make sense to do that now. Because it is quite interesting to see what the amounts paid to the Gupta Enterprise companies were relative to the amounts 20 paid to Sap.

Can I ask you to go to page 213 of the Bundle 9 – 213, paragr4aph 280 and explain the relationship between what the Gupta Enterprise got relative to what Sap got from Eskom and Transnet.

MR HOLDEN: I am afraid I have lost your reference there.

ADV CHASKALSON SC: Page 213, Flow of Funds Bundle 9, page 213.

MR HOLDEN: Okay, page ...[intervenes]

ADV CHASKALSON SC: And it is paragraph 280.

MR HOLDEN: That is correct. Okay, apologies, Chair. In relation to the payments of R74,100 million was paid by Transnet to Sap. Sap paid Global Softech Solutions an amount of R7,410,000.00 and that is equal to 10 percent of the contract figure that was awarded to Sap by Transnet,
10 which is effective as far as I understand it, a 10 percent success fee in relation to this contract.

ADV CHASKALSON SC: And then if one go down to table 124 which talks about the payments by Sap by Cad House on the other three contracts, if you can take the Chair through that table.

MR HOLDEN: Certainly. The payments to Cad House by Sap Africa, there were three payments. The first payment was made on the 8th of April 2016 an amount of R16,987,884.09. That was a payment from Sap Africa to
20 Cad House and that was a 14.9 percent commission on a payment of R114,012,644.88 that was made by Transnet in relation to Sap order form 59.

On the 4th of July 2016, an amount of R9,245,459.01 and the payment was made from Sap to Cad House. That appears to be a commission on

R70,158,284.70 that was paid by Eskom on the 17th of June against that order form 24.

And then finally on the 28th of December 2016, an amount of R73,691,650.84 was paid by Sap to Cad House and that was a 14.9 percent commission on the largest contract which Sap received in relation to State Capture for the Gupta Enterprise.

And that contract was worth R494,574,837.87 and that was paid by Eskom on the 23rd of December 2016.

10 The total amount then paid to Cad House by Sap in relation to this contract was R99,924,993.94.

ADV CHASKALSON SC: And we see the two of the three payments are 14.9 percent commissions. Is there anything that you can say about that?

MR HOLDEN: Certainly. It appears to be a very large sum of money and I would be very interested to find out precisely what services were being provided by Cad House that would provide for a percentage commission.

20 I should mention and in a very long period of work on anti-corruption matters that percentage base commissions are considered some of the most dangerous in terms of prejudice to the State and that is partially because where there are potentially corrupt actors involved, if it is a percentage commission on a State payments, the corrupt actors may seek to increase the cost

of the State contract in order to increase their potential absolute value that expresses as a percentage.

ADV CHASKALSON SC: The ...[intervenes]

CHAIRPERSON: It looks like it might be the convenient time, Mr Chaskalson.

ADV CHASKALSON SC: Thank you, Chair. It is in fact very convenient to take a break. Thank you, Chair.

CHAIRPERSON: Okay, we will take the lunch adjournment and we will resume at two. We are adjourned.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV CHASKALSON SC: Thank you, Chairperson. Thank you, Mr Holden. Mr Holden the next entity on our list was going to be Company B but on reflection it is going to be difficult to address Company B without identifying Company B so, I will ask you not to do that and just merely to stand by your report in that regard.

20 And then the next entity that we need to address specifically is Denton and can I ask you to go to page 101 of your – of Bundle 9 where you address the situation in relation to Denton's. Maybe go up a page to where you start at paragraph 115 on page 100.

And maybe dictate to the Chair why you have - a description of why you have included Denton's under this

category.

MR HOLDEN: Certainly, Chair. So, paragraph 115 I set out that I were show an affidavit that was deposed by Mohamed Noor Kapdi on behalf of KapdiTwala Incorporated which trades as Denton South Africa which is dated the 30th of November 2020.

I have considered the contents of that affidavit alongside the fact that Denton has made a number of payments to first level laundry entities arising from the contract that Denton's was awarded by the State. In particular I draw the attention of the Commission to the version of events that he sets out and which I recorded at paragraphs 116 to 118.

The substance of which is that in 2015, Mr Kapdi claims that he was approached by one Mr Rafique Bagus. He was a client of Denton's and then also the Chairperson of Alexkor who agreed to advertise Denton's to the public sector, although it is a little bit unclear as to what that advertisement involve.

Subsequent to the awarded contracts to Denton's by Eskom we will discuss the exact amount of the contract below. The contract was referred to Denton's South Africa and Eskom Project Picardi, Mr Kapdi stated that after being awarded the contract by Eskom.

He then contacted Mr Bagus to thank him for his

efforts to market the firm and he also further says and I quote:

“I also raised the issue of remuneration.”

He also believed he would be entitled for work done in marketing the firm. He further then alleges that Mr Bagus indicated that he would not require remuneration, but a third party would contact Denton’s to arrange payment for their marketing services.

And then subsequent to that, Mr Kapdi was
10 approached by Ashok Narayan to discuss the payments.

ADV CHASKALSON SC: Can I then ask you to go down to paragraph 123 on page 102 where you discuss the terms of the arrangement reached between Denton’s and Mr Narayan.

MR HOLDEN: Certainly, Chair. At paragraph 123 according to Mr Kapdi, he was prompted by Ashok Narayan, he then entered into a consultancy agreement between Denton’s and Fortime to effect the payment with regard to the Eskom contract.

20 I summarised my disquiet about this version of events in the following paragraph. The issue that I – there a number of issues that I raised there, the first one is that I find it remarkable that Denton’s would enter into a marketing agreement, subsequent to a contract being awarded on which basis it is alleged that Denton’s secured

a contract because of that marketing.

In addition to which there were a number of documents that were attached to Mr Kapdi's affidavit which included an agreement – the agreement that govern these payments to Fortime, between Denton's and Fortime and it is dated the 1st of February 2015.

That agreement I should mention was signed by one Mr Sabiya Ahmed and Mr Sabiya Ahmed we will discuss in much greater detail in later evidence regarding the much
10 larger laundry suffice it to say that he was the director of a number of first level laundry entities that the Gupta Enterprise made us of.

It appears then from an email chain that was disclosed to in Mr Kapdi's affidavit that the agreement that was dated the 21st of February, was actually still; in draft form as late as 21st of August 2015 after its stipulated termination date.

It was then backdated to the 1st of February to make it look like Fortime had been providing consultancy
20 services for which it appeared to have been remunerated and I find that arrangement to be incredibly suspicious, not least that Fortime appears to have the services provided by Fortime are remarkable vague and opaque in this version.

ADV CHASKALSON SC: Then you list in fact table 46 the payments that Eskom made to Denton's. Can you take the

Chair through those payments?

MR HOLDEN: Certainly, I am just sharing my screen very quickly. I hope I have succeeded.

ADV CHASKALSON SC: It has now.

CHAIRPERSON: Very well.

MR HOLDEN: So, table 46 I set out the payments to Denton South Africa from Eskom in relation to Project Picardi. On the 8th of July 2015, Denton's was paid an amount of R359,185.06. On the 21st of July 2015,
10 Denton's was paid an amount of R7,844,197.50.

On the 18th of August 2015 it was paid an amount of R9,686,846. On the 17th of November 2015, it was paid an amount of R2,985,087 and then on the 29th of February, it was paid an amount of R17,570, for a total figure of R20,892,885.56.

ADV CHASKALSON SC: Okay, and then in paragraph 127 you describe the amount that was paid to Fortime by Denton's.

MR HOLDEN: Certainly. Fortime was ultimately paid
20 R1,231,200 in relation to this contract on the 22nd of August 2015.

ADV CHASKALSON SC: Then you go on to address the Denton's / Denel contract. Can you tell the Chair about that?

MR HOLDEN: Certainly. In 2015 Denton's was appointed

to Denel's legal panel. In September 2015, the head of legal at Denel approached Mr Kapdi and informed him that Denton's had been selected to submit a request proposal in relation to an investigation that was required by Denel.

On the 5th of October 2015, Denton submitted a bid for the work quoting a fee capped at R4.1 million and that becomes relevant and we discuss the amount that Denton's was eventually paid. Within four days on the 9th of October 2015, Denton's was formally appointed by Denel to
10 undertake the project which was then called Project Betty.

ADV CHASKALSON SC: Okay.

MR HOLDEN: Denton's then – apologies.

ADV CHASKALSON SC: Please continue.

MR HOLDEN: As I showed at table 47, Denton's ultimately invoiced Denel R5,971,266.24 which is obviously quite substantially more than the capped fee and I do set out the references and the payments but there are quite a large number of them. I am not sure if Chair requires me to read them all into the record or not.

20 **CHAIRPERSON:** Are those the ones on the table at 104? The table 47.

MR HOLDEN: At table 47 correct, Chair.

CHAIRPERSON: Yes, I think just read them into the record.

MR HOLDEN: Okay. On the 3rd of November 2015

Dentons was paid by Denel an amount of R669,693.00. On the 3rd of November 2015 – so the same day, it was paid an amount of R30,843.39. On the 24th of November 2015 it was paid an amount of R1,465,640.86.

On the 15th of December 2015, Denton's was paid an amount of R2,413,243.20. On the 15th of December 2015, it was paid an amount of R86,361.44. On the 29th of December, it was paid an amount of R438,982.50. On the 29th of December 2015 it was paid an amount of – it was the same day, R368,624.12.

On the 29th of January 2016, it was paid an amount of R420,67.80. On the 1st of February 2016, it was paid an amount of R26,163.82. On the 25th of February 2016, it was paid an amount of R6,840.00. On the 6th of April 2016, it was paid an amount of R50746 – so, R50,746.11.

And then on the 19th of July 2016, there was a credit note issued by Denton's through which they repaid a certain amount of R6,840 which was a refund against the amount that was paid to them on the 25th of February 2016. Which then brings us to the total amount with that amount – the credit note included, of R5,971,266.24.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Can you then explain how Fortime came to be involved in the Denel payments to

Denton's.

MR HOLDEN: Certainly. According to Mr Kapdi's version, in January 2016 following the completion of the work at Denel, he was approached again by Mr Ashok Narayan in order to negotiate a marketing fee in relation to the contract and in total, Fortime was ultimately paid R642,588.36.

In relation to this contract the three payments between December 2015 and February 2016, I do hesitate
10 to note that I find - I did notice when I was working through these, through this report again yesterday, that the timeline according to Mr Kapdi, does not appear to work in this regard.

In that he says he was approached in January 2016 to negotiate the fee, but there was a payment to Fortime in December 2015 although I am not sure how much hangs on that.

CHAIRPERSON: So, were you able to tell Mr Holden whether Denton's investigation at Denel that you are
20 talking about here, was the investigation connected with the suspension of executives – of certain executives at Denel in 2015?

ADV CHASKALSON SC: Chair, at Eskom or at Denel?

CHAIRPERSON: They were involved in both Eskom and Denel and in both entities, certain executives were

suspended under highly suspicious circumstances. So, I think they started at Eskom, and they finished their report or they were told to stop the investigation around June or July in Eskom and then, by then certain executives who had been suspended, had left.

And then in September same year at Denel, three executives were suspended and on the basis that there was to be a disciplinary enquiry. And that disciplinary enquiry had not happened more than a year later when
10 they were offer some settlements, but Denel was involved in investigations if I am not mistaken.

So, I just wanted to check with Mr Holden whether he had come across anything that indicated that Denton's investigation at Denel was connected with the suspension of those executives.

MR HOLDEN: Chair?

CHAIRPERSON: Hmm? The executives was
...[intervenes]

MR HOLDEN: Please forgive me – you were talking.

20 **ADV CHASKALSON SC:** No, no, please go ahead, Mr Holden.

CHAIRPERSON: The executives were Mr Saloojee, Mr Mhlontlo and Ms Africa in case that might help you.

MR HOLDEN: I am afraid, Chair but I have not seen the results of the investigation, the investigative report that is

referred to here.

CHAIRPERSON: Yes.

MR HOLDEN: And I think my evidence, Chair may be able to shed some light on this matter.

CHAIRPERSON: Okay, alright. I think we will – it will be good if we can check because you know, it seems to be – they are used at both entities, Eskom and Denel and the fact that in both entities executives were suspended roundabout – or soon before Denton’s got involved may be
10 something to look at. Okay no, that is fine. Let us continue.

ADV CHASKALSON SC: Thank you, Chair. I merely wanted to note that in Mr Kapdi’s affidavit he does give a broad outline of what the subject of the investigation was.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: I will get the reference at the next break and I will refer you.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: I know that in respect of Denel,
20 there is nothing mentioned about suspended executives.

CHAIRPERSON: Okay

ADV CHASKALSON SC: I know also that there is nothing mentioned about suspended executives in relation to Eskom.

CHAIRPERSON: Yes, yes.

ADV CHASKALSON SC: But I understand from documents and I am not sure if they form annexures to his affidavit or not, but the issue of individual culpability of executives was expressly excluded from the ambit of Denel.

CHAIRPERSON: Ja, at Eskom ja. Yes.

ADV CHASKALSON SC: The Denel investigation. It was excluded, at Denel not – I beg your pardon, at Eskom.

CHAIRPERSON: At Eskom.

10 **ADV CHASKALSON SC:** Eskom, yes. Denel asked not to look at ...[intervenes]

CHAIRPERSON: Yes, ja.

ADV CHASKALSON SC: Individual executives misconduct.

CHAIRPERSON: Yes, ja – ja. No, no, I remember that as well. Okay, alright.

ADV CHASKALSON SC: The next item on the list is that requires some explanation is Lornavision and that is addressed at page 105 of your report. Can you briefly
20 explain to the Chair how Lornavision came to be included in your report?

MR HOLDEN: Certainly, Chair. At paragraph 132 I indicate that in 2017 the special investigation unit successfully sought and procured a High Court judgment that set aside the contract between Lornavision and the

SABC to which I refer here.

Lornavision at the time of which Kuben Moodley was a director were contracted by the SABC to provide debt collection services.

ADV CHASKALSON SC: And can you show what your investigations revealed in relation to what happened to the amounts paid by the SABC to Lornavision?

MR HOLDEN: Certainly, the amounts that were paid to Lornavision, were subsequently paid to an entity called
10 Customer Communications Services Company which I abbreviate as TCCSC and from there to a Gupta Enterprise first level laundry vehicle by the name of Birsaa Projects.

ADV CHASKALSON SC: And at table 48 you list the payments to Lornavision. Can you take the Chair briefly through that table which starts at page 105.

MR HOLDEN: Certainly. We have quite a substantial number of payments which I am going to read into the record again. On the 17th of September 2015, there was an amount of R2,433,900 paid by SABC to Lornavision. On
20 the 30th of January 2016, there is an amount of R3,631,931.88.

On the 16th of February 2016 there is an amount of R2,604,825.37. On the 1st of March 2016 there is an amount of R3,582,851.68 paid to Lornavision by SABC. On the 17th of March 2016 there is an amount of R541,717.22.

On the 31st of March 2016 there is an amount of R1,663,311.78.

On the 28th of April 2016, there is an amount of R760,361.59 that was paid by the SABC to Lornavision. Moving on to the following page which is flow of funds 09/106. On 17th of May 2016 an amount of R2,252,163.12 was paid to Lornavision.

On the 31st of May 2016, and amount of R2,248,575.80 was paid to Lornavision. As the Chair will
10 probably notice all those payments that I have just mentioned, were paid into Lornavision's First National bank account – FNB account, and I give the number there.

All payments that are made subsequent to that date, are then made into a separate Standard Bank account. Ad – oh apologies, Chair I have now skipped forward. Turning to the table on the 15th of June 2016, Lornavision was paid an amount of R844,193.47.

On the 7th of July 2016, it was paid an amount of R4,650,710.39. On the 30th of July 2016, it was paid an
20 amount of R1,695,021.84. On the 16th of August 2016, it was paid an amount of R991,182.70. On the 31st of May 2016. It was paid an amount of R2,468,671.38.

On the 15th of September 2016, it was paid an amount of R1,340,401.07. On the 29th of September 2016. It was paid an amount of R3,065,413.13. On the 4th of

October 2016, it was aid an amount of R885,162.12. On the 18th of October 2016, it was aid an amount of R1,434,669.92.

On the 31st of October 2016, it was paid an amount of R2,692,150.06 and on the same day the 31st of October, it was paid an amount of R659,805.55. On the 15th of October 2016, it was paid an amount of R1,883,899.20. On the 30th of November 2016, it was paid an amount of R3,632,401.67.

10 On the 15th of December 2016, it was paid an amount of R2,504,308.99. ons the 31st of December 2015, it was paid an amount of R3,466,404.32. On the 17th of January 2017, it was paid an amount of R1,674,965.06. On the 31st of January 2017, it was paid an amount of R6,968,543.52.

On the 16th of February 2017, it was paid an amount of R2,046,013.61, which brings us to a total figure of R62,733,557.24.

ADV CHASKALSON SC: Thank you, Mr Holden. The next
20 set of contracts that you address in your report that call for some explanation is the contacts that were awarded by Eskom and Nkonki – sorry, Eskom and Transnet to Nkonki and also to other auditing firms that engaged Nkonki as a subcontractor following the acquisition of Nkonki by the Trillian Group.

You address that from page 106, Chair again I must refer to you on this one. I am not sure how much of the Nkonki evidence has already served before the Commission?

CHAIRPERSON: No, no, I think not much. If there is, it is very little. So, ja.

ADV CHASKALSON SC: Then, Mr Holden can you briefly explain the significance or how these contracts came to be in your report, bearing in mind that at a later stage in your
10 evidence, we will go into considerable detail as to how Trillian acquired Nkonki. But if I can ask you to start at page 135 – sorry, at page 106, paragraph 135.

MR HOLDEN: Certainly, Chair. At paragraph 136 I note that the Commission have procured an in the affidavit of Tebogo Leballo who was the chief financial officer at Trillian during the period under review and a copy of that affidavit and then three supplementary affidavits furnished by Mr Leballo were shown to me and I cached the submission.

20 In that affidavit Mr Leballo set out how Nkonki acquired – sorry, how Trillian acquired Nkonki and we will discuss that in considerably more detail later as Nkonki was a bid to be purchased using criminal funding. In the same period, subsequent to the purchase of Nkonki by the Trillian Group, it was awarded as a series of contracts at

Eskom.

Well, it was appointed as supply and development parts that is a series of contracts at Eskom in which the primary partners were Deloitte, KPMG, or PWC. All of those contracts appear to be irregular. With regards to Deloitte, they have acknowledged that they are irregular in respect of the Eskom task orders SM002 and SM004.

On which Deloitte engaged in contracting a subcontractor, and they have agreed to be paid a
10 R150 million of the fees, they will pay to them on relevant contract at captures two Annexures. The statement that was issued by Eskom on the 25th of October 2019 announcing its decision to recover the funds from Deloitte.

And then subsequently, the joint statement that was issued on the 25th of March 2020 by Eskom and Deloitte when the dispute was settled partially to the repayment of the R150 million. PWC's Eskom contracts was referred to as the Capital Scrubbing contract.

And it is described very extensively in the affidavit
20 of Jonathan William Gordon Cawood which was submitted by PWC to the Commission and which is attached hereto. The details set out by Mr Cawood is that PWC engaged Nkonki on the Eskom capital scrubbing contract, following an unsuccessful attempt by PWC – sorry, an unsuccessful attempt in September 2016 by Trillian departing ways with

PWC.

Subsequently, Eskom allowed Nkonki to be considered for partnering with PWC despite the fact that Nkonki had not met the requirements for Eskom's panel b. It appears that Eskom constitutes a panel c to accommodate the position of Nkonki.

Eskom then concluded a risk-based contract with the PWC / Nkonki consortium. This was irregular as Eskom had not obtained the necessary Treasury approval for such
10 a contract. As in the case of McKinsey Trillian master services agreement, Eskom effectively misrepresented to PWC that it had obtained the necessary Treasury approval.

KPMG's Eskom contract with Nkonki was in respect of a task order called SM008. It is described in the statement of Ahmed Hassen Jaffar which was submitted by KPMG to the Commission and which I attached in my report.

As appears from the State, Mr Jaffar the process for task order SM008 was manifestly irregular and appears to
20 have been designed to ensure that a 40 percent of the value of the contract would be allocated to Nkonki. KPMG ended up submitting proposals for this task order four times as the requirements kept on changing.

KPMG was appointed on the basis of its fourth submission which proposed sub-contracting to four

different subcontractors, Nkonki was one of those, and even if that fails to qualify for Eskom's panel b and three other contractors who were – who had qualified for Eskom's panel b.

After being appointed, KPMG were then subsequently told that they were no longer allowed to subcontract to the three qualified firms on Eskom's panel b. Instead they would only – they could only subcontract to subcontractors on Eskom's panel c of which
10 Nkonki was the only one.

This effectively ensured that the full 40 percent value of the subcontractors was subcontracted by KPMG to [indistinct] and then we can discuss the total fees at the table following.

ADV CHASKALSON SC: Before we get to the total fees, you drew a parallel with what you described as the McKinsey Trillian MSA contract at Eskom, where Eskom misrepresented in that case to McKinsey that it had the necessary treasury approval for risk, a risk based
20 remuneration system and in this case to PWC.

I would just like to clarify of course that that was a contract with McKinsey directly, not with McKinsey and Trillian. Trillian sort of worked alongside McKinsey on that contract, but we have heard evidence that there was never any subcontract between Trillian and McKinsey even

though Trillian did work alongside McKinsey on that contract.

Getting to the payments which you address in table 49, can you take the Chair through the payments on all of these contracts that you have been describing?

MR HOLDEN: Certainly. The, at table 49 we set out the payments done promptly by De Loit, KPMG, PWC and Eskom. The first item is] invoices paid by PWC which does not include VAT and be Nkonki invoices between January
10 and December 2017, Nkonki was paid by PWC an amount of R166,031,535-00.

The next item is Nkonki invoices that were paid by KPMG, again excluding VAT. The first was on the 31st of October 2017 for the value R2 154 237-48. On the 14th of December 2017 Nkonki was paid an amount of R1 896 303-36.

On the same date there was payment in the amount of R771 155-20. On the 9th of February 2018 there was payment in the amount of R2 565 517-56. On 6 March
20 2018 there was payment in the amount of R2 282 450-00. On the 20th of April 2018 there was payment in the amount of R866 621-03.

On the 1st of March 2019 there was payment in the amount of R1 537 459-99 which brings the subtotal of payments to KPMG, by KPMG to Nkonki of R11 379 802-62.

We then move on to the Nkonki invoices that were paid by De Loit and again ...[intervenes]

ADV CHASKALSON SC: Sorry Mr Holden. These amounts stretch over one and a half pages. Maybe if I can just ask you to scroll and get to the subtotal on page 110.

CHAIRPERSON: Ja.

MR HOLDEN: Certainly. The subtotal for De Loit if R42 401 008-38 and Nkonki was paid directly by Eskom and certain on the KPMG contract and was paid an amount
10 of R5 141 894-00. That is across four invoices, which brings us to a total excluding VAT of R74 954 240-00. The VAT amount on that is R10 493 593-60 which brings us to a total of R85 447 833-60.

ADV CHASKALSON SC: And then you deal in aggregate with the amounts paid by Eskom to De Loit, KPMG and PWC, and can you just give the Chair the total that you reach in paragraph 140?

MR HOLDEN: Certainly. The total aggregate figure paid to the contractors was R367 263 450-87, to which I then
20 added the additional amount as paid directly to Nkonki of R5 141 894-00 which then brings the total cost, the total amount paid by Eskom on these contracts rises to R362 405 344-87 exclusive of VAT or R413 142 093-15 inclusive of VAT.

ADV CHASKALSON SC: Then the next line items on that

master table relate to Tegeta and Optimum payments by the state to Tegeta and Optimum. There has been a wealth of evidence before the commission in relation to both. Maybe if you can just take the Chair to the table of payments and just first in relation to Tegeta is page 113.

Table 51 and again we are dealing with a great many payments. So maybe if you can just identify the three bank accounts, the subtotals by bank account and the total overall.

10 **MR HOLDEN:** Certainly Chair. We have the first set of payments that are made to Tegeta, exploration of resources and again I apologise for the shortening to Tegeta Resources in table 51.

The first payments are made into Tegeta Exploration's FNB account and the subtotal of payments made into the FNB account was R1 547 947 599-09. It was then subsequently paid by a state Bank of India account and the total value of those payments, it is quite [indistinct payments further on the second page over was
20 R725 221 794-80 and then finally it was remunerated via ex Bank of Eroda account, ending 042 and it was paid a total amount of R142 354 587-06, which brings us the total amount paid by Eskom to Tegeta Exploration and Resources of R2 442 523 980-95.

ADV CHASKALSON SC: Then in table 52, you deal with

payments by Eskom to Optimum after 14 April 2016 which was the day on which Tegeta's acquisition of Optimum became final. Again if you can, there are no subtitles, but if you can identify the three payments and the three bank statements into which amounts are paid, and the total.

MR HOLDEN: Certainly. Chair, there were payments made between the 14th of April 2016, the 22nd of July 2016 were made into the Standard Bank account 364029. On the 29th of July 2016 until the 27th of March 2018, it was paid into
10 ex Bank of Eroda accounts, ending 523 and then on the 17th of May 2018, as far as I recall this is a reference to an attorney through which they received the payment of funds.

That is for one payment of R208 887 589. The total value of payments to Optimum subsequent to the purchase by the Gupta enterprise was R1 682 026 066-26.

ADV CHASKALSON SC: You are in fact correct that that last payment is a payment to an attorney's firm. You address it in paragraph 147. Can you take the Chair to that paragraph?

20 **MR HOLDEN:** Certainly. I hesitated to mention the name because I was worried about getting it wrong.

ADV CHASKALSON SC: It is paragraph 147 at page 116.

MR HOLDEN: Yes, I am sorry, I am looking in my hard copy. It was paid through the trust accounts of the attorneys Roerich Wolmarans and Luderick's Incorporated.

ADV CHASKALSON SC: And do you know why it went to an attorney's account at that stage?

MR HOLDEN: As far as I understand there were no banking facilities available to Optimum at that point.

ADV CHASKALSON SC: Yes. Can we then deal with TNA Media and there are vast numbers of payments that were made to TNA Media. Maybe the best way of handling them is to go to the executive summary at page 15, paragraph 19 where the amounts by organ of state are set out
10 together with cross-references to the relevant source tables in the report.

So if you can take the Chair through that table at paragraph 19 on page 15 of the executive summary?

MR HOLDEN: Certainly. I am just loading it up for the public to see it as well. We have the first item is an amount of, Eskom paid to the TNA an amount of R35 401 246-60. Transnet paid an amount of R144 147 790. Department of Water and Sanitation paid an amount of R5 924 333-64. The office of the premier of
20 the Free State paid an amount of R42 062 906-36. Free Sate provincial treasury paid an amount of R11 331 233-30. The office of the premier of Mpumalanga was paid an amount of, sorry paid an amount of R6 581 301-20 and the office of the premier of the North West province paid TNA an amount of R9 303 888-20.

ADV CHASKALSON SC: Now the irregularity of these payments as traversed in the report and some of it has been traversed in evidence. Maybe if we can take an illustrative example, the case of the Free State treasury which you deal with on page 130, paragraph 158 on.

MR HOLDEN: I appear to have missed your reference there.

ADV CHASKALSON SC: It is Bundle 9, page 130.

MR HOLDEN: Certainly. Chair, I was made aware of
10 investigations that the commission undertook in relation to payments made by the Free State provincial treasury to TNA. The investigations revealed that TNA was paid large sums by the Free State provincial treasury without any of the requisite contractual agreements by one.

Upon request the Free State provincial treasury could only provide a single service level agreement to which TNA would supply the provincial treasury with 6000 newspapers for an amount of R576 000-00 which is less than 10% of the amount that is totally transferred, the total
20 that is transferred to TNA by the Free State provincial treasury.

CHAIRPERSON: Okay. Yes, okay. You may continue.

ADV CHASKALSON SC: Then in table 57 you itemise all of those payments. Again I do not need you to, need you to go through them all, but maybe you can just repeat

again what the total amount paid was in the context of a case where the only contract that the treasury could produce was for R576 000-00.

MR HOLDEN: Certainly. The total amount that is paid, is R11 331 233-68.

ADV CHASKALSON SC: And then if you could deal with the Mpumalanga office of the premier payments.

MR HOLDEN: Certainly. Again I was informed of investigations that were undertaken by the commission into
10 these contracts, and what it discovered was that the office of the premier confirmed to the commission that no contracts are put in place between the Mpumalanga office of the premier and TNA, and instead all procurement was undertaken by deviation.

ADV CHASKALSON SC: And the total amount of these payments?

MR HOLDEN: Was R6 581 301-20.

ADV CHASKALSON SC: And then we come to deal with VR Lazer and Denel. There has been extensive evidence
20 before the commission in relation to the relevant contracts. I would merely ask you to take the Chair to the payments that you have identified in table 61, on page 136. Running all the way through to 140 and again I would ask you not to read them all into the record, because that would probably take half an hour.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But maybe just to mention the dates that are spanned and the aggregate amounts and possibly I do not even think we need to mention the bank accounts. They speak for themselves, but the period of these payments and the aggregate amount would be useful.

MR HOLDEN: Certainly Chair. The first payment was made on the 7th of October 2014 and the final payment, multiple pages down, was made on the 12th of December 10 2017 and the total amount paid was R242 425 736070. If I may I will repeat that, because I did stumble there.

It is R242 425 736-70.

ADV CHASKALSON SC: The next line item relates to Global Soft Tech Solutions just below where you are in your report. So if you can go to page 142 of the report and first explain who Global Soft Tech Solutions were which you do in paragraph 171 of your report.

MR HOLDEN: Certainly. Global Soft Tech Solutions are an IT company and in 2014 Sahara Systems purchased a 20 50% share in GSS. In May 2016 it sold its shares, its 50% share in GSS to a company by the name of Future Tech and Future Tech is a company that was operated by and for the benefit of the Gupta Enterprise.

We will discuss Future Tech in considerably more detail when we discuss the flow of funds in relation to

Trillian.

ADV CHASKALSON SC: And then if you can just comment on the once of fee paid to Global Soft Tech Solutions in April 2017.

MR HOLDEN: Certainly. On the 11th of April 2017 GSS was paid a once off payment of R16 199 400-00. That is R16 199 400-00.

ADV CHASKALSON SC: Then if we can go down to Cutting Edge, and which you deal with just below Global
10 Soft Tech Solutions from paragraph 176 and if you can first explain the relationship between Cutting Edge and the Gupta enterprise.

MR HOLDEN: Certainly. In 2014 Sahara Holdings purchased 51% of the shareholding in Cutting Edge which was then, I said previously known as Leonardo Business Consulting, but as far as I recall it is actually subsequently known as Leonardo Business Consultants.

Cutting Edge became an effective subsidiary of the Sahara Group on that date. In evidence of that we have an
20 email from the Gupta Enterprises attorney Pieter van der Merwe to Sanchez Tobey which records the sale and there are other emails which are attached to the report which indicate that the sale was concluded.

ADV CHASKALSON SC: And then if you can continue in paragraph 176 in relation to the contract that Cutting Edge

acquired with Transnet shortly after it became a Sahara subsidiary.

MR HOLDEN: Certainly. On the 17th of October 2014 Transnet issued a letter of intent to conclude a two year contract with Cutting Edge to provide Transnet with a solution for systems, for a systems analytical tool and capability to report on key procurement metric.

The contract was awarded to Cutting Edge on a confinement basis without any competitive bidding.

10 **ADV CHASKALSON SC:** And then you describe the payments made on this contract that have been awarded without any competitive bidding. Can you tell the Chair what period those payments spanned and what the total amount was with reference to table 63?

MR HOLDEN: Certainly. It was paid, the first payment was made on the 22nd of September 2014 and I should mention that that seems to be before the issue of a letter of intent that is issued by Transnet to Cutting Edge. In any event, on the 22nd of September 2014 the first payment is
20 made.

The final payment is made on the 1st of March 2017 and the total amount paid to Cutting Edge under this contract was R41 294 949-60.

ADV CHASKALSON SC: And then in paragraph 178 you deal with the Cutting Edge contract which may in fact hold

the record for the quickest contract from unsolicited proposal to multi million rand payment. Can you tell the Chair about this contract?

MR HOLDEN: Certainly. On the 29th of April 2016, Cutting Edge solicited an unsolicited proposal to Eskom to provide data management and cleaning services. That proposal is attached. On the 9th of May 2016 Eskom concluded the contract with Cutting Edge in that regard.

The VAT inclusive value of that contract was
10 R71 166 780-00. So roughly in the course of 11 days we went from unsolicited proposal to signing the contract and of course there was no competitive bidding process in relation to the contract as one would imagine.

Finally that full amount of the contract is paid to Cutting Edge on the 16th of May 2016 and as my evidence leader just acknowledged, we therefore have a situation where an unsolicited proposal produced a payment of 71 million rand in a mere 17 days.

CHAIRPERSON: This must really have been a record, and
20 of those 17 days I am sure some were, some were weekends. So if you look at working days, then it is even probably much more than, well it is less than 17. It might not be much.

Maybe it is 40 days, 30 days.

ADV CHASKALSON SC: Do not forget May day. That is a

public holiday.

CHAIRPERSON: That is right. So they had done work within that period of two weeks that was worth 71 million rand, and it is ... it was a provision of data management maintaining services to Eskom. Okay, alright.

ADV CHASKALSON SC: It was a speed cleaning service Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Now, and Mr Holden can you
10 briefly talk about the last payment or set of payments to Cutting Edge that you address in paragraph 179?

MR HOLDEN: Certainly. What we see is over and above this payment, Eskom then paid a further amount of R24 432 133-44. That is R24 432 133-44 during the course of 2017. Those payments were all made on an ad hoc basis, and that was made on the basis of Cutting Edge's position on the Eskom IT panel of service providers.

In this regard, those particular contracts were not investigated in any great depth, but it does bear pointing
20 out that by October 2017 Eskom was so over spending on its IT panel of service providers, it required a five year budget for this panel to be increased by more than 230% from 740 million to 2.5 billion and that was subsequent to Cutting Edge being appointed as panel.

ADV CHASKALSON SC: You then in paragraph, sorry

table 64 and paragraph ...[intervenes]

CHAIRPERSON: I am sorry Mr Chaskalson. Just remind me again, the connection between Cutting Edge and the Guptas? Mr Holden may ...[intervenes]

ADV CHASKALSON SC: Mr Holden, can you take the Chair back to paragraph 176 for the connection between the Guptas and Cutting Edge?

MR HOLDEN: Certainly. At paragraph 176 I note that Sahara Holdings bought a 51% share in Cutting Edge in
10 mid-2014.

CHAIRPERSON: Oh, yes.

MR HOLDEN: And the sale is recorded in the email of the 17th of July 2014. All of the contracts to which I speak now were awarded to Cutting Edge subsequent to that purchase.

CHAIRPERSON: Yes, okay thank you.

ADV CHASKALSON SC: And then in table 64 you have an aggregate list of payments from Eskom to Cutting Edge. Can you just briefly again just talk about the period and
20 the total?

MR HOLDEN: Certainly. So in relation to the unsolicited bid on the 16th of May 2016, Cutting Edge was paid an amount of R71 166 780-00 and then for the ad hoc appointment the payments begin on the 31st of January 2017 and run until the 28th of November 2017, and the total

for the ad hoc payments was R24 432 133-44.

When added to the unsolicited bid we get a total figure of R95 598 913-44.

CHAIRPERSON: And of course all these payments that were happening in 2017 and these ones on this table 64, except for one, it looks like all of them were in 2017 from January up to November. They were happening long after the release of the public protector's report, date of capture which was in October or early November 2016, which but it
10 is like these transactions were continuing as if there was nothing.

Yes, okay. Let us continue.

ADV CHASKALSON SC: Lastly before we move off Cutting Edge, you have a table 65 which aggregates both the Transnet and Eskom payments. Can you just record the total aggregate figure from Transnet and Eskom to Cutting Edge?

MR HOLDEN: Certainly. The Transnet amount again is R41 294 949-60. The Eskom amount is R95 598 913-44
20 and that brings us to a total of R136 893 863-04.

ADV CHASKALSON SC: Then Mr Holden, the next large amounts that are on your aggregate table that we started off with, are payments in respect of contracts in respect of the Crane contracts. Now we spent at least a full day's evidence possibly too, on these contracts when you

testified in December.

I do not want to discuss the detail, but maybe just mention the aggregate figures that you used on the, that you referred to on table 72 at pages 152 to 153. I just want to check. Before you share your screen on this, can you just check that you have a redacted page 152?

Because the, either company A or company B's name appears on the original page 152 in a different context.

10 **MR HOLDEN**: Let me have a look quickly. Yes, it is reductive.

ADV CHASKALSON SC: Okay. Okay, for future reference probably do not share your screen while you are checking.

MR HOLDEN: [indistinct]

ADV CHASKALSON SC: Yes, anyway. There is no harm done. So can you just mention the aggregate figures because these are extraordinary figures of what the state paid on these contracts and these are the figures you have taken as I understand it from the evidence of Ms Welsh
20 before this commission.

MR HOLDEN: And I was [indistinct] the full set of payments were not disclosed in the initial report, because there are just so many of them, but the aggregate figures in relation to the 95 20E electric locomotives, all in cost the amount excluding VAT was R3 015 372 544-19, total

amount including VAT was R3 432 869 565-21.

That was paid to CSR. In relation to the 232 45D diesel locomotives, the cost including the cost of the relocation of redaction facilities to Durban, [indistinct - distorted] North Rail was paid an amount excluding VAT of R2 447 076 643-61.

With VAT it becomes a total amount of R2 823 869 773-71. In relation to the 100 21E electric locomotives, the all in cost excluding VAT was 10 R4 526 147 303-20. The total amount therefore is five, including VAT apologies is R5 158 831 654-92.

In relation to the 359 22E electric locomotives all in cost, CSR was paid an amount of R13 092 575 534-47. With VAT included it is an amount of R14 910 761 921-66. In relation to all of the locomotive contracts we have an amount excluding VAT of R23 081 172 025-47. Including VAT is an amount of R26 327 322 915-50.

In relation to the Leber crane contractor addressed in my previous evidence, a VAT exclusive amount was paid 20 of R737 806 002-30. The VAT included it is R841 098 842-64. In relation to the ZPMC crane contractor again addressed in previous evidence, the VAT exclusive amount is R770 005 468-00 and the VAT inclusive amount is R877 806 234-00 which brings us to a sub total of all the crane contracts involving Leber and ZPMC of

R1 507 811 470-00 which brings us to a VAT inclusive amount and the VAT inclusive amount for those two is R1 718 905 076-16.

When all of those contracts are added together, we get an amount exclusive of VAT of R24 588 983 495-79 and a VAT inclusive amount of R28 046 227 991-66. That is R28 046 227 991-66.

ADV CHASKALSON SC: Now before we leave this section on contracts tainted by state capture, you have indicated
10 at various points in the report that you have only added up amounts that where there is evidence of irregularity in the award of the contract, and the contract is tainted by Gupta linked state capture.

You have discussed in your evidence thus far other amounts that are unrelated to the Guptas. I want to take you to the example of Sahara Computers, which is related to the Guptas, but which you have excluded, because you have not got clear evidence of irregularity, despite a possible suspicion.

20 So can I ask you to take the Chair to page 146 of your report and paragraph 181 where you explain why you do not include Sahara Computers payments in your total account here.

MR HOLDEN: Certainly. Chair, the commission in its investigation to the Trillian related identified payment

aggregating to just over 102 million rand that was paid to the Sahara Group by the state. There was an extensive attempt to establish the contracts on the basis upon which those procurements were made and whether they were fair and equitable.

It appears that a number of organs of state were unable to produce any evidence. However, many of these payments were made a very long time ago and it is difficult to know based on what has been disclosed whether the
10 lack of contractors due to the passing of time and for record keeping, or whether specifically because there were no contract.

It was also I think within the time a lot and very difficult to establish on a payment by payment or contract by contract basis, in the absence of huge amounts of material, written material justifying the payments. Which ones could and could not be considered irregular.

On which basis I thought it was probably the most prudent option was to enumerate the payments to the
20 Sahara Group to give an indication of the scale of its contracting with the state, but they are not included in the total tally of the cost of state capture.

In an abundance of caution, it may be that further searches through the state records would identify contracts or indeed Sahara might be able to produce contracts that

1 speak to those payment amounts.

ADV CHASKALSON SC: Then the last issue that I want to traverse on this topic of aggregate payments from the state painted by state capture, is a breakdown of these payments by organ of state, because it is extremely revealing.

Can I ask you to go to page 155 of your report, where you have done that exercise. Unfortunately you did not number the table where you did it, but it appears under
10 paragraph 196 on page 155 and if you can take the Chair through that process which explains to us where the real harm was suffered in state capture in financial terms.

MR HOLDEN: Certainly Chair. So as the evidence leader indicated, it became an interesting exercise once we had established the total amounts paid, where the primary sights of state capture were in terms of the expenditure. The top three sights of state capture we identified were Transnet including the second defined benefit fund, Eskom and then the Free State local government including the
20 office of the premier, the aggregate figures for Transnet ...[intervenes]

ADV CHASKALSON SC: Sorry Mr Holden, if I can just correct you there. We are talking about the Free State provincial government, not the Free State local government. Occasionally in the report and likewise lower

down it is the North West provincial government, not local government.

MR HOLDEN: Yes.

ADV CHASKALSON SC: There is an error that was not picked up there, but please continue and I would ask you to read these figures into the record because they make for extraordinary reading.

MR HOLDEN: Certainly. So in relation to Transnet including the second defined benefit fund, it is an amount
10 of R40 084 201 927-00 which indicates that Transnet was responsible for 81.59% of payments made by the state in contracts related to state capture, related to the Gupta enterprise.

Second [indistinct - distorted] Eskom which paid an amount of R6 969 886 305-20 which equals a percentage amount of 14.19% of all payments made by the state on contracts paid by the involvement of the Gupta enterprise.

The Free State provincial government paid an
20 amount of R441 042 621-08 and somewhat disturbingly that very large figure only amounts to 0.9% of the total amount paid by the state in contracts afflicted with state capture involving the Gupta enterprise.

Subsequent to that is Denel which pays an amount of R248 423 159-00 which is 0.51%. The IDC, industrial

development corporation paid an amount of R250 000 000, so 250 million rand which is equal to 0.51%. The SABC it is an amount of R62 733 557-24. So 0.13%.

The North West provincial government including the office of the premier is R39 308 888-02 which brings us to a percentage figure of 0.08%. South African Airways and South Africa MSA express which I put together here, it was an amount of R26 402 833-20.

Which is equal to 0.05%. The office of the premier
10 of Mpumalanga is an amount of R6 581 301-20 that is 0.01% and for Sascol it is an amount of R5 711 400-00 which is 0.01% and if I may just reemphasise again to the Chair and to the public that these are the only amounts in relation to state capture involved in the Gupta enterprise.

It does not tally the amounts that may have been in fact, it was the state capture not involving the Gupta enterprise.

CHAIRPERSON: Can I ask you this question Mr Holden. Would it be correct to say most of these payments that one
20 is talking about, particularly with special reference to Eskom and Transnet, that may be the other entities that you have just dealt with in this table, that most of them would have happened after 2013.

Is that your sense or you are not able to say?

MR HOLDEN: [indistinct]

CHAIRPERSON: Sorry?

MR HOLDEN: Apologies Chair, there was a bit of a lag there, so I might have cut you off by mistake, but ...[intervenes]

CHAIRPERSON: Oh, okay. I am asking whether it is your sense that most of these payments and I am talking about the ones that you have just dealt with now, to by Transnet and Eskom and the other entities that you have just dealt with, that most of these payments would have happened
10 after 2013 or is that something you are not able to ...[intervenes]

MR HOLDEN: That is correct Chair.

CHAIRPERSON: It is correct? Okay, alright. I know you have got the dates of payment in the report, but my sense is that generally speaking it does look like most of the payments happened after 2013. Ja, okay alright.

MR HOLDEN: Chair, that is correct. I think what is particularly interesting in that regard, obviously there are certain payments in relation to the capture of provincial
20 government that happens before 2013 in the Free State.

CHAIRPERSON: Yes, yes.

MR HOLDEN: But there is definitely a sense of momentum that develops over the years, that as the years go by, the more money is spent.

CHAIRPERSON: Yes.

MR HOLDEN: And as we set out in the, in further evidence, part of the explanation of that is that the Gupta enterprise is very efficient at [indistinct – 00:16:09] these criminal funds and then using them to re-invest into new assets which ...[intervenes]

CHAIRPERSON: Yes.

MR HOLDEN: Which is then used to procure additional funds from the state and it becomes sort of a snowball effect if you will, of criminal funds being recycled and purchasing assets, but that leads to further state capture.

10

CHAIRPERSON: Yes, okay. Thank you.

ADV CHASKALSON SC: What I would like us to move to now is a different category of numbers. We have been looking thus far at ...[intervenes]

CHAIRPERSON: Can we take a short adjournment?

ADV CHASKALSON SC: Certainly Chair. It is a very convenient time to ...[intervenes]

20

CHAIRPERSON: Yes, we were going to take one at four but let us take it now and then we skip four o'clock. If we still need to continue, we will continue beyond four.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue. Are you there Mr

Holden?

MR HOLDEN: Yes, I am here Chair.

CHAIRPERSON: Okay, alright. Thank you.

ADV CHASKALSON SC: So Mr Holden, we are now going to move from looking at the total payments made by the state on amounts that were, on contracts that were tainted by state capture to the share of that amount of 49 billion that went directly to the Gupta enterprise.

Can I ask you just to explain the distinction
10 between these two sets of numbers that we, the set of numbers that we have been looking at up to this point in the set of numbers that we are now going to look at.

MR HOLDEN: Certainly Chair. So the numbers we have been looking at up to date are the amounts that are paid by the state in relation to all of those contractors affected by state capture. So that is the amount that is paid to contractors in relation to those contracts.

The second figure we will deal with now is the amount of money that is paid directly to the Gupta
20 enterprise, let me rephrase that. It is the total amount of money the Gupta enterprise earned off state capture. Now I think the best way to understand the difference between these two figures is to rather say that when we write about this or talk about this, that of the 49 billion rand that was paid out in state capture contracts, the Gupta enterprise

earned just under 16 billion rand of that money and there are three categories of payments that we identify in relation to this.

The first is payment that were made directly to the Gupta enterprise. The Gupta enterprise companies as contractors being in business for the state or alternatively where those Gupta enterprise companies acted as subcontractors to third party entities doing business with the state.

10 Then we also look at payments made by contractors to the state to what I call first level money laundering entity operating within South Africa, an example of which we will see now would be Regiments for example.

What I mean here is payment would have been by the state to Regiments and from Regiments a certain amount we would pay to the first level [indistinct – distorted] enterprises and then finally it is the kickbacks, the enumerated kickbacks paid directly to the Gupta enterprise companies outside of South Africa.

20 That is in relation to the Transnet contracts, the locomotive procurements and the train contract.

ADV CHASKALSON SC: So let us then start with the first of your categories, which is payments that are made by the state directly to the Gupta enterprise or payments that are made by state contractors directly to Gupta enterprise

companies.

Can I ask you to put onto the screen your table 134 on page 226? Where you list those payments and maybe if you can take the Chair through those payments.

MR HOLDEN: Certainly. So the first category of payments is direct payments made to Gupta enterprise companies by the state. The first entry is the Free State Department of Agriculture and Rural Development to pay New Lane an amount of R24 984 240-00.

10 The second entry is the Free State Department of Agriculture and Rural Development which paid Estina an amount of R280 202 652. The Free State Department of Education paid Sunbay Trading an amount of 28.5 million rand.

The Free State office of the premier paid Sunbay Trading an amount of R4 578 810-00. Transnet paid to Cutting Edge an amount of R45 904 113-24. Eskom paid Cutting Edge an amount of R107, I think that figure might actually be a mis-transposed figure, now that I look at it.

20 **ADV CHASKALSON SC:** It is. The correct figure will be, it is about 12 million less I recall.

MR HOLDEN: Yes.

ADV CHASKALSON SC: Yes, we will get the correct figure and insert it there. Apologies for not picking that one up but let us look at the Eskom SAP payments.

MR HOLDEN: The payments to SAP by Eskom were a total of R564 733 122-57. The amount paid by Transnet to SAP was R225 883 124-88. An amount that Transnet paid to Zestalore is an amount of R13 407 883-18. An amount that Transnet paid to Zestalore via Innovent Asset Management, an amount of R222 839 809-93.

The amount paid by Eskom to Tegeta Expiration and Resources was an amount of R2 442 523 980-95. The amount paid by Eskom to Optimum Coal was an amount of
10 R1 682 206 066-26. The amount paid by the IBC to Oak Bay Investment, Oak Bay Resources in actual investments was 250 million rand.

The amount paid by Eskom to TNA Media was R35 401 246-60. The amount paid by Transnet to TNA Media was R144 147 790-00. The amount paid by the office of the premier of the Free State to TNA Media was R42 062 906-36.

The amount from the Free State treasury office of the treasury to TNA Media was an amount of R11 331 233-
20 68. The amount paid to the office of the premier of Mpumalanga by, to TNA Media was R6 581 301-20. The amount paid by the office of the premier of the North West province to TNA Media was R9 308 999-02 and then on the following page we carry on.

The amount paid by Denel to DR Laser was

R242 425 736-70. The amount paid by Transnet to Global Soft Tech Solutions or GSS is R1 6199 400-00, which gives us a subtotal of direct payments to the Gupta enterprise in contracts affected with state capture, involving the Gupta enterprise of R6 400 815 744-13.

We then move on to the second category and that is the amount that is paid by state contractors, derived from state capture contracts involved in the Gupta enterprises that is then paid to Gupta enterprise companies. So in
10 relation to the Trillian Group and it is paid from the GFB Break Through contract with Transnet, the Eskom 2016 August 2016 and February 2017 master services agreement, Cutting Edge Commerce is paid an amount of R71 240 396-00.

The amount that is paid to Zestalore by Trillian from the August 2016 master services agreement, Transnet company B and Sethaba Computer Services is an amount of R95 485 677-62. If I may, a company B supplied development agreement with Sethaba Computer Systems
20 for R323 413 332-51.

Software AG and SAP paid an amount to Global Soft Tech Solutions of R15 021 194-28. SAP paid to Cab House an amount of R99 924 993-94. Curova Mediosa paid an amount of R1 556 561-49 to Sethaba Computer Systems and then finally an amount was paid to a Gupta enterprise

entity by the name of Sentor Mining which is then subsequently owned by a company by the name of Central Ventures which we will explore I think in greater evidence below.

It is paid an amount from the 2016 Eskom MSA December. The February 2017 Eskom master services agreement and a Transnet benefit fund by the Trillian Group. It is paid an amount of R270 461 906-00. So the indirect payments by state contractors is R877 104 061-84.

10 So therefore the direct and indirect payments to the Gupta enterprise companies arising from state capture is R7 277 919 805-97.

ADV CHASKALSON SC: The next, so we have now dealt with the first category of payments received by the Gupta enterprise, the amounts paid directly to it by the State or by contractors that are dealing with the state. Your second category on your list, not on your list, on your description was what you called payments made by state contractors to first level money laundry entities.

20 This is going to require some explanation. So can you explain to the Chair what you mean by first level money laundry entities or first level laundry entities?

MR HOLDEN: Certainly Chair. What we refer to there is the companies that were identified by the Gupta enterprise to receive success fees or business development, supply

development payments. That was the first payment that was made from a state contractor into the Gupta enterprise.

It was the first step in the laundry process. From there as you will see in much more detail in later evidence, the funds moved from the first level laundry entity into an extremely expensive and complicated local and international money laundering network.

The use of identifying payment if I may to first level
10 contracts, is that we know the payments being made in this regard to first level laundry entities, are being made to companies either told by the Gupta enterprise or who are receiving anticipating funds on behalf of the Gupta enterprise.

We cannot trace all of these funds to their end point as much as it goes into a very complicated international money laundering network. I have treated all the payments to first level laundry enterprise, first level laundry companies as effectively payment to the Gupta enterprise
20 to generate a figure of how much the Gupta enterprise earned off their capture contract.

ADV CHASKALSON SC: And can you tell the Chair who are they key players in relation to these first level laundry entities?

MR HOLDEN: Certainly. We see repeated the key players

are Salim Essa and Ashok Narayan. For example we saw in relation to the discussion of Dentons, it was Narayan who was directing and controlling the manner in which four time contracted with Dentons and how it was paid.

ADV CHASKALSON SC: And can you list for the Chair the names of these first level laundry entities.

MR HOLDEN: Certainly. The first one is Alvathyme. The second is [indistinct - distorted]. The third is Block Mania. The fourth is Tavitha Trading. The fifth is For Sure
10 Consultants. The sixth is For Time Consultants. The seventh is Homex. The eighth is Isma. The ninth is an entity called Jacksa Trading. Tenth is an entity called Maher Strategy. The eleventh is an entity called Max and Capital. The twelfth is an entity called Majool. The thirteenth is an entity by the name of Pack Trade and the last entity is operates by the name of Shackle Commerce. I see the Chair was scrolling through the report to try and find that list of names.

I cannot remember exactly where on the
20 ...[intervenes]

CHAIRPERSON: I seem to remember it. I seem to remember it better in the executive summary.

ADV CHASKALSON SC: It is in the definitely in the executive summary Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: It would appear in the executive summary at paragraph 34.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: On page 23 of the executive summary.

CHAIRPERSON: Yes, okay. Alright.

ADV CHASKALSON SC: Now you have been describing these entities as laundry entities that are doing money laundering. Perhaps you could illustrate that with
10 reference to an email that I will ask you to look at, which comes from Ashok Narayan in relation to one of these entities.

It is in Bundle 13, page 381. Bundle 13, page 381. It is Annexure 45 to your report.

MR HOLDEN: Annexure 45?

ADV CHASKALSON SC: Annexure 45.

MR HOLDEN: [indistinct – distorted]

ADV CHASKALSON SC: And can you tell the Chair, can you describe what this email suggests to you. Or first who
20 it is from, to whom it is sent and what you see there.

MR HOLDEN: Certainly Chair. This is an email that is sent on the 17th of September 2015. It is sent from an email address wallamsa@gmail.com, which we actually the commission has heard quite a lot of evidence about that email address, but it is the email address for Ashok

Narayan.

The email is sent to Eric Wood with the subject payment, and the subject of this is to discuss the manner in which For Time would be paid by Regiments. The total For Time, the total invoice amount was R14 345 760-00. However, Ashok Narayan then asked Mr Wood to split that one invoice amount into three separate payments.

One of five million rand on September the 17th, that is the date of the email. Five million rand on September 10 the 18th which is the Friday and then an amount of R4 354 760-00 on the 21st of September, that is the Monday.

Then a further amount which is a separate invoice, would be paid for R4 075 500-00 on September the 22nd. This is a very clear example of what we identified as [indistinct – distorted] in my previous evidence, which is just to take a single large payment amount and to reduce it into smaller payment amounts paid over a certain number of days.

20 In the hope that the smaller payment amounts will attract less attention from whoever might be charged with the regulating of the flow of funds.

ADV CHASKALSON SC: Now at page 194 of your main report, in table 113 you have broken down the payments to laundry entity by state contract as it were, and can you

take the Chair through that table at page 194 of Bundle 9?
Maybe the starting point before we get into the line items,
is to reference, yes.

Is to talk about the total amount that was paid by
state contractors into these laundry entities.

MR HOLDEN: Certainly Chair. At paragraph 263 I set up a
total amount that is paid to the first level laundry entities
and that amount is R1 207 032 055-67. That is one billion,
two hundred and seven million thirty two thousand fifty five
10 rand and sixty seven cents.

ADV CHASKALSON SC: And then ...[intervenes]

CHAIRPERSON: I am sorry, I cannot see that figure. I am
at 194.

ADV CHASKALSON SC: Chair, Mr Holden was reading
from paragraph 263.

CHAIRPERSON: Oh. I am at paragraph 263. Just repeat
the figure that you gave Mr Holden?

MR HOLDEN: Certainly. It is R1 207 032 055-67.

CHAIRPERSON: I seem to think your bundle and mine, the
20 page numbers are not always exactly the same. I do not
think I have got that number on, or it is not in the table. I
was looking on the table. The number is not in the table.
It is above the table.

ADV CHASKALSON SC: It is above the table, indeed
Chair.

CHAIRPERSON: Yes, okay. No, I was busy looking at the numbers that are in the table.

ADV CHASKALSON SC: No, it is before we get to the table.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: You will see there at the very bottom, you scroll all the way down to the bottom of the table, you will see the same number again.

CHAIRPERSON: Yes.

10 **ADV CHASKALSON SC:** With the total.

CHAIRPERSON: Okay, no you can proceed Mr Holden.

ADV CHASKALSON SC: And then Mr Holden can you just take us contract by contract, laundry entity by laundry entity through this table?

MR HOLDEN: Absolutely, and I apologise for cutting it off, there is a slight lag. So I am trying not to appear rude. In table 113 the contract we referred to here is the Mediosa contracts, and that is all of the contracts that we have identified, paid to Mediosa attached to state capture
20 payments.

The first payment is made to [indistinct – distorted] of R15 960 000-00. Then there is a payment made to Albatyme and that is actually a separate payment to Coogan Moodley, but together they come to R2 538 948-00. The next project is the China north rail Durban relocation

project.

Which was awarded to, there was a payment of extractor products and from there Bex paid an amount of R15 228 070-98 to Majool, an amount of R14 ...[intervenes]

ADV CHASKALSON SC: Sorry Mr Holden, I apologise for interrupting but I should have indicated to the Chair that there is a version of this table with cross-references to the underlying source table that is in the executive summary at page 24, paragraph 36.

10 There, in that version there will be cross-references which tell you how this amount of R15 960 000-00 is made up.

CHAIRPERSON: Okay, no that is fine, I have made a note.

ADV CHASKALSON SC: Sorry Mr Holden, if you might continue? I apologise for the interruption.

MR HOLDEN: Thank you. To repeat, in relation to Isma Bex paid an amount of R14 147 400-00. Bex then further paid an amount of R18 140 820-00 to For Time Consultants. [indistinct – distorted] Strategy was paid an
20 amount of R18 605 940-00 and Block Mania was paid an amount of R10 154 226-18.

In the Regiments group and here we aggregate all of the state capture contracts, in which development fees were then, development fees or other fees were paid to Gupta control companies, or Gupta enterprise companies.

The first amount is Albatyme.

The amount that it is paid by Regiments Capital and it is paid R224 055 778-48. The second entry again is Albatyme, but this time paid from Regiments Securities. It is paid an amount of R5 609 572-72. Tavitha Trading is paid an amount of R129 229 827-25 and if you can recall, Tavitha Trading was the entity that Salim Essa identified in his dealings with combined private investigations.

CHAIRPERSON: Yes.

10 **MR HOLDEN:** For Sure Consultants, we have an amount of R16 890 928-70. For Time Consultants we have an amount of R53 880 753-93. For Homex we have an amount of R179 506 583-48. For [indistinct] Strategy we have an amount of R10 322 510-00. In relation to Majool we have a payment of R29 558 898-91.

We then move on to the Trillian Group in relation to the Transnet Club loan and there Albatyme was paid an amount of R74 784 000-00. We then move to the Trillian Group's payment in relation to the Transnet Property
20 Database contract, and they paid from that amount [indistinct] Projects, R4 847 893-00.

Top Majool an amount of R10 362 200-00. For Time Consultants it is R4 981 800-00. In relation to the SA Express contract that was awarded to the Trillian Group, it then went on to pay Bursa Projects an amount of

R3 420 000-00.

In relation to the Trillian Group in relation to the contract, to the payment that was made, received from Transnet in relation to the GFB and [indistinct – distorted] contracts, it thereafter paid Albatyme an amount of 3.5 million rand.

Bursa Projects an amount of 12 million rand. Majool an amount of R19 380 000-00 and then on the following page, an amount of For Time Consultants of
10 R4 959 000-00. Remaining with the Trillian Group, the amount that it received from, in relation to the Eskom corporate plan contract, it thereafter paid an amount of R4 847 093 to Bursa Projects.

In relation to the August 2016 Eskom master services agreement payment to the Trillian Group an amount of R17 045 000-00 was paid to Bursa Projects. To Majool an amount of R9 822 000-00 was paid. For Time Consultants an amount of R12 427 328-00 was paid.

Maxim Capital was paid an amount of R1 970 000-
20 00. Pack Trade was paid an amount of R3 030 000-00. Shackle Commerce was paid an amount of R2 850 000-00. Jacksa was paid an amount of R2 150 000-00, that is 2.15 million rand.

In relation to the Neotel contracts where, sorry specifically to the 300 million rand and the 1.8 billion rand

contracts, it does not refer to the CCTV contract. Homex was then paid an amount of R75 573 519-00. In relation to Leber Cranes, Homex was paid R1 800 000-00, so it is 1.8 million.

Sethaba Computers was paid onto Homex apologies, an amount of R828 569-10 and to Albatyme an amount of [indistinct] and then subsequently made further payments to Homex of R499 783-00. To Albatyme of R954 146-84. To For Time Consultants an amount of
10 R1 387 652-63.

Then moving on to Zestalore. Zestalore made a payment of R120 000-00 to Tavitha Trading. A payment of R630 883-00. The Bursa Project amount of R1 261 766-00 to Pack Trade.

Then moving on to combined private investigations. They made a payment to Tavitha of R14 673 600-00. To Homex they paid an amount of R17 510 400-00. To Bursa Consulting they paid an amount of R2 918 400-00. To Majool they paid an amount of R10 797 201-85.

20 Denton South Africa paid to For Time Consultants an amount of R1 873 788. Lorma Vision made payments to Bursa Projects in the amount of R3 019 868-23 and to Shackle Commerce an amount of R5 779 767-40. In relation to the Transnet CCTV contract that was originally placed with Neotel and then subcontracted to Technology

Procurement Holdings, the funds were paid to Homex by Tech Pro and or a company called Digital Video Solutions in the amount of R119 700 000-00. That is one hundred and nineteen million, seven hundred thousand.

CRRC which was one of the contractors in relation to the locomotive contract, paid an amount to For Time Consultants of R7 892 226-77. In relation to SAP and Clad House Bursa Projects was paid an amount of R3 420 000-00.

10 Bringing us to a total of R1 207 032 055-67.

ADV CHASKALSON SC: And then if you can go to page 198 where you had aggregated these same payments by laundry entity.

MR HOLDEN: Certainly. Here we have in table 114 the first entry is Albatyme which received R311 556 446-04. Bursa Projects which earned R49 230 737-23. Block Mania which was paid an amount of R10 154 226-18. Tavitha Trading which is paid an amount of R144 093 427-25.

For Sure Consultants was paid an amount of
20 R19 809 329-70. For Time Consultants was paid an amount of R105 543 369-69. Homex was paid an amount of R395 418 856-44. Isma was paid an amount of R14 147 400-00.

Dapsha was paid an amount of 2.15 million. Maher Strategy was paid an amount of R28 928 450. Maxim

Capital was paid an amount of R1 970 000-00, so it is 1.97 million. Majool was paid an amount of R95 148 371-74. Trade was paid an amount of R4 291 766-00 and Shackle Commerce was paid an amount of R24 589 767-40.

ADV CHASKALSON SC: So that is your second, your second category of payments to the Guptas from state capture. Your third is the known kickbacks and these relate to the locomotive and crane contracts that we dealt with in your previous evidence.

10 So it may be as well to go to simply to the summary table which is at page 420 of Bundle 9. Table 247 and can you take the Chair through those amounts.

MR HOLDEN: Certainly Chair. What we have here is the grand total of all kickbacks paid to the Gupta enterprise related to the 95 100359 and 232 locomotive procurements, attended maintenance contract, the CNR relocation costs and the purchase of Leber Cranes with their PMC.

20 For the purchase of Leber Cranes we were able to identify payments of R26 586 799-49. In relation to the purchase of ZPMC cranes we were able to identify amounts of R33 379 031-04. In relation to the 95 100359 and 232 locomotive contracts, including maintenance contracts, we have an amount of R3 400 558 015-00.

In relation to the CNR relocation contract we have an amount of R76 586 903-13. Which brings us to a sub

total of confirmed kickback paid of R3 537 110 748-66 and it may be worthwhile explaining here Chair. If you recall in the evidence that I was led in December, we were able to confirm those payments against a range of documents, including bank statements, internal Gupta enterprise ledgers.

After a certain point the banking records go cold, however we do know that there were an issue of payments that were made to the Gupta enterprise and it seems that
10 in the period in which [indistinct] I assume they have been made.

In which case we get an amount of R3 768 046 193-40 which brings us to a total kickback figure of R7 305 156 942-06. That is seven billion three hundred and five million one hundred and fifty six thousand nine hundred and forty two rand and six cents.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And then if we add up these three categories and it may be, let me just check if this is the,
20 no. The executive summary simply, if one goes to the executive summary at page 32, paragraph 46 you have a consolidated figure for payments to the Gupta enterprise.

If you can take the Chair through those payments by, simply by subtotal because we have gone to line item already, and what the aggregate total is.

CHAIRPERSON: 22 or 32?

ADV CHASKALSON SC: It is page 32 Chair.

CHAIRPERSON: 32?

ADV CHASKALSON SC: 32 of the executive summary.

CHAIRPERSON: Hm.

MR HOLDEN: Certainly Chair.

CHAIRPERSON: I have got it. Yes.

MR HOLDEN: So in relation to direct payments to the Gupta enterprise by organs of state which we have already
10 enumerated, it was an amount of R6 400 815 744-13. In payments by state contractors, derived from state capture contracts and Chair, I do not think I have redacted this executive summary.

So I am going to stop sharing the screen for one second.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Maybe Mr Holden, because we are just talking sub totals, you can mention the sub totals without the line items or the ...[intervenes]

20 **MR HOLDEN:** That is correct. Ja, I have now moved the PDF beyond that point. The indirect payments via state contractors if R886 860 561-84. In relation to payments to first level laundry entities, we have a sub total of R1 207 032 055-67.

We have two lines we have not dealt with here,

which I am sure we will beginning with in slightly further evidence, is a payment that is made from Regiments to Albatyme and Trillian which is then paid to Tegeta, Exploration and Resources of 160 million rand.

From Regiments there is an occasion which I am sure we will deal with in more detail later, where Regiments effectively receives and launders an amount from Tech Pro in relation to the CCTV contract, which is then subsequently paid from Regiments to TNA of 17.1
10 million rand.

The sub total of those cases is R177 100 000-00. That is hundred and seventy seven million rand, one hundred thousand rand. The kickbacks to the Gupta enterprise is a sub total of R7 305 156 943030, which is how we then arrive at the total amount earned by the Gupta enterprise from state capture as R15 967 208 804-87.

ADV CHASKALSON SC: Do you want to say that in millions and billions?

20 **MR HOLDEN:** Certainly. That is fifteen billion nine hundred and sixty seven million two hundred and eight thousand eight hundred and four rand and eighty seven cents.

ADV CHASKALSON SC: Before we close today I would like us to deal with the third category. We have dealt with

the amounts that the state paid out in total on state capture contracts affecting the Guptas or tainted by the Guptas. We have a share of that amount that the Guptas received.

The third category that I would like us to look at is the loss suffered by the state through Gupta enterprise state capture and I would like you to in assessing this category where we have not got the same levels of precision that we have on the others.

10 Just to describe the various heads of loss that the state would have suffered and you do this in your executive summary at page 38, starting with paragraph 47. Maybe if you can take the Chair through this analysis that you do in relation to the loss suffered by the state.

MR HOLDEN: Certainly. Chair, as the evidence leader correctly points out, the figures that I have tabulated in relation to payments in relation to state capture contracts, is really I refer to it as the total cost of state capture, but it actually is not the total cost in sort of generic terms.

20 It is an accounting cost. It is the amount that we can identify as paid in the confirmed payments to the Gupta, sorry in relation to state capture contracts. It does not even begin to quantify the harm and loss suffered by the state and I have identified a number of different heads of loss, where the state may have lost quite a of money in

addition to the amounts that were paid out.

The first is the total value of kickbacks paid to the Gupta enterprise by third party contractors to conclude a contract with the state. This amount can be assumed to be [indistinct] by the state because of an open and honest procurement process without interference by the Gupta enterprise or other corrupt parties.

It can be assumed that the bidders would have fixed prices at a level that did not need to accommodate the
10 kickbacks that they had committed to pay the Gupta enterprise. Here we are actually able to identify a loss to the state directly, which is the amount of kickbacks that we are aware of, and that we have identified previously as R7 305 156 942-06.

The third category of loss is the total value of gratuitous expenditure where that expenditure took place, seemingly with little motivation beyond enriching the Gupta enterprise and that is certainly in cases where there was no real attempt to deliver any sort of value to the state.

20 One example of that is the payment of 254 million rand to TNA. Advertising, marketing and newspapers and I think it can be safely assumed that most, if not all of this expenditure would have been avoided if the Gupta enterprise was not using its influence over the state to ensure it.

For me a more clear cut example is the Estina Dairy project, which we have now heard evidence through the commission and evidence that I have led, which shows that there is almost no attempt to deliver a dairy farm [indistinct] and it seems that from conception to the execution the whole project was designed simply to enrich the Gupta enterprise and deliver effectively no value to the state.

10 This however is an exercise that is a qualitative exercise that I hesitate to make on behalf of the commission and it requires quite a sensitive accounting. So I have not given a figure in that relation but I assume it is quite substantial.

The third category of loss is the price inflation that is intended on contracts made with the Gupta enterprise by said entities, especially in the case and this happened in alarming number of times where no such competitive bidding took place.

20 We can assume in those cases that the amount that was paid by the state was considerably more than the going market rate or even the usual rates paid by the Gupta, charged by the Gupta enterprise for its non tech clients and a very good example of that is Sunday Trading.

As we have discussed previously, Sunday Trading was paid R33 078 810-00 by the Free State government,

almost all of which was paid over to Sahara Computers and Sahara Computers delivered on that contract. Internal records from the emerging from the Gupta leaks, show that the unit price that was charged by Sunday / Sahara to the Free State government was times almost double what Sahara was charging its corporate clients on the open market.

Again, this is somewhat beyond the scope of my report sadly so. I have not been able to put a specific figure on that. Then there is a fourth heading, the total value of price inflation in the contract price ...[intervenes]

ADV CHASKALSON SC: I just want to interrupt at this point, because I just want to warn you not to scroll down because you would not have redacted something under D2. So please do not scroll down to D2.

MR HOLDEN: I may switch back to my camera in ...[intervenes]

ADV CHASKALSON SC: Please do.

MR HOLDEN: As a matter of caution.

20 **ADV CHASKALSON SC:** Thanks.

MR HOLDEN: Certainly. At heading D we have the total value of price inflation and the contract prices charged to the state by third party contractors who did business with the state, where they were protected by the Gupta enterprise and what we refer to here, is the fact that the

Gupta enterprise, state capture project corrected a culture of corruption and difference to cost in many state owned enterprises in government departments.

There is good reason to believe that those entities, they were protected by the Gupta enterprise. Used that position to increase the value of the contracts awarded to them and also inflate the amounts they charged to the state in order to maximise the profits they make from that.

The example I give there is ...[intervenes]

10 **ADV CHASKALSON SC:** Let us leave that example. Sorry. Because it is an example to which we can return at a later stage, but we should not mention it now.

MR HOLDEN: Okay. The fifth heading is the total value of contractual damages suffered by the state in the contracts of the Gupta enterprise itself or third party contractors and here we, what we are talking about essentially is that in certain cases where there were state capture allegations or state capture payments that we made, those parties who contracted with the state, probably may have delivered on
20 their contracts diligently and correctly and not cause harm to the state.

However, in certain contracts it is quite likely that the contract performance was incredibly poor, which there was of course additional loss to the state and here I would like to refer to something that is in the public domain as far

as I understand, but is not actually appended to the report and I wonder if my evidence leader would like to address how that is now dealt with.

ADV CHASKALSON SC: Yes, I mean you can certainly refer to material that is in the public domain. You can, I know what you want to refer to and the document that you need to, as evidence is something that the commission can obtain in the public domain.

10 So maybe give the illustration that you have in mind here.

MR HOLDEN: Certainly. What we have here, what I refer to here is the loss suffered by Eskom in relation to the Optimum contracts after Optimum was purchased by the Gupta enterprise, and here what is quite interesting, is that we have established that the Gupta enterprise, so Eskom paid an amount of 1.68 billion rand to Optimum but actually the loss suffered by Eskom was considerably more than that.

20 Eskom has submitted a damages claim in relation to this contract and they are claiming damages in relation to the loss suffered by Eskom because of poor quality coal delivered by Optimum and the loss suffered by Eskom because of insufficient quantities of coal delivered, and then the loss suffered by Eskom because historical contractual penalties were not levied where they should

have been.

The total claim that is being filed by Eskom, I do not have their exact figure here, but I know that it is over three billion rand. So what we have here is an example of the state may have paid 1.68 billion rand to Optimum but suffered losses almost double that because of the performance of the contract.

Then finally we identified collateral wasteful expenditure incurred by organs of state to accommodate state capture contracts, and here what I refer to as those instances where the state may have contracted with third parties who were not party to state capture, but paid them amounts that were equal to the or in the same ball park if you will, to those amounts that were paid to the Gupta enterprise protected entities, and that may have happened in order to disguise the discrepancy between the amounts paid to companies protected by the Gupta enterprise and those not.

One good example here is in relation to the locomotive contract. It is possible that General Electric and Bombardier were offered terms by Transnet which were more favourable than they possibly could have gotten if they negotiated harder but were potentially disinclined to do so because the, it would reveal the exaggerated cost that was being paid to CSR and CNR and CRRC.

That exaggerated cost had to be paid in order to create a 20% haircut that from which the kickbacks could be paid. So I do not attempt to quantify the losses suffered by the state in relation to Gupta enterprise related to state capture, but I think I can say with extremely high level of confidence, that that amount far exceeds the just under 16 billion rand that was paid to the Gupta enterprise from state capture.

ADV CHASKALSON SC: Chair, we have got to a point in
10 Mr Holden's evidence where it will be difficult to proceed without, well difficult to proceed in the light of the Rule 3(3) considerations.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: So I would ask that he stand down at this point and return at a later stage when the Rule 3(3) difficulty no longer prevails.

CHAIRPERSON: Yes, okay. No, that is fine. We will stop here then and a date, I will determine a date when you can come back Mr Holden to complete your evidence. That is
20 going to be as soon as possible, bearing in mind the earliest considerations.

Okay, thank you very much Mr Holden and arrangements will be made for you to come back. Once again, thank you for availing yourself to assist us.

MR HOLDEN: Thank you very much Chair, it is my

pleasure.

CHAIRPERSON: Thank you. Okay Mr Chaskalson, we will adjourn for ... we will adjourn the day session now and I hope that the evening session is ready. I will adjourn for about 15 minutes and then come back to deal with evidence relating to Eskom, and then tomorrow we will deal with matters that are scheduled for tomorrow and they include Ms Dudu Myeni.

ADV CHASKALSON SC: Thank you Chair.

10 **CHAIRPERSON:** We adjourn.

HEARING ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: ... morning, the greeting is the same.

ADV SELEKA SC: Is the same.

CHAIRPERSON: Ja. Okay, alright.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Chair, Mr Singh is the next witness.

CHAIRPERSON: Good evening, good afternoon Mr Singh?

20 **MR SINGH:** Good afternoon Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: And as usual represented by my learned friends with the ...[intervenes]

CHAIRPERSON: Yes. Okay, thank you. Okay.

ADV SELEKA SC: I think there has been a sufficient lapse

of time.

CHAIRPERSON: Ja, please administer the oath or affirmation.

MR SINGH: Mr Chair, while we are doing that, that light just needs to be adjusted a little bit.

CHAIRPERSON: Sorry, the light?

MR SINGH: That light just needs to be adjusted a little bit.

CHAIRPERSON: Oh, okay. Will somebody attend to that?

REGISTRAR: Please state your full names for the record?

10 **MR HOLDEN:** Anoj Singh.

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

MR SINGH: No.

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

MR SINGH: I do.

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

MR SINGH: So help me God.

ANOJ SINGH: (D.s.s)

CHAIRPERSON: Thank you, you may be seated Mr Singh. Is the light fine now? Is the light fine now?

MR SINGH: Yes, thank you.

CHAIRPERSON: Okay, alright. Mr Seleka, do you want for the benefit of the public just to say where we are with Mr Singh's evidence and what will be covered?

ADV SELEKA SC: Yes, thank you Chairperson. We have raised quite extensive ground with Mr Singh. We dealt with issues pertaining to McKinsey and Trillian. His relations with or lack thereof with Mr Salim Essa, with the Guptas. We have dealt with his travels last time.

What we are left with in the main is the Tegeta OCM
10 matter. There are issues, well I think one or two issues still needing to be finalised, particularly in regard to the payment to subcontractors. Chair, the witness has finally prepared the affidavit which she has undertaken to have it signed and commissioned, and provided to us today.

I know that I had not yet received it by the time I arrived here. But hopefully we will give it to Mr Singh tonight if it is has come through and it can be addressed on Wednesday. It is a minor issue.

CHAIRPERSON: Yes. Ja.

20 **ADV SELEKA SC:** But for now is the Tegeta matters. The pre-payments that were made to Tegeta. The guarantee that was also initiated to the extent that Mr Singh is able to share information with the commission on that. He would do so by reference of the version of the other witnesses.

CHAIRPERSON: Ja, no that is fine.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Well we, you said we dealt with the travelling. Which is true. I noted when the personnel from the travel agency came, that largely their evidence and your evidence converged. The only issues as I recall is simply that from your version you say Mr Essa had nothing to do with your bookings through Travel Excellence.

Whereas they say he introduced you and they used his [indistinct] what they call guarantor, but they said that
10 most of the bookings you called to make, asked them to make bookings. They also said that you called to say somebody will come and bring payment which was in cash.

There is only one I think transaction if I recall, payment that was made I think through EFT, if I am not mistaken of which it came from Mr Salim Essa and I did ask that they should try and obtain the documentation from the bank that might show exactly when that payment came.

But largely there seems to be convergence between your version and their version in regard to your travelling
20 bookings. Okay, alright. Let us continue.

ADV SELEKA SC: Yes. That payment Chair, is the sixty thousand. I think Mr Singh, they said they received it via cash and deposited the money into the bank account, but there was a payment which they could, well the arrangement was made with Mr Asha Chawla and there was

no identification of the payee on the bank account and I think the point raised by the Chairperson, I rose pointedly in regard to that one.

Mr Singh, on the Tegeta matters there are two main issues or three. Well, one is related to the other. It is the submission of December 2015 for pre-payment of 1.6 million rand to, and you will tell the Chairperson to who because the board members say it was to Glenco.

You will give the Chairperson your understanding of
10 that submission. That submission is followed by a guarantee of the same amount. In respect of the guarantee it is clear in whose favour the guarantee was issued, that was in favour of Tegeta.

CHAIRPERSON: Are we going to use Eskom Bundle 18?

ADV SELEKA SC: Yes Chair, we are going to use Eskom Bundle 18.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER SC: Chairperson, while my learned friend is busy with that maybe he can also just
20 identify for us ...[intervenes]

CHAIRPERSON: Before you proceed. We will start from what page Mr Seleka?

ADV SELEKA SC: It is, I will start from page 352 point 89.

CHAIRPERSON: Okay, alright. I just wanted to make sure that I am on the right page.

ADV SELEKA SC: Yes, it is the beginning of an affidavit.

CHAIRPERSON: Ja. Well, a statement.

ADV SELEKA SC: Of a statement ...[intervenes]

CHAIRPERSON: You know, Mr Efron has been said to be making submitting to the commission statements while other people are submitting affidavits.

ADV SELEKA SC: Affidavits.

CHAIRPERSON: I have noticed that this is a statement and it does not have a date as to when he did it.

10 **ADV SELEKA SC:** Yes, I believe he testified on the basis of it, in phase 1 Chair.

CHAIRPERSON: Ja, well if he ... if it was used for testifying he would have confirmed under oath that it is true.

ADV SELEKA SC: Yes.

CHAIRPERSON: And correct, but witnesses have pointed out that he seems to be sending statements that are not under oath or that are not affirmed declarations because there was the one that he submitted this year, which

20 ...[intervenes]

ADV SELEKA SC: He did.

CHAIRPERSON: I think was also said to be just a normal statement.

ADV SELEKA SC: It was his statement and we have raised that with his attorneys Chair.

CHAIRPERSON: Ja, because it is quite strange. Everybody is submitting affidavits or affirmed declarations.

ADV SELEKA SC: No, we have raised it with his attorneys.

CHAIRPERSON: Ja.

ADV SELEKA SC: He is overseas, I do not know where.

CHAIRPERSON: Ja.

ADV SELEKA SC: And we have asked him to go to the South African embassy to have the submissions.

10 **CHAIRPERSON:** Ja. Okay, alright. Counsel for Mr Singh wanted to say something?

ADV VAN DEN HEEVER SC: Chairperson, I just wanted my learned friend ... he says the board members say it was a payment to Glenco. If he can maybe just identify for us which board members so that we can all be on the same page.

CHAIRPERSON: I am not sure, I am not sure is that ... what was that Mr Seleka? Were you still just telling us what Mr Singh's evidence will be about?

20 **ADV SELEKA SC:** Yes. I was giving Mr Singh a background ...[intervenes]

CHAIRPERSON: Let me allow you to start. Just start afresh ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: On that.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then I will hear, ja.

ADV SELEKA SC: So I was saying there are mainly two issues Mr Singh. You can say three but the second one is related to the first, which is one is the submission for the 1.68 million rand. Billion, and with that is the guarantee for the same amount.

Then I said to you you will explain to the Chairperson your understanding of who was meant to
10 receive that payment of 1.68 billion because the board members in their testimony before the commission, you would have seen also in their affidavits, that they understood it to be a payment in favour of Glenco.

Then I said well, in regard to the guarantee it is clear who was the beneficiary to receive the guarantee. Those are the two aspects. Then the third happens in April 2016. That is the pre-payment of 659 million rand, and this one is also clear that it was a pre-payment to Tegeta.

That Chair, is other issues.

20 **CHAIRPERSON:** Okay, alright. Continue.

ADV SELEKA SC: Thank you. Mr Singh, the ... we were taken through what I would say to be phase 1 evidence last week extensively by Mr Koko to the point where the business rescue practitioners issue a letter on 20 August 2015 that they cannot ...[intervenes]

CHAIRPERSON: I am sorry Mr Seleka.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Can I just raise something that I am not sure where I have raised it before. I do not know if I indicated that the intention is that when we adjourned on Wednesday evening, that should be the last time for Mr Singh to give oral evidence.

Did I mention that?

ADV SELEKA SC: Chair, we ... well ...[intervenes]

10 **CHAIRPERSON:** I am more concerned about her. Do you know anything about that?

ADV VAN DEN HEEVER SC: Chairperson, you will recall I think the second time or when we started we indicated to the Chairperson depending on how Mr Singh's evidence progresses.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER SC: We might, well we reserved our right to potentially file an affidavit ...[intervenes]

CHAIRPERSON: Yes.

20 **ADV VAN DEN HEEVER SC:** Instead of ...[intervenes]

CHAIRPERSON: Of oral, yes.

ADV VAN DEN HEEVER SC: Indeed.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER SC: But we will wait and see how my learned friend performs today ...[intervenes]

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER SC: In respect of his part.

CHAIRPERSON: Okay, no that is alright.

ADV VAN DEN HEEVER SC: Thank you Chairperson.

CHAIRPERSON: No, I am happy that, that is what I wanted to check to that we are on the same page. So that is fine.

ADV VAN DEN HEEVER SC: My learned friend gave an indication today that he is going to finish with my client.

10 **CHAIRPERSON:** Ja.

ADV VAN DEN HEEVER SC: So that would leave Basson for Wednesday.

CHAIRPERSON: Okay, no that is alright. Mr Seleka, that is what I wanted to check, whether ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: We have talked about what could happen after you are done.

ADV SELEKA SC: Yes, no ...[intervenes]

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** Thank you Chair.

CHAIRPERSON: Alright.

ADV SELEKA SC: Hopefully I will not finish with Mr Singh, but I will finish with his evidence. Thank you Chair. So Mr Singh, if you look at this affidavit, I mean the statement of Mr Efron, in Eskom Bundle 18, page the affidavit starts on

the page I have given, 35 I mean the statement.

352, point 89 but I want to pick it up ...[intervenes]

MR SINGH: Sorry Mr Seleka, that is the black numbers, right?

ADV SELEKA SC: The black numbers yes. I want to pick it up at page 352 point 100. Paragraph 48. 48 talks about the appointment of the business rescue practitioners and it reads:

10 “Following the appointment of 4 August 2015, the business rescue practitioners identified the CSA as the key issue causing the OCH and the OCM financial hardship. The business rescue practitioner’s main objective was to avoid the liquidation process and accordingly they requested a meeting with Eskom, with the view to reaching an agreement which would avoid liquidation. However, Eskom refused to meet with the business rescue practitioners. On 20 August 2015 ...”

20 Before I read on Mr Singh, were you aware of the interaction between the business rescue practitioners and Eskom?

MR SINGH: No sir.

ADV CHASKALSON SC: You were not aware?

MR SINGH: No.

ADV CHASKALSON SC: Okay. So you would not have been aware of this exchange between them which I will deal with in a short while where they sent a letter to Eskom and they say they cannot, they are unable in the circumstances to continue supplying coal.

MR SINGH: No sir.

ADV SELEKA SC: You were not aware?

MR SINGH: At this stage, no sir.

ADV SELEKA SC: Yes. Well, the 20th of August they do
10 that. When you turn the page, paragraph 50 on page 352
point 101. A meeting gets to be called at Eskom. The
paragraph reads:

“After the business rescue practitioners has seized the supply of coal to Eskom, Eskom requested a meeting with the BRP’s. The BRP’s and I arranged to meet with Mr Molefe and the then group executive technology of Eskom, Mr Koko on 3 September 2015.”

Mr Koko has testified about this meeting:

20 “However, when we arrived at Eskom’s premises, Mr Molefe and Mr Koko insisted that the BRP’s remain outside and I accordingly met with them alone.”

What comes out of this meeting Mr Singh, when we read the affidavit is the agreement to reinstate the supply

of coal to Eskom. Have you had a chance to read this affidavit?

MR SINGH: No sir.

ADV SELEKA SC: Paragraph 51:

10 “At this meeting Mr Molefe insisted that I restore the supply of coal to Hendrina. I explained to Mr Molefe that it was the BRP’s who had seized the supply of coal and had any decision to recommence supply was theirs. In my position as a representative of Glenco, as opposed to on behalf of OCH and or OCM which were under the control of the BRP’s, which would need to ...”

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes Chair?

CHAIRPERSON: Why are you reading all of that for somebody who was not in that meeting?

ADV SELEKA SC: Ja, okay. Let me get to the just ...[intervenes]

20 **CHAIRPERSON**: Ja, you can just summarise what emerged from that meeting.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: In so far as it is relevant to the question you want to raise with him.

ADV SELEKA SC: Thank you Chair. So what emerges

then from this meeting Mr Singh, is the agreement between the parties which is Eskom on the one hand, and the business rescue practitioners to reinstate the supply of coal to Eskom.

Now that supply happens on the basis of the existing coal supply agreement between Eskom. So what the evidence from Mr Efron shows, is that they then continue to supply coal at R150-00 per ton. Now Chair, with that I want to show Mr Singh the evidence of Mr
10 Rishaban Moodley and if you could please, Eskom Bundle 14.

Do not remove the other one yet, I just want to read a paragraph from Eskom Bundle 14(D).

CHAIRPERSON: Do I need to go there? I might, okay.

ADV SELEKA SC: Not really Chair.

CHAIRPERSON: Okay. Just read it.

ADV SELEKA SC: So the Mr Moodley who was the attorney for Eskom for the record, Eskom Bundle 14(D), page 894, paragraph 32.

20 **MR SINGH:** B you say?

ADV SELEKA SC: D. 14(D).

MR SINGH: I have got B.

ADV SELEKA SC: Yes, my junior will assist you.

MR SINGH: 18?

CHAIRPERSON: And do you think Mr Singh would need to

see it?

ADV SELEKA SC: He can simply listen to it.

CHAIRPERSON: Maybe listen to, Mr Singh if after the question is done you think you must look at it, then you can look at it.

MR SINGH: Okay.

ADV SELEKA SC: So bear in mind this is what emerges from the meeting of the 3rd of September and about what happens thereafter is what Mr Moodley writes here. He

10 says:

“CDH assisted Eskom with preparing the necessary documents for interim arrangements between Eskom and the BRP of Glenco business rescue, so as to ensure the continuation of coal supply to the power station and in order to mitigate against the risk of the power station not being supplied with any coal by OCM. This interim arrangement persisted for the duration of the business rescue proceedings from about August 2015 to July 2016. The BRP or the business rescue practitioners has given the dates of the continuation from September 2016, 2015 I beg your pardon to October 2016.”

20

Now for that duration according to their version,

their continued to be supply of coal to Eskom by OCM. I would like you to explain to the Chairperson firstly in regard to the submission for 1.6 billion rand pre-payment, what you understood that payment to relate to or that submission to relate to and who was to be paid in terms of that submission.

CHAIRPERSON: This is the submission that we find where?

ADV SELEKA SC: The submission Chair, it is also in
10 Eskom Bundle 18A. It is on page 493.

MR SINGH: Four nine three?

ADV SELEKA SC: Four nine three, Eskom Bundle 18A. So on page 497 Mr Singh, we see that you were one of the signatories to this document.

MR SINGH: That is correct.

CHAIRPERSON: Okay. Continue then.

ADV SELEKA SC: Yes, Mr Singh.

MR SINGH: Sorry Mr Seleka, the question you would like me to answer?

20 **CHAIRPERSON:** He was asking what you understood that submission to relate to, I think that was the first point. First leg of the question.

ADV SELEKA SC: Yes, and who was to be given ... who was going to be the recipient of the pre-payment.

MR SINGH: Okay. So Mr Chair, as Mr Seleka has pointed

out, the submission related to the pre-purchase for coal from the OCM. The reason behind the submission was to mitigate as pointed out in the document, the supplier of coal risk that had been identified relating to OCM as well as supply to, I think it was the Kroonfontein, ja from the Kroonfontein Mine which is also a subsidiary of OCM.

So it really related to the supply of coal, relating to OCM as well as an issue relating to Exira in terms of the supply of coal. Mr Chair, that was the background behind
10 the submission. In terms of the party that was supposed to be paid for the coal, if we look at the underlined, in terms of the resolution, this is a resolution that is submitted to the board, for the board to approve.

The underlying agreements obviously get prepared and the underlying agreements then obviously represent the underlying legal entities that entered into the agreement, and the legal agreement that was then prepared, I think it is in here somewhere as well.

ADV SELEKA SC: The what?

20 **MR SINGH:** The legal agreement that was, underpins the resolution. The coal supply agreement that was signed between ...[intervenes]

ADV SELEKA SC: Oh, the coal supply agreement?

MR SINGH: Yes, so that is where you will find Mr Chair, and this is I think where Mr Seleka is going to, is you say

here OCM, but the coal supply agreement is actually made out to Tegeta. Is that the nexus?

CHAIRPERSON: He just wants your understanding of who was supposed to be paid.

MR SINGH: Yes, then hence I am saying ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: This document eventually leads to the underlined contract that gets signed.

CHAIRPERSON: Yes.

10 **MR SINGH:** And Eskom cannot pay 1.6 billion without a contract.

CHAIRPERSON: Yes.

MR SINGH: So the underlying contract, effectively gave rise to the fact that Tegeta gets paid or potentially would have been paid 1.6 billion for the pre-purchase of coal from OCM. Okay.

CHAIRPERSON: So who did you understand at the time of signing the submission to be the intended recipient? Was it Tegeta or was it OCM under Glenco?

20 **MR SINGH:** Mr Chair, from my understanding at the time, from the reading of the submission and enquiries that I have made of Mr Koko and Ms Daniels, the payment was intended to be made to Tegeta.

CHAIRPERSON: Yes.

MR SINGH: And Mr Chair, in answering one of the

questions of ...[intervenes]

CHAIRPERSON: And then, and that I guess is in accordance with the clear wording of Clause, paragraph 2.2 of the submission which was saying you wanted a resolution of the board that would say that the group chief executive together with the group executive for generation are hereby authorised to negotiate and conclude an agreement with the proposed new owners of OCM in regard to the pre-payment to secure the fixed coal price for a
10 period of 12 months.

Is that correct?

MR SINGH: Mr Chair, yes. In terms of paragraph 2.1.2 to be more specific.

CHAIRPERSON: Well, 2.2 not 2.1.2.

MR SINGH: Mr Chair ...[intervenes]

CHAIRPERSON: At page 475.

MR SINGH: If you are at page 18/493.

CHAIRPERSON: I am sorry, have I gone to a wrong thing now? Four nine three.

20 **MR SINGH:** Yes, four nine three.

ADV SELEKA SC: Page 493.

CHAIRPERSON: Okay, okay. I think I made ...[intervenes]

ADV SELEKA SC: That is the evolution of the ...

CHAIRPERSON: Oh, okay before it got to ...[intervenes]

ADV SELEKA SC: To where we are on page 493.

CHAIRPERSON: Okay, let me – oh okay.

MR SINGH: But you are correct in your summary.

CHAIRPERSON: Yes, okay – yes.

MR SINGH: Yes.

CHAIRPERSON: The group chief executive together with the group executive for Generation – oh, it is the same thing.

ADV SELEKA SC: It is the same thing. It is just the numbering of paragraphs.

10 **MR SINGH:** The numbering is it, ja.

CHAIRPERSON: Ja – ja, okay.

MR SINGH: So, Mr Chair that is the paragraph that we – that I refer to.

CHAIRPERSON: Yes.

MR SINGH: Mr Chair, in addressing that question and responding to Mr Seleka’s question around board members and their view, Mr Chair I think the submission - if you read the submission in its entirety, I think it makes it quite clear that for all intents and purposes, this payment was being
20 made in lieu of an acquisition transaction.

CHAIRPERSON: In?

MR SINGH: In lieu of a transaction that related to an acquisition of the mine. If you look at – Mr Chair, the word proposed owners or ...[intervenes]

CHAIRPERSON: Well, you say in lieu of – in lieu of is in

the face of. You mean in anticipation of ...[intervenes]

MR SINGH: Yes, of an acquisition.

CHAIRPERSON: Ja, okay.

MR SINGH: And I say that Mr Chair because if you look at the submission as I said, if you read it in its entirety, proposed owners – new owners, in the entirety of the document, it gets mentioned at least six to eight times.

CHAIRPERSON: H'm.

MR SINGH: They then go on to mention, Mr Chair if you
10 look at for example paragraph 3.1.6, they mention that a
due diligence has commenced on the 10th of
November 2015 and is currently under way. 3.1.6
...[intervenes]

CHAIRPERSON: You say, 3.1.6.

MR SINGH: Yes.

CHAIRPERSON: Oh, ja it is.

MR SINGH: It says that if you look at the second sentence, Mr Chair. The due diligence commenced around 10th of November and is currently under way.

20 **CHAIRPERSON:** Ja.

MR SINGH: And that is preceded by the fact that the business rescue practitioners had brought together to the table at I think it was a meeting on the 25th of November or there or thereabouts. So, Mr Chair it would be difficult to understand how this would not be anticipated that this

would be a payment that was been made in anticipation of an acquisition of a mine.

CHAIRPERSON: But of course, Mr Singh it is not – the one difficulty is why the board should be asked to resolve that payment be made to somebody who is not the owner of the miners were at the time. Is it not because Tegeta at that stage had not concluded any – had not concluded a sake, is it not?

MR SINGH: Mr Chair that is correct. If you then have
10 regard to the actual underlying contract, Mr Chair you will see that that – the underlying contract contained suspensive conditions.

CHAIRPERSON: [Affirms].

MR SINGH: And those suspensive conditions, Mr Chair would effectively had – would have needed Tegeta to actually take ownership of the mine before the payment would effectively have been made. There were five suspensive conditions contained in the agreement.

CHAIRPERSON: But the resolution did not say that the
20 payment should be before certain conditions were met in this – the actual resolution did not say that.

MR SINGH: Mr Chair, the – the resolution does not say that *per se*, but if you look at ...[intervenes]

CHAIRPERSON: In other words, the resolution that was ask – that the board was asked to provide, was

unconditional. Is it not?

MR SINGH: Well, Mr Chair if you look at 2.1.3 it says:

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

CHAIRPERSON: Yes.

MR SINGH: So, and then if you look at ...[intervenes]

CHAIRPERSON: You say one or more of those approvals
10 were conditions precedent.

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Okay. Where do we find those conditions?

MR SINGH: I think if we just go to the agreement.

CHAIRPERSON: Is it the CSA?

MR SINGH: Yes. Well, no it is the ...[intervenes]

ADV SELEKA SC: Well – no.

MR SINGH: The underlying agreement ...[intervenes]

CHAIRPERSON: The sale agreement?

20 **ADV SELEKA SC:** No, let me try to assist. Mr Singh I found, I have a flag with one on – I wonder whether this is the signed one?

CHAIRPERSON: At page?

ADV SELEKA SC: From page 758.

MR SINGH: 7-5-8.

ADV SELEKA SC: I think for present purposes we can probably use this one.

CHAIRPERSON: Sorry?

ADV SELEKA SC: I am saying, Mr Chair I think for present purposes - this is not the signed one, but ...[intervenes]

CHAIRPERSON: Ja, but it should be the same.

ADV SELEKA SC: But I am assuming we could use this one.

10 **CHAIRPERSON:** Ja. Oh, the agreement you were talking to about was for – was the pre-purchase of coal.

MR SINGH: That is correct.

CHAIRPERSON: As opposed to the sale of coal – of no , no, not coal. The sale of purchase of OCM.

MR SINGH: OCM, yes.

CHAIRPERSON: Ja, okay. Alright.

MR SINGH: So this agreement, Mr Chair is the output of the resolution – the pre-purchase. And you will notice, Mr Chair if you go to page 18-759 ...[intervenes]

20 **CHAIRPERSON:** 18?

MR SINGH: 18 Yes, 18-759 ...[intervenes]

CHAIRPERSON: Oh, the one I am looking at does not have paragraph 18 or clause 18.

MR SINGH: No, no, Sir. Page 18.

CHAIRPERSON: Oh, you are looking at the ...[intervenes]

MR SINGH: Page 18-759.

CHAIRPERSON: Okay, 18 is the Bundle.

MR SINGH: Yes.

CHAIRPERSON: Ja, Bundle 18. You do not need to mention 18, just mention ...[intervenes]

MR SINGH: Oh, okay.

CHAIRPERSON: Okay, what is the page number then?

MR SINGH: 759.

CHAIRPERSON: 759 ja, I am there.

10 **MR SINGH:** And then if you look at condition precedent, paragraph 5 in that ...[intervenes]

CHAIRPERSON: Yes?

MR SINGH: So those agreements there, I mean those conditions speak to them, okay.

CHAIRPERSON: Let me just have a look.

20 “Save for clauses 1, 5 and 7 to 12, all of which become effective immediately, this agreement is subject to the fulfilment of the conditions preceded by no later than 17h00 on 31 March 2016. 5.1. All approvals and concerns under the Mineral and Petroleum Resources Development Act required for the shared transfer including but not limited to Section 11 approval has been obtained

by the parties. At best they share transfer...”

That is about the sale of OCM.

MR SINGH: Yes.

CHAIRPERSON: “All agreements and transactions contemplated in this agreement, with the externals that have been approved by the completion authorities that support OCM, the
10 Companies Safety Act and of course OSB that gives the next confirmation notice that confirm that pursuant the share, transfer the shares on in OCM have been transferred.”

This does not connect with the payment of – or does it, with the payment of that amount in the – or the payment contemplated in the 2.1.2, is it not?

MR SINGH: Mr Chair ...[intervenes]

CHAIRPERSON: Or do I misunderstand something?

20 **MR SINGH:** No, this – this, I think is a draft. You will find that there is another one that, the final one that actually correlates to the R1.6 billion payment.

CHAIRPERSON: Oh, I see.

MR SINGH: Actually if you look at clause 6.2 or 6.1, it does reference to R1.68 billion payment.

CHAIRPERSON: “Eskom will make an advance payment to OCM to pre-purchase future coal supply in terms of the existing coal supply agreement in the amount of R1,680,240 payable on fulfilment of the conditions precedent set out in clause 5.1”

Well, that might connect ...[intervenes]

MR SINGH: And then that leads ...[intervenes]

CHAIRPERSON: The payment, ja.

10 **MR SINGH:** That leads then to 6.2, Mr Chair.

CHAIRPERSON: “6.2 Pursuant to 6.1, Eskom will issue a guarantee in favour of Tegeta in the amount of R1,680,000 to secure the payment of the advance payment. It is recorded that the issue of the grant will be conditional on the similar terms as set out in clause 5 hereof.”

So, clause 6.1 if that also exist in the signed one, says that the advance payment will happen, will be payable on
20 fulfilment of the conditions precedent which means there will have been – there would have been a transfer of the shares from Glencoe to Tegeta.

MR SINGH: To Tegeta.

CHAIRPERSON: So, that is that. Of course that was not before the board because that would have been prepared

after, is it not?

MR SINGH: That is correct, Mr Chair but ...[intervenes]

CHAIRPERSON: Yes. Ja, but

MR SINGH: And you see, 6.1 does ...[intervenes]

CHAIRPERSON: The point I am making is that the agreement that was concluded, ensured that the payment to Tegeta would only happened when the shares have been transferred.

MR SINGH: Well actually, Mr Chair this agreement
10 envisaged a payment to OCM directly.

CHAIRPERSON: Ja.

MR SINGH: And by virtue of providing payment security to Tegeta who was the purchaser of the – of OCM, 6.2 provided the guarantee.

CHAIRPERSON: Ja. Of course, OCM as such the whole thing was whether, is it OCM under Glencoe or OCM under Tegeta. Is it not?

MR SINGH: Hence, Mr Chair this makes it key, hey.

CHAIRPERSON: Ja.

20 **MR SINGH:** That there was a distinction between when transfer of ownership actually happened.

CHAIRPERSON: Yes, yes. No, no, I understand that. The reference to the conditions precedent, you indicate that that payment would only happen after Tegeta has come on board

MR SINGH: On board, exactly.

CHAIRPERSON: Ja. Okay, Mr Seleka?

ADV SELEKA SC: Yes, thank you, Chair. Mr Singh we know that the submission was submitted on an urgent basis to the board. So, so much urgent that the board decided the matter on a round robin basis. What was the reason for the urgency?

MR SINGH: Mr Chair, if we go back to the – where do we get the submission?

10 **ADV SELEKA SC:** The submission, page 493, Eskom Bundle 18, Docket A.

MR SINGH: Mr Chair as I said, the document was looking to alleviate supplier – coal supply risk and based on the discussions that we had with Mr Koko at the time, he identified this to be a significant matter that needed to be considered by the board, and hence submitted the documentation that needed to be considered on an urgent basis.

20 I think it was with him and Ms Daniels that – actually I think it was Ms Daniels that prepared the documentation that it should be a round robin resolution as to whether it needed to go to board of IFC. I think that was something that was also discussed previously in some of the testimony that was provided to the Commission.

But by and large, Mr Chair it was the supply of all risk issue

that led to the urgency that needed to be ...[intervenes]

CHAIRPERSON: But actually, there was no such urgency that the matter could not be discussed by the board in a proper meeting. By then in a few days' time or the following week, is it not?

MR SINGH: Mr Chair, I am not aware of the fact that there was no urgency – I think if Mr Seleka can elaborate on that, then if ...[intervenes]

CHAIRPERSON: From you're your know obviously, he
10 wants to find out from you whether on your understanding, where there any grounds for this to be triggered as so urgent – it is a very big amount, it is so urgent that the board must decide this without a proper meeting. You do not know of any reason why the board could not have been asked to have a proper meeting because risk is an important matter.

MR SINGH: Well, Mr Chair I think, if you look at the state of Eskom at the time, I think that would have played into the matter of whether it was urgent, or not. I think Eskom
20 previously had – I think in 2008, had a coal crisis.

CHAIRPERSON: H'm.

MR SINGH: Which obviously led to issues that arose at the time in terms of load shedding and those issues. In 2015 Eskom was in ...[intervenes]

CHAIRPERSON: Obviously, what happened in 2008 could

not be a grounds for urgency in 2015.

MR SINGH: No, no, Mr Chair I mean - I am saying that there is a history of coal related issues in Eskom.

CHAIRPERSON: No, no, I understand that.

MR SINGH: That led to the issue of load shedding.

CHAIRPERSON: Yes.

MR SINGH: Mr Chair, we were charged at the time – or the board was charged at the time with the issue of alleviating load shedding.

10 **CHAIRPERSON**: Yes, but that could not justified when the board was being asked to consider such an important issue saying deal with it on the phone or something like that, and not ...[intervenes]

MR SINGH: Well, Mr Chair ...[intervenes]

CHAIRPERSON: Not have their proper meeting ...[intervenes]

MR SINGH: If you allow me ...[intervenes]

CHAIRPERSON: Which could be had in a few days' time or even the following week, yes. Now I allow you.

20 **MR SINGH**: Thank you, Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: If we had reference to 2008/ and I agree that it is probably some seven years before this event, but it is not unlike Eskom to have coal crises, firstly in terms 2008. Secondly in 2008, Mr Chair the board also at that time,

considered on an urgent basis via round robin resolution, the issue of coal and coal related contracts.

Mr Chair, in 2008 they were awarded R10 billion worth of contracts on an emergency basis on a round robin resolution. If I am not mistaken, in terms of my understanding and reading of the report, they actually issued R164 billion worth of contracts in that manner.

Secondly, Mr Chair if you then take cognisance of the fact that Eskom I think in 2014 or there or thereabouts, also declared a coal crisis because of wet coal and all of these type of things, which eventually led to one thing which was load shedding.

When we – I mean no. When I got there in August 2015, Mr Chair one of the things that I said to you that we seized with was prevent load shedding. And this was premised on the basis that if this was not addressed, it will result in load shedding.

CHAIRPERSON: But I want to stop you there, Mr Singh because whatever you say, I think you are not going to be saying to me there was – you are aware that there was a proper round of urgency that made this so urgent that there should be no waiting for a few days for the board to have a proper meeting. You are not going to be saying that, in the end.

MR SINGH: Well, Mr Chair if you look at the

correspondence relative to the matter at hand, I think, Mr Chair in discussion with Mr Koko relating to the submission at the time in terms of understanding whether there was an urgent need of what was the nature of the coal - security of supply risk that he had identified.

I think he did mention, Mr Chair that at the time the coal supply from OCM was via the communication from the business rescue practitioners themselves as well as I think the attorneys on record found the business as practitioners. That call was actually only guaranteed up I think until January – 31 January 2016, and ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: In that case, Mr Chair it was imperative that we obviously gained security supply for coal beyond 31 January 2016. That led to Mr Koko engaging with the department of Minerals and Energy.

CHAIRPERSON: No, no, that is fine, Mr Singh. I think in the end the one thing that you cannot say, you are indicating what Mr Koko said and so on, but I think you – it is because I think earlier on, I understood you to be suggesting that maybe somebody else should be asked what the grounds of urgency was. But I may have misunderstood you.

MR SINGH: I mean, Mr Chair ...[intervenes]

CHAIRPERSON: But obviously the – if the supplier of

coal are going to existing supplies would end in a month's time, in two months' time or whatever, the board could meet in three days' time, in four days' time and deal with this matter properly.

MR SINGH: Well, Mr Chair I guess so.

CHAIRPERSON: Yes, because with round robin is it not, there is no proper – there is no discussion among the members. They are just send documentation to say this is what about and each one considers the documentation and
10 indicate whether they support or do not support.

Of course they can raise questions if they want to raise, but there is no discussion such as one you will get in a meeting with them.

MR SINGH: Well, Mr Chair equally so every board member has the right to say well, this is either too risky, I do not understand it or it is too weak.

CHAIRPERSON: No, no, I - that is a fair point, well.

MR SINGH: Ja.

CHAIRPERSON: But that is something that one wants to
20 look at the board members themselves, say what made these board members to think that it was fine not to have a proper meeting and a proper discussion before making this decision.

You know, what made all of them to be comfortable to deal with it on by way of a round robin, you know so,

that too is something to consider because the executives did not force them to consider this matter through a round robin.

Whatever it was, it was a suggestion or a request, but it was up to them to say we think for this type of decision we need a meeting.

MR SINGH: That is correct.

CHAIRPERSON: And we do not think that you people have the proper grounds to say we cannot have a meeting
10 in a few days' time.

MR SINGH: That is correct.

CHAIRPERSON: Ja. Mr Seleka?

ADV SELEKA SC: Yes, thank you. Mr Singh, and my question also arises from the fact that the underlying agreement you have referred which is the supply of coal – purchase of coal agreement, did not in part or in most part come into force.

It was subject to this suspensive conditions that were to be fulfilled on the 31st of March 2016. And I
20 remember your answer to the Parliamentary portfolio Committee, you said coal could not be supplied immediately in terms of this agreement.

MR SINGH: In terms of the coal supply again?

CHAIRPERSON: The pre-purchase.

ADV SELEKA SC: The underlying agreement.

CHAIRPERSON: The pre-purchase.

MR SINGH: That is correct.

ADV SELEKA SC: Say again?

MR SINGH: That is correct.

ADV SELEKA SC: That is correct. So, that all the more and it gets the urgency with which the decision was made.

MR SINGH: Mr Chair, I think if we are going to answer that question, we have to then go to another agreement that I think the business rescue practitioners refers to and
10 I think Mr Koko also referred to it in his testimony if I am not mistaken.

Is the actual – and this is the agreement that maybe you are referring to, Mr Chair the actual agreement that was signed between Tegeta and Glencoe for the purchase of OCM.

ADV SELEKA SC: The sale of shares agreement?

MR SINGH: Yes, between Tegeta and Glencoe.

ADV SELEKA SC: Yes – no, I understand.

MR SINGH: Yes.

20 **CHAIRPERSON:** But that will not help with the issue of the urgency of the resolution.

MR SINGH: Well, Chair if you look at one of those there was in terms of that agreement, Mr Chair there was an undertaking that there would be an agreement or a pre-financing agreement – a pre-commencement financing

agreement or something that was mentioned. And again,
Mr Chair I was not party to these agreements
...[intervenes]

CHAIRPERSON: Ja, I think you were not a party.

MR SINGH: Ja.

CHAIRPERSON: We should not spend too much time on
something that you were not involved in.

MR SINGH: But it answers his question, Mr Chair it
becomes ...[intervenes]

10 **CHAIRPERSON:** Yes, what is the answer that it provides?

MR SINGH: There was a pre-commencement agreement –
pre-commencement finance agreement that was agreed to
in terms of that agreement between the BRP's and Tegeta.

CHAIRPERSON: Hmm.

MR SINGH: That they would supply coal and they would
then in turn supply coal free of scope. So, that which in
terms of that agreement, it – there was security of supply.

CHAIRPERSON: Yes.

20 **MR SINGH:** In terms of this agreement yes, there would
have been no coal supply because it was suspensive.

CHAIRPERSON: Ja, ja.

MR SINGH: But in terms of the pre-commencement
financing agreement ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: That the business rescue practitioners have

gone into quite a detail of discussion, that enabled Eskom to still obtain supply of coal.

CHAIRPERSON: And when was that pre-finance or whatever agreement?

MR SINGH: I think it was a – I think it was an agreement that was signed as part of the as \i said the sale of shares agreement between Tegeta and Glencoe.

CHAIRPERSON: And when would that have been that you remember?

10 **MR SINGH:** I think that was around 1`0th of whenever – 10th of December ...[intervenes]

CHAIRPERSON: December?

MR SINGH: Or the 8th of December.

CHAIRPERSON: And this a resolution was what date?

MR SINGH: This was on the 8th or 9th – 8th or 9th.

CHAIRPERSON: Ja.

MR SINGH: 9 December, Chair.

CHAIRPERSON: Ja. Okay, Mr Seleka?

20 **ADV SELEKA SC:** Thank you, Chair. Ja, Mr Singh the – that you are saying to the Chairperson it was clear from this submission to the board that payment – the pre-payment was to be made to Tegeta.

MR SINGH: Mr Chair, the pre-payment was in terms of the agreement. The underlying legal agreement that we have just read together with Chairman.

CHAIRPERSON: Yes.

MR SINGH: 6.1 Of that agreement made clear that the payment would be made to OCM.

CHAIRPERSON: Yes.

MR SINGH: And in order for us to get payments accepted to Tegeta in terms of the R1.68, that would have been paid under the suspensive conditions of the coal, the 6.2 of that agreement gave effect to a guarantee.

ADV SELEKA SC: Sorry, I was not talking about the
10 submission. You are saying it is clear from the submission that the payment – the pre-payment of R1.68 billion was to be made to Tegeta.

CHAIRPERSON: Yes, that is what you said.

ADV SELEKA SC: Yes.

MR SINGH: Well, on reading of the agreement, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think that is what it is.

ADV SELEKA SC: So, in order to purchase coal from
20 Tegeta, that would coal supply ...[intervenes]

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Was to facilitate to secure coal. The submission said the board should provide a resolution along the lines of the – of 2.1.2. So, it is clear that the – the resolution contemplated that the payment would go to

Tegeta. Remember, those are the issues we raised with the board.

ADV SELEKA SC: That is right.

CHAIRPERSON: Board members and they said that for a number of – well, maybe all of them those who gave evidence here, said they were under the impression that they were authorising payment to Glencoe.

ADV SELEKA SC: Glencoe, yes.

CHAIRPERSON: And I guess that Mr Singh is going to
10 say but how could they be – how could they have thought that.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because the submission that was given to them is clear that they should authorise payment to the ...[intervenes]

ADV SELEKA SC: The proposed owner.

CHAIRPERSON: To the proposed owners.

ADV SELEKA SC: Yes.

MR SINGH: But ...[intervenes]

20 **CHAIRPERSON:** Which is what we raised with them.

ADV SELEKA SC: Yes.

MR SINGH: Mr Chair I think it is important from my perspective, to make a distinction between the submission ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: And the legally binding agreement that flowed from the submission.

CHAIRPERSON: Yes.

MR SINGH: Or flowed from the resolution.

CHAIRPERSON: But for purposes of the board what one is looking at is what was before the board when they made decision to authorise to do the – to give the resolution that they gave. You see, that is what is important to say what information was placed before them and we know the
10 submission was before the council.

MR SINGH: Ja.

CHAIRPERSON: And the submission talks about concluding an agreement and payment to the proposed owners, so as far as I can remember none of them was able to explain how they could all have missed those words in 2.1.2 and thought that they were being asked to give a resolution that payment, prepayment be made to Glencor or Glencor, to OCM under Glencor.

MR SINGH: Mr Chair, I think also, I think if you look at
20 2.1, 2.1.2 and again maybe it is just semantics, but maybe just for the sake of me pointing it out, it is authorised to negotiate and conclude a pre-purchase of coal agreement with the proposed owners of OCM.

CHAIRPERSON: Ja.

MR SINGH: Okay, it does not say it needs to make a

payment to the proposed owners of OCM.

CHAIRPERSON: Yes. This is the... Where is the actual resolution?

MR SINGH: It is on 493 sir, page 493 and we go back to 2.1.2.

CHAIRPERSON: This is a summary.

MR SINGH: Chair, page 493.

CHAIRPERSON: Yes, I can see that.

10 **MR SINGH:** And then we look again at your paragraph of 2.1.2.

CHAIRPERSON: Yes.

MR SINGH: We basically asked for authority to negotiate and conclude a key purchase of coal agreement.

CHAIRPERSON: Ja.

MR SINGH: With the proposed owners of OCM.

20 **CHAIRPERSON:** Yes, but obviously if you are going to secure coal, because as I understand it this was securing coal for future, if the people that you are seeking to secure coal from are the people you are going to reach an agreement with, you are asked to reach an agreement with, it makes sense that the payment would then go to them, is it not?

MR SINGH: Mr Chair, this is where I am trying to draw the distinction.

CHAIRPERSON: Yes.

MR SINGH: If you look at this it says negotiate and conclude.

CHAIRPERSON: Ja.

MR SINGH: The key purchase agreement.

CHAIRPERSON: Yes.

MR SINGH: It does not say anything about a payment.

CHAIRPERSON: Yes.

MR SINGH: If you then go to the underlying agreement that we have read, 6.1 of that makes it clear that the
10 payment will go to OCM.

CHAIRPERSON: Yes.

MR SINGH: When the suspensive conditions are fulfilled.

CHAIRPERSON: Yes, but that OCM is OCM under Tegeta.

MR SINGH: When the suspensive conditions have been fulfilled.

CHAIRPERSON: Obviously, ja.

MR SINGH: Yes.

CHAIRPERSON: Ja, so when he says OCM in that agreement it does not mean OCM under Glencor, because
20 the conditions precedent that would have happened, would have brought in ...[intervenes]

MR SINGH: Yes Mr Chair, but then if you look at the submission it says what those, that money would have been used for.

CHAIRPERSON: Ja.

MR SINGH: It would have been used to settle OCM creditors as part of the sale process.

CHAIRPERSON: Well, I am not sure about that part, but Mr Seleka, continue.

ADV SELEKA SC: Yes, that makes it difficult Mr Singh, because that is why the Board said they thought, and particularly IFC, Doctor Naidoo said for that reason he thought you were paying Glencor and he wrote a support letter saying well, now OCM will come out of business
10 rescue, the debts will be paid, it will operate normally, let the CEO of Eskom and that of Glencor make a joint statement.

MR SINGH: But Mr Chair, the only difficulty we have with Mr Naidoo's summary is that he then mentions that in that same summary that he is very happy that the ownership of OCM is now going to be 51% BEE empowered, so if that was the case how it was it going to be something that was going to be ...[intervenes]

CHAIRPERSON: I am sorry, he says he is happy that?

20 **MR SINGH:** I am saying that in that summary Mr Naidoo makes he alludes to the fact that through this transaction OCM becomes a 51% empowered entity.

CHAIRPERSON: Which was only going to happen because of Tegeta.

MR SINGH: Tegeta.

CHAIRPERSON: Ja.

MR SINGH: So hence I am saying again I am confused as to how he believed that this was a transaction other than what we had contemplated in the documents.

ADV SELEKA SC: Yes, but the question obviously is; which liabilities of OCM were going to be paid by the prepayment of R1, 68 billion? You have answer that question. Tegeta is not in the picture at this stage, it is a proposed owner.

10 **MR SINGH:** Yes, and hence the suspensive conditions in the underlying agreement that we have just read. We do make mention of the fact that, if you look at 3.6.2 ...[intervenes]

CHAIRPERSON: Just one second, Mr Singh. Mr Seleka, the Board resolution, you say it was made on the 9th of December.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And the agreement that Mr Singh refers to as the underlying agreement was made on the?

20 **ADV SELEKA SC:** 10 December.

CHAIRPERSON: Ja, in that event Mr Singh, you cannot use the agreement of the 10th of December to explain the decision of the 9th of December, because that was not, that had not happened. The Board did not have the agreement of the 10th of December, is it not?

MR SINGH: Neither did ...[intervenes]

CHAIRPERSON: When they made the resolution.

MR SINGH: Yes, the agreement did to exist at that time.

CHAIRPERSON: Ja, it did not exist at that time.

MR SINGH: Yes.

CHAIRPERSON: And in the submission there was also nothing that was saying, there was nothing to the effect that the agreement is about to be concluded on the 10th or anything like that, is it not?

10 **MR SINGH:** Mr Chair, I think we did ...[intervenes]

CHAIRPERSON: There might not be a date, but it was indicated that it might happen.

MR SINGH: Mr Chair, if you look at 3.1.7, which is on page 494, the proposed purchase that was presented at the meeting confirmed that the company had commenced due diligences and that it would, it was committed to a 30 day, or a definitive agreement to be in place by 15 December 2015.

20 **CHAIRPERSON:** Yes, but there was not even a draft agreement at that stage before the Board, or was there?

MR SINGH: No, no, there was not a draft agreement.

CHAIRPERSON: Ja, ja. No, I am not sure that you, one can use the terms of, I do not think you can use the terms of the agreement that were not in place at the time the Board made the decision to explain the Board's decision.

MR SINGH: No Mr Chair, and this is why I am saying I am drawing a distinction between the resolution and the actual legal underlying binding agreement.

CHAIRPERSON: Ja.

MR SINGH: So the Board gave us a resolution to include, negotiate and include a pre-purchase of coal agreement.

CHAIRPERSON: And completely, actually completely left the terms and conditions of that agreement to you, for those that it authorised to negotiate, is it not?

10 **MR SINGH**: We did ...[intervenes]

CHAIRPERSON: So it did not even know what the terms and conditions of that agreement would be, they gave you and the CEO and the Gupta Enterprise for Generation a blank cheque.

MR SINGH: Mr Chair, under 'key assumptions' I think we did indicate that, well these were flowing to the, these were flowing to the conditions precedent.

CHAIRPERSON: Yes?

MR SINGH: Let me just find that.

20 **CHAIRPERSON**: Well, I do not know, mister ...[intervenes]

MR SINGH: Mr Chair, I think the agreement would have basically been an agreement to purchase coal from OCM at a discount of 5% and for the Kroonfontein Mine at a specific price that is reflected at 3.3.1.

CHAIRPERSON: Ja, okay. Mr Seleka, continue.

ADV SELEKA SC: So you are right, the submission related to the prepayment, pre-purchase of coal, the underlying agreement issues a guarantee to Tegeta. Are you able to explain to the Chairperson why would an SOE have decided to issue a guarantee to a private entity?

MR SINGH: Mr Chair, as I have explained, the underlying agreement contains suspensive conditions and the suspensive conditions would have been fulfilled over a
10 period of time, as Ms Daniels had explained to me at the time that the proposed purchases, because Tegeta at the time required payment certainty that Eskom would be in a position to perform when those suspensive conditions were fulfilled and that was the need for us to issue the guarantee in view of that.

ADV SELEKA SC: You were guaranteeing that Eskom would be able to perform.

MR SINGH: That is correct.

ADV SELEKA SC: Ja, but Eskom was being supplied coal
20 by OCM under Glencor and as I heard through you, that interim arrangement continued through July 2016. There is another date, August 2016. You did not give them a guarantee that you will perform.

MR SINGH: Mr Chair, that was under a normal coal supply agreement.

CHAIRPERSON: When you say guaranteed to perform, do you mean the payment?

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes, Chair. If I understand you correctly ...[intervenes]

CHAIRPERSON: It is a guarantee, it was a guarantee for payment, is it not?

MR SINGH: This was a guarantee specifically for the
10 payment of R1, 6 billion under the agreement.

CHAIRPERSON: Ja. If you say guaranteed to perform it might ...[intervenes]

ADV SELEKA SC: Okay, yes.

CHAIRPERSON: So let us call it what it is.

ADV SELEKA SC: Yes. So you did not give them the guarantee that you will pay them, they supplied you coal and you paid.

MR SINGH: Yes Mr Chair, because that was in terms of the agreement that required them to supply coal at R150 a
20 ton on a monthly basis.

ADV SELEKA SC: Yes, and they were the owners of the mine, Tegeta was not, in December 2015.

MR SINGH: That is correct.

ADV SELEKA SC: You do not find it strange that you needed to give Tegeta a guarantee that you will pay them?

MR SINGH: Well Mr Chair, if you look at the, the nature of the coal supply agreement with OCM of R150 a ton, the nature is different to the agreement that was reached for the pre-purchase of coal from OCM. The pre-purchase agreement was premised on the basis that Eskom would need to pay R1, 6 billion on the fulfilment of the suspensive conditions and that R1, 6 billion was the payment risk that Tegeta was taking on Eskom, if we had the ability to perform in terms of the agreement, the pre-
10 purchase agreement.

CHAIRPERSON: The risk that Tegeta was taking with Eskom at a time when it was not even the owner of the mine.

MR SINGH: In terms of the suspensive conditions, yes.

CHAIRPERSON: Ja, yes.

ADV SELEKA SC: Yes. Mr Singh, then the... Sorry, I am trying to think what I wanted to ask you. So there is this prepayment, you guarantee, Tegeta also gives you coal in January 2016, February 2016, March, April 2016, without a
20 guarantee.

MR SINGH: Mr Chair, that as I said would follow the pre-commencement financing arrangement that they entered into with the VRPs.

ADV SELEKA SC: And did you know that they were buying the coal to supply to Arnot they were buying it from

OCM?

MR SINGH: Mr Seleka, I did not have personal knowledge of that at the time, no.

ADV SELEKA SC: Of those interim agreements they had with OCM?

MR SINGH: Yes. I mean look, I mean we now know that those agreements were in place.

ADV SELEKA SC: Yes.

MR SINGH: And they were in place between Tegeta and
10 the VRP.

ADV SELEKA SC: Yes.

MR SINGH: And then basically then, Trillian basically supplied us through those pre-commencement financing agreement.

ADV SELEKA SC: Yes.

MR SINGH: Also when I say 'us' I mean Eskom.

ADV SELEKA SC: But I know that you knew about this at the Parliamentary Portfolio Committee.

MR SINGH: No.

20 **ADV SELEKA SC**: You even said that, when you were asked about a mark-up, that Eskom would pay because it is using an intermediary, it is using Tegeta to get coal from OCM. Tegeta will impose a mark-up when they on-sale to you or Eskom, and you said it makes business sense to do that.

MR SINGH: Mr Chair, I do not recall the exact context in terms of however that question was asked at the Portfolio Committee, but based on what we know now it seems like Tegeta basically entered into an agreement with the business rescue practitioners at the same rate at the coal supply agreement and basically sold it to Eskom at the same rate.

CHAIRPERSON: Do you want to go to the relevant parts of the transcript or record of the Parliamentary Portfolio
10 Committee so that Mr Singh can be reminded of the context?

ADV SELEKA SC: Yes. I think my junior will locate it.

CHAIRPERSON: Ja, you can continue with ...[intervenes]

ADV SELEKA SC: Do you have it in Mr Singh's bundle?
16A. Thank you. Then I will come back to that, Mr Singh, when we deal with the R658 million prepayment. So let us see what is your comment on this. Tegeta is the proposed owner, it was about to acquire and you made a very interesting, interesting statement, you said the payment,
20 the prepayment was being made in lieu of acquisition of the mine, earlier.

MR SINGH: No, maybe I used the wrong word, I think the Chair corrected me.

ADV SELEKA SC: Well ja, but that is an interesting statement, because let us hear what you say to this; at the

time Tegeta, Oak Bay is seeking to acquire OCM
...[intervenes]

MR SINGH: Sorry, I just did not hear the opening of it.

ADV SELEKA SC: At the time, during this time December 2015, well in fact at the time of the submission they had agreed on 2 December 2015 after Minister Zwane was in Switzerland, they had orally agreed or come to terms on their agreement for the acquisition of shares and Tegeta, Oak Bay had offered R2, 15 billion as the purchase price,
10 which was accepted.

It has been alleged, and I want your reaction to this, that this transaction we are dealing with here, the pre-purchase agreement within Eskom, starting with the submission, converted into a guarantee, followed with this pre-purchase agreement, was in fact a sham to assist Tegeta Oak Bay with the financial facility or capacity to show that it can pay the purchase price. What is your comment on that?

MR SINGH: Well Mr Chair, let me start here, it is always
20 good to go back to the underlying legal agreements. If we had reference to that, the supply agreement that the, paragraph 6.2 of that agreement and again Mr Seleka, I will ask your help for that, I think it was, 843 I think it was.

ADV SELEKA SC: Do you want the supply agreement?

MR SINGH: Yes please, sir.

ADV SELEKA SC: The supply agreement. I will use the one on page 759.

MR SINGH: 759?

ADV SELEKA SC: Yes.

MR SINGH: So Mr Chair, if I take you to 759, which again that is the unsigned version, but I am assuming the signed version resembles this.

ADV SELEKA SC: It is further on, the signed version is further on.

10 **MR SINGH:** But I think for the present purposes it is fine.

CHAIRPERSON: Let us go to the signed one.

MR SINGH: Page 774.

ADV SELEKA SC: 774. I see it is ...[intervenes]

MR SINGH: No, that is not the signed one.

CHAIRPERSON: Ja, it is not the signed one.

ADV SELEKA SC: Ja, it is only signed by Ms Lavindra Nath.

MR SINGH: 774.

CHAIRPERSON: Signed by Tegeta only.

20 **ADV SELEKA SC:** You have not signed that one, Mr Singh.

MR SINGH: My 744 does not have a signed one at all.

ADV SELEKA SC: No, no, that is the beginning of the agreement, 774.

MR SINGH: 776 Is not signed.

ADV SELEKA SC: The signed page, but only signed by one party, is 782.

MR SINGH: 782.

ADV SELEKA SC: Are you in Eskom bundle A?

MR SINGH: 18, Hey?

ADV SELEKA SC: 18A, yes. Sorry. So we have 782.

MR SINGH: 782, Yes.

ADV SELEKA SC: That is the correct document.

MR SINGH: So we can use this, Mr Chair.

10 **ADV SELEKA SC:** Ja, the ...[intervenes]

MR SINGH: So we go to, for our specific response to the question let us go to page 780. You will notice Mr Chair, if we look at clause 6.1 it is similar to the clause that you read in the previous agreement.

CHAIRPERSON: Ja.

MR SINGH: And then 6.2 is similar to the clause that you read in the previous agreement.

CHAIRPERSON: Yes.

20 **MR SINGH:** So 6.1 makes reference to the physical cash payment and then 6.2 refers to the bank guarantee.

CHAIRPERSON: Yes.

MR SINGH: Now of interest here in responding to the question is the last sentence of 6.2 it is recorded that the issue of the guarantee will be conditional on the similar terms set out on clause 5 hereof and clause 5 hereof

Mr Chair, is obviously the ...[intervenes]

CHAIRPERSON: Sorry, you are reading from?

MR SINGH: Sorry Mr Chair, page 780.

CHAIRPERSON: Ja?

MR SINGH: If you look at 6.2 it deals with the guarantee.

CHAIRPERSON: Yes.

MR SINGH: And it is the same as you have read in the draft agreement.

CHAIRPERSON: Yes.

10 **MR SINGH:** But of relevance to us here is the last sentence of 6.2. It says it is recorded that the issue of legality will be conditional on the similar terms as set out in clause 5 hereof.

CHAIRPERSON: Ja.

MR SINGH: Which means it is the conditions precedent.

CHAIRPERSON: Ja.

MR SINGH: What it means Chair, is that we have signed this agreement and we basically said to Tegeta we are happy to give you this guarantee in good faith to show that
20 we have the ability to perform, but just note that in order for that to happen, whatever these suspensive conditions are in this agreement it informs this, the guarantee that you are going to get, we will form, the suspensive conditions will be mirrored therein and Mr Chair, if you look at the actual guarantee that was then issued, again I am

going to ask Mr Seleka for his help to take me to it, I think it is probably before this. Ah I think Mr Chair, I think this answers a few questions at the same time. So Mr Chair, if you go to page 719 of the same bundle that you are in.

CHAIRPERSON: 719?

MR SINGH: Yes. This is actually a version of the signed agreement, Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: Okay, it goes form 719, 720 and then
10 effectively I think 721 should be the, 721 and 722 is basically the ...[intervenes]

CHAIRPERSON: Oh, this is the signed ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: The copy of the signed agreement.

MR SINGH: Yes, so that answers ...[intervenes]

CHAIRPERSON: So we must note where it is to be found, Mr Seleka.

ADV SELEKA SC: Yes.

MR SINGH: Yes. So going back to 6.2, as I said it
20 references the suspensive conditions. Then if you go to 717, Mr Chair, this is actually the actual guarantee that is now issued by Absa in favour of Tegeta.

CHAIRPERSON: Yes.

MR SINGH: Giving effect to clause 6.2 of that underlying agreement.

CHAIRPERSON: Yes.

MR SINGH: You will notice that point 2 of that guarantee on page 717 Mr Chair, contains the same suspensive conditions as reflected in clause 5 of the agreement.

CHAIRPERSON: Ja.

MR SINGH: And you will notice Mr Chair, that the guarantee has basically been issued as a non negotiable, that is on the top of page 717.

CHAIRPERSON: Yes.

10 **MR SINGH:** And it is covered again in clause 7 on page 718 where it says this agreement is neither negotiable, nor transferable and it is restricted to the payment of the sum of money only, and limited to the guaranteed amount.

So Mr Chair, where I am going with this is that for any, for any party to rely on either the underlying pre-purchase agreement or to rely on the performance guarantee prior to the suspensive conditions being fulfilled in issuing any sort of comfort that R1, 6 billion would be
20 raised by Tegeta on the strength of those two documents, would be doing so very recklessly, Mr Chair.

CHAIRPERSON: Yes?

MR SINGH: The second point Mr Chair, is if you have regard to the evidence of Mr Miles and we can go to the specific pages and paragraphs if we need to, but I think Mr

Miles has given his affidavit or statement and in there Mr Chair, he does refer to the fact that there were numerous times that they had tried to establish whether Tegeta had the ability to perform in terms of the R2, 15 billion and in those Mr Chair, they were not provided with the required comfort that they were looking for in terms of being able to ascertain whether Tegeta had the ability to perform or not.

It does not make reference to this guarantee, nor
10 the underlying pre-purchase of coal agreement as comfort that he took in terms of being able to run this thing, whether Tegeta had the ability to perform or not.

I think there was a letter that was provided to the BRPs at some point in time that referred to the fact that Tegeta had the ability to perform. I think the business rescue practitioners together with the Consortium Bank rejected that assertion and requested Tegeta to confirm that through a swift note, which is obviously a system that the banks use, and that was not possible and Mr Miles did
20 not confirm it.

So Mr Chair, if this instrument was in any way used and if anyone had placed reliance on this instrument Mr Chair, the request for it to have been confirmed by a swift would have been done.

CHAIRPERSON: But quite clearly Tegeta made out

something to, or was, or appears to have been in need of either obtaining the cash as soon as possible or in need of a guarantee in regard to the coal, for whatever reason. It was not prepared to just work on the basis of reach an agreement, sign on behalf of Eskom to say you will give us coal for this period and we will pay you, we are an SOE, we are not going to fail, prepared to rely on that situation only. They either needed to have cash or to have a bank guarantee in regard to that coal.

10 **MR SINGH:** Well Mr Chair, that may have been the case.

CHAIRPERSON: Ja. Mr Seleka, I do not know whether we have spent too much time on this.

ADV SELEKA SC: Ja, no, I am ready to move on, Chair. Mr Singh, on the... So that is the R1, 6 billion converted into a guarantee, which I understand was never used, that guarantee, so the guarantee was never used.

MR SINGH: No sir, it was not.

ADV SELEKA SC: When you get to the 659, and just remember, bear in mind throughout this period that
20 according to Eskom's attorneys, not only OCM, but Eskom's attorneys, there are agreements with Eskom and OCM to continue supplying coal to Eskom from September at least 2015 right through to July, August 2016. Now comes the prepayment submission of April 2016. Am I correct that you also signed that one, or you did not sign

it?

MR SINGH: No, sir.

ADV SELEKA SC: No, you did not sign it. Do you have...
Oh sorry, before I move then, sorry Chair, before I move there, we have seen from the documentation here that the submission in regard to the R1, 6 billion was sent by Lupia to Eric Wood, or is it yourself who sent it?

MR SINGH: I think in terms of the documentation Mr Chair, I think it was my PA that sent it to Mr Wood.

10 **ADV SELEKA SC:** Did she do it at your behest?

MR SINGH: Yes, sir.

ADV SELEKA SC: Can you explain, why did you involve them? Because we have seen that not only does it go to Mr Eric Wood, it goes to Businessman Infoportal who comments and says he wants the PFMA requirement to be taken out and he says he does not want it to go to IFC, he wants the resolution to go to the Board.

MR SINGH: Mr Chair yes, in terms of answering the question as to why involving Regiments Mr Chair, at the
20 time you would recall that Regiments was involved with the corporate plan of, let us say Regiments/Trillian was involved with the corporate plan of Eskom at the time and Mr Chair, they were also, as you will recall, involved in, later on, issues relating of the MSA and in the MSA there were, as Mr Seleka pointed out to us previously, there were

cash unlocking opportunities that were being explored and they obviously had access to information relating to Eskom, Eskom's coal, Eskom finances and alike at the time.

I then requested, Mr Chair, because on the version that I was provided the financial considerations relating to the R1, 6 billion prepayment in my view was not duly considered and I asked Mr Wood to apply his mind in terms of the financial implications of a transaction of this nature
10 and at that stage Mr Chair, he then revised the document to include the implications and the, or revised net present value relating to the transaction.

ADV SELEKA SC: Did you know who is Businessman Infoportal?

MR SINGH: No sir, I did not.

ADV SELEKA SC: Did you see the e-mail that was exchanged between him and Mr Eric Wood?

MR SINGH: At the time?

ADV SELEKA SC: Yes.

20 **MR SINGH:** No.

ADV SELEKA SC: Did you go to the offices of Mr Eric Wood?

MR SINGH: I occasionally, due to business needs and meetings, yes I did.

ADV SELEKA SC: Yes, but specifically in relation to this?

MR SINGH: No, sir.

ADV SELEKA SC: Okay. Please look at the affidavit of Ms Fahima, not now, but you will look at it, we have exchanged it with your lawyers. Now in respect of the 659 prepayment you feature in the BTC meeting of the 13th of March, the 13th of April 2016. Chair, I will find the reference in a short while.

And then Mr Singh, according to the minutes you apologised to the BTC for not, for having overlooked the
10 fact that Tegeta was facing going concern issues in that the banks had closed their accounts and they found it difficult to trade. Do you recall that?

MR SINGH: Mr Chair, I do not recall that.

ADV SELEKA SC: Okay. Should I find the minutes for you?

MR SINGH: Indeed please.

ADV SELEKA SC: Thank you, Chair. Chair, I will find the minutes of BTC meeting of 13 April 2016.

CHAIRPERSON: What is the point about those minutes?

20 **ADV SELEKA SC:** Yes, what is recorded in the minutes or captured in the minutes is the apology by Mr Singh saying to the Board:

“I apologise. I overlooked to disclose the facts or to report to you, BTC, that Tegeta is facing going concern issues in that the

banks have closed their accounts.”

Because that raised the question mark as to whether the prepayment of R659 million could still be made. It might be difficult for them in the circumstances to even supply coal, but Mr Singh says he cannot recall that aspect and my junior is looking for that.

CHAIRPERSON: What are the topics you wanted to cover with him this evening?

ADV SELEKA SC: Yes, this is, we are now on the third
10 one Chair, this is, we are now on the third one, which is the last one, the prepayment of, the decision of 1.6, the guarantee.

CHAIRPERSON: Ja.

ADV SELEKA SC: And now the 659 prepayment.

CHAIRPERSON: Okay, alright. Ja, I just want us to cover as much as we can.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: If you are able to finish whatever questions you have of him this evening, all the better.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: But if despite your best efforts you are not able to, then we take it from there, because Wednesday has been set aside for that. Then let us try.

ADV SELEKA SC: Ja. I am nearly actually finished.

CHAIRPERSON: Okay no, that is fine.

ADV SELEKA SC: I am nearly actually finished.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Singh and I will be left with the small issues to tidy up on Wednesday. Mr Singh then ...[intervenes]

CHAIRPERSON: If they are small issues they could be dealt with in written form.

ADV SELEKA SC: Yes.

CHAIRPERSON: So in other words, he only has to come
10 back on Wednesday if there is a real need.

ADV SELEKA SC: Yes.

CHAIRPERSON: The small issues they can be dealt with in, you can send a request and he can do an affidavit to respond to that.

ADV SELEKA SC: Yes, yes.

MR SINGH: Mr Chair ...[intervenes]

CHAIRPERSON: You wanted to say something, Mr Singh.
Ja?

MR SINGH: Yes. I mean in terms of, just for the sake of
20 expediency, just for completeness in my response to Mr Seleka's question why the minutes are being sought, Mr Chair, I do not recall the apology as minuted, because I never made the apology.

CHAIRPERSON: Okay.

MR SINGH: In that the minutes are an incorrect reflection

of what transpired at the meeting.

CHAIRPERSON: Are you suggesting that you are aware that the minutes reflect an apology, but you say you do not recall having made it, or what is the position?

MR SINGH: So Mr Chair, I think before I ...[intervenes]

CHAIRPERSON: Oh, you are saying to the extent that the minutes may reflect ...[intervenes]

MR SINGH: Reflect it, yes.

CHAIRPERSON: An apology, you do not recall having
10 made such an apology.

MR SINGH: Yes, and the minutes are an incorrect reflection.

CHAIRPERSON: If that is what they reflect?

MR SINGH: If that is what they say.

CHAIRPERSON: Okay.

MR SINGH: And if we get the minutes as well as the submission for the 11th of April it will be quite clear in terms of the, let us call it the inaccuracy of the minute.

CHAIRPERSON: Yes. Mr Seleka?

20 **ADV SELEKA SC:** Yes, thank you Chair, I found the minutes, Eskom bundle 18(b).

CHAIRPERSON: What is the point about the apology again?

ADV SELEKA SC: Tegeta faced with the closing of bank accounts, the acknowledgement that it might, it may not be

able to trade, the decision however on the 13th which was made on the 11th of April 2016, it hangs in the balance, but nonetheless they decide to make the prepayment.

CHAIRPERSON: Yes.

ADV SELEKA SC: No the real question is; why was the prepayment made? And Mr Singh can address, the question is ultimately going to be; were you making the prepayment to help Tegeta which was in financial distress because the bank had closed their accounts when you
10 made the prepayment, and why could you not make the payment in the normal course? You supply coal and you ...[intervenes]

CHAIRPERSON: But if they already had the obligation to pay, to make the prepayment, would the closing of the accounts obliterate the obligation? In other words, whether they were helping out Tegeta, is that not something that should be looked at prior to the conclusion of the agreement itself and so on, and the resolution?

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Because if they already have a legal obligation to pay, I am not sure that the banks closed their accounts, I mean that would mean that they do not have to, they do not owe, they must not honour their obligation.

ADV SELEKA SC: Yes Chair, the question obviously arises as to whether there was that legal obligation. So

what has, and I appreciate, because I am not taking Mr Singh through that, because he says he was not involved. So I wanted to zoom into his role when this decision was made, it is on the 11th of April at the meetings held by telephone conference at nine o'clock in the evening, but is made on the basis of a request and we traversed that with Ms – Dr Ayanda Ntete on the basis of the request from Tegeta for the prepayment.

So there is no contract in place. They made that
 10 decision on the 11th of April when the BTC was scheduled to sit on the 13th of April 2016. It ultimately sits on the 13th of April and it discusses the same issue. On that day the payment was made with the instruction that it should be made before the banks closed on that day, but Chair, we must read that also, so that is the one aspect about Tegeta struggling, but I also want, I need to put to Mr Singh the evidence of Mr Pierce Marsden and Mr Clinton Efron who says prior to the 13th Mr Hawa comes to him and say we are 600 million short.

20 **CHAIRPERSON:** Yes, okay.

ADV SELEKA SC: So Mr Singh, it is those two aspects. Chair, can I ...[intervenes]

CHAIRPERSON: No, no, no, it is fine, go ahead, ja.

ADV SELEKA SC: Ja, if you go, if we go to the minutes, I gave you the page, Eskom bundle 18(b).

MR SINGH: Page?

ADV SELEKA SC: Page 971, 972.

CHAIRPERSON: 971?

ADV SELEKA SC: 971. The minute starts there.

MR SINGH: 971?

ADV SELEKA SC: 971.

MR SINGH: Yes?

ADV SELEKA SC: You see the minutes of the Eskom Board Tender Committee meeting held at the boardroom,
10 13 April 2016 at 09:00.

MR SINGH: Yes.

ADV SELEKA SC: You see that. So you were present in the meeting together with other or some of your colleagues. Page 972, paragraph 41.

MR SINGH: 4.1.

ADV SELEKA SC: 4.1, Thank you. Special BTC meeting, confirmation from CFO in respect of securities from Tegeta Resources.

20 “The CFO recapped that the submission tabled before the special BTC meeting held on the 11th of April 2016 had been reviewed by him, along with the review of the security package table from Tegeta Resources. He apologised for having overlooked the consideration of the current

circumstances around Tegeta.”

Do you see that?

MR SINGH: Yes.

ADV SELEKA SC: Yes.

10 “There were various issues relating to the challenges the company was facing from its banking institutions. Eskom had taken cession over the company’s revenue, a lean over the coal assets, et cetera, which formed the security package required for the transaction under consideration. In light of current events being experienced by Tegeta, questions had arisen around Tegeta’s going concern status over the next three to 12 months, there was therefore no value to Eskom in holding the cession of the revenue, because without bank accounts the company would not be in a position to operate. The above challenges were identified post the BTC’s approval having been given to the tabled submission at the special committee meeting.”

20 Do you see that apology is recorded?

MR SINGH: I do, yes.

ADV SELEKA SC: Do you still say you do not, I mean the

minutes are incorrect?

MR SINGH: That is correct. Mr Chair, I say that having regard to, if you look at the second line it says ‘along with the review of the security package table from Tegeta Resources’, which would mean that the BTC submission on the 11th had a BTC submission or security package that was attached. Now if the, I do not know if we have the actual BTC submission from the 11th, do we have it?

ADV SELEKA SC: Say again?

10 **MR SINGH**: The BTC submission for the 11th.

ADV SELEKA SC: Yes, we do have that. Page 931.

MR SINGH: Mr Chair, if whatever to the submission to the Board Tender Committee on the 11th of April 2016, which starts at 931 ...[intervenes]

ADV SELEKA SC: Sorry, sorry Mr Singh, let us go to page 936, that is the signed one, 936. 936, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: That is the signed one.

20 **MR SINGH**: So Mr Chair, you will see that 936, 937, 938 and 939 is basically the submission that was reflected as the submission that was tabled on the meeting of the 11th of April 2016.

CHAIRPERSON: Yes?

MR SINGH: You will notice the five pages, Mr Chair, does not refer to any security package that had been tabled

before the Committee, it just requests that the Committee approves the prepayment with Tegeta, I think in the value of R586 778 500, and that is recorded on page 938 at paragraph 3.3.2.

It just requests, and for the record Mr Chair, I did not attend this meeting and the resolution that is required Mr Chair, is basically recorded at 2.1, 2.2 and 2.3. It basically says that the Chief Financial Officer is hereby authorised to approve the basis for the prepayment to
10 secure the fixed price call and the period of the extension, for the period of the extension.

CHAIRPERSON: Yes.

MR SINGH: So Mr Chair, this basically is the document that is tabled and if we then have reference to the minutes, Mr Chair, you will see that it references the fact that the security package that was tabled at this meeting, so there was obviously no security package that was tabled at that meeting, because that was the BTC submission that was submitted.

20 **CHAIRPERSON:** Just make that point again.

MR SINGH: So Mr Chair... Sorry, Mr Seleka. Sorry Mr Seleka, the minutes again is on page?

CHAIRPERSON: 971.

MR SINGH: 971.

CHAIRPERSON: For the meeting of the 13th of April.

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Ja, 971.

MR SINGH: So if you look, if you have reference or regard to 971 ...[intervenes]

CHAIRPERSON: And you are talking, you are supposed to be talking at ...[intervenes]

MR SINGH: And I am talking to 942.

CHAIRPERSON: 972?

MR SINGH: Yes, 972.

10 **CHAIRPERSON:** Ja.

MR SINGH: Let me get there myself, Mr Chair.

CHAIRPERSON: Under paragraph ...[intervenes]

MR SINGH: 971. So Mr Chair, if you look at 4.1 and it says there the CFO recapped the submission table before the BTC meeting on the 11th of April 2016, which is the submission that appears on page 942, okay, had been reviewed by him.

CHAIRPERSON: Yes?

20 **MR SINGH:** I have not reviewed that submission before it was tabled before the BTC of 11th of April, Mr Chair. Along with the review of the security package tabled from Tegeta Resources, now that was the, from the BTC submission on 942, Mr Chair, you do not find a security package that is referred to in the submission.

CHAIRPERSON: Yes?

MR SINGH: So therefore, Mr Chair, I am saying that the reflection in the minutes, the way the minutes are captured is inaccurate.

CHAIRPERSON: Is there an audio, Mr Seleka, an audio recording of the meeting, do you know?

ADV SELEKA SC: Chair, I cannot recall offhand. I know there are minutes that have audios, others do not have.

CHAIRPERSON: Yes.

ADV SELEKA SC: I will check on this one.

10 **CHAIRPERSON:** Ja, okay.

MR SINGH: But for all intents and purposes Mr Chair, my recollection of the meeting was as follows, or let us not say the recollection of the meeting, the recollection of the events was as follows. I was not aware that the BTC was sitting at 21:00 on the 11th to consider this matter.

The first time I had come to know about this matter was on the 12th of April, which was the morning of the 12th of April and Ms Daniels had informed me that the BTC had sat and had taken a resolution for a prepayment of this
20 amount and that the BTC had requested me to do certain things and I think one was then, one of them was to ensure that there was a discount, the other one was that the security package that was offered by Tegeta was appropriate and thirdly that it made economic sense for Eskom, or something to that effect.

Mr Chair, on being advised of that I then said okay, so how do we do this, so I think then we called a meeting with Tegeta, I think it was on the 12th, and engaged with them and at that meeting it was then put on the table that obviously we are providing you a cession of revenue and having submitted, giving us a cession of revenue, given the fact that you are having these issues with banks, you may not even be here in three months from now, so that is not really secured.

10 The other option that we did and looked at Mr Chair, at that meeting was to understand what is the net asset value of Tegeta or Oak Bay, I am not sure whether it was Oak Bay or Tegeta, but the management accounts that were provided to us at the time were also not adequate, because I think net asset value of, that was reflected, if memory serves, was in the region of about R24 million to R25 million, so again that did not help.

20 What was of value to us was the issue of the actual coal supply agreement that we had with Tegeta, which at the time was the Brakfontein contract, which was concluded I think in March 2015 or so, and I think that contract ran for a period of 10 years.

So that was the only security that we could actually take and having concluded with Tegeta that listen, if they wanted to go ahead with this transaction then the only way

for them to go ahead with this transaction was to basically provide with the cession of shares on Tegeta, that would give us access, the underlying contract that Eskom had with Brakfontein, which then would enable us in the event of default to basically, let us call it ostensibly get pre coal. So we had, actually had access to the entire coal reserves of the Brakfontein Mine. We then discussed the issue of the discount and the discount was agreed at I think 3% or 3.5%.

10 **CHAIRPERSON:** What was that?

MR SINGH: It was agreed at I think 3% or 3.5% if I am not mistaken, but it was then eventually put into the agreement. Those discussions that then happened on the 12th, Mr Chair, was then the subject of this discussion at the BTC on the 13th.

This discussion that I then gave feedback to the Committee, if you look at this, again the second line that says ‘had been reviewed by him’, so I said to the Committee that you took this decision on the 11th, I had
20 access to the documents post that, I have reviewed that. Having reviewed that, an engagement with Tegeta on the 12th, these are the issues that we now find. The proposal that they had given us in terms of the cession of revenue is unacceptable, the net asset value is not acceptable.

The only alternative that we have is this, how can I,

cession of shares which gives us access to Brakfontein and if that is acceptable to you as the BTC then we can go ahead and take that as security and then the BTC considered that and given, and then took the resolution to say that empowered us to enter into a cession of shares agreement with Tegeta.

CHAIRPERSON: Ja. Mr Seleka?

ADV SELEKA SC: Yes. Mr Singh, I am going to, you know in your response issues about the discount, I
 10 remember there were, that discount issue was pointedly raised with you at a Parliamentary Portfolio Committee and we went through it here with Doctor Ayanda Mteta. Tegeta had in fact already indicated that they will give a discount, in their letter, of 3% and you were asked who did you negotiate the discount with, you could not recall at the Parliamentary Portfolio Committee and in fact what transpires here was the evidence of Ms Ayanda Mteta, it was a 3.5%.

That offer was made, it came from Tegeta and it did
 20 not, it was not the result of any discussion between you or Tegeta regarding a discount.

MR SINGH: Well Mr Chair, if you look at the resolution that was, that BTC eventually took it said that there should be a discount and there was a discount. It did not say that you should then get 3% discount and you needed to make

it five or there was a 1% discount and you needed to make it three, the resolution said there must be a discount. And on the engagement with Mr Mtetwa in the meetings, I think on the 12th, or the engagement with Tegeta in the meeting of the 12th, the matter of the discount was discussed and the 3 or 3.5 % was the number that was settled on. So I am not too sure what the issue is.

ADV SELEKA SC: Ja, well, I have told you this – the position on the discount. Let me go to another major issue
10 which we see from Mr Ephron’s statement and Mr Pierce Marsden’s affidavit. And Chair, I want you to go there and this is the last ...[intervenes]

CHAIRPERSON: Can we just take a ten minutes’ adjournment.

ADV SELEKA SC: Certainly.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you, Chair. Eskom Bundle 18(a), page 352.115.

MR SINGH: Sorry, one second, Mr Seleka.

ADV SELEKA SC: Ja, 18(a).

MR SINGH: 18. Page?

ADV SELEKA SC: 352.115.

MR SINGH: 352.115.

ADV SELEKA SC: 115. Page – paragraph 105.

MR SINGH: I am there, yes.

ADV SELEKA SC: Thank you. Mr Ephron says at paragraph 105:

10 “In the week beginning 4 April 2016, I received a telephone call from Mr Essa advising that Tegeta was short of an amount of R 600 million for the purpose of payment of the purchase price.

We requested that Glencore Fund be shortfall of R 600 million and said that Oakbay would get Eskom to pay the first R 600 million from coal sales to Glencore.

Glencore declined this request...”

Mr Singh, you would not have known about this conversation.

20 **MR SINGH:** No, sir.

ADV SELEKA SC: He carries on and says:

“At the meeting on 11 April 2016, Mr Marsden, one of the Business Rescue Practitioners, was advised by Mr Howa that Tegeta was R 600 million short and Mr Howa requested

that Mr Marsden approached the Consortium of Banks requesting a bridging loan in the amount of R 600 million in order to finance the shortfall on the pre-purchase price.

Mr Marsden arranged a meeting with the Consortium of Banks whereafter Mr Marsden advised Mr Howa that the Consortium of Banks was not prepared to finance the shortfall of the purchase price...”

10 You would also not have been aware of this?

MR SINGH: I was not.

ADV SELEKA SC: Now, this is prior to the BTC meeting urgently in the night of the 11th of April 2016 to make that decision for a prepayment of R 659 million. Did you take part in that meeting?

MR SINGH: On the 11th?

ADV SELEKA SC: On the 11th, ja.

MR SINGH: No, sir.

ADV SELEKA SC: Oh, you only took part in the meeting
20 of the 13th of April?

MR SINGH: Sorry, sir?

ADV SELEKA SC: You only took part in the meeting of 13 April 2016.

MR SINGH: That is correct.

ADV SELEKA SC: So on the face of these allegations, it

would appear that Tegeta was, as it is alleged, again seeking financial or, rather, having financial difficulty to pay for the balance of the purchase price for the acquisition of OCM and it makes, firstly, these attempts to get the R 600 million shortfall and when that failed, it would seem that it then came to Eskom. In fact, even suggested here that Glencore should pay and Oakbay would get the R 600 million as a first payment from the sale of coal to Eskom and pay Glencore back.

10 **CHAIRPERSON**: Was 11 April, Mr Seleka, the same date on which the submission to the BTC was signed?

ADV SELEKA SC: The 11th of April?

CHAIRPERSON: H'm. Was it?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: In the – around four. So you see the emails ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...finalising their submission.

20 **CHAIRPERSON**: Ja.

ADV SELEKA SC: And the meeting is via telephone conference at nine o'clock.

CHAIRPERSON: In the night?

ADV SELEKA SC: At night, yes.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Well ...[intervenes]

CHAIRPERSON: Continue.

ADV SELEKA SC: ...Mr Singh says he was not part of that. Those who came here, Mr Singh have a difficulty – well, they ultimately say they do not see why it was urgent to meet on the 11th of April when there was a BTC meeting already scheduled for the 13th of April 2016. Are you able to answer the urgency?

MR SINGH: No, sir.

10 **ADV SELEKA SC:** Are you able to answer why on the 13th of April 2016 did you make a payment on an urgent basis?

MR SINGH: Mr Chair, the payment that was made on the 13th of April 2016 was as a result of an agreement that was entered into between Eskom and Tegeta that had been and will remain by the close of business so they can get paid. So in terms of that agreement, Mr Chair, we had an obligation to perform.

20 **CHAIRPERSON:** [laughs] No, Mr Singh, that cannot be the answer. If the question is why it was urgent what – to pay on the 13th, the answer cannot be because of the agreement. Because the question wants to find out why did Eskom, in the first place, agree to pay so urgently on the 13th.

MR SINGH: Well... That payment emanated from the

meeting on the 11th ...[intervenes]

MR SINGH: ...which I was not party to.

CHAIRPERSON: Yes.

MR SINGH: I was ...[intervenes]

CHAIRPERSON: From what one sees here. The urgency was about Tegeta needing money in order to be able to pay the price.

MR SINGH: Well, Mr Chair ...[intervenes]

CHAIRPERSON: H'm.

10 **MR SINGH**: ...I would not be able to comment.

CHAIRPERSON: You will not be able to say anything about it?

MR SINGH: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Chair, that essentially concludes my questions in regard to the Tegeta transactions to Mr Singh because his involvement ...[intervenes]

CHAIRPERSON: Yes

ADV SELEKA SC: ...is indeed limited.

20 **CHAIRPERSON**: Okay.

ADV SELEKA SC: And I was showing Mr Singh a video clip of a press conference by him and Mr Molefe ...[intervenes]

CHAIRPERSON: H'm?

ADV SELEKA SC: ...where they are talking about this

issue.

CHAIRPERSON: H'm?

ADV SELEKA SC: And I thought, if the Chair allows, I could play that as the parting shot.

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: Well, how long does it take?

ADV SELEKA SC: It is a nine minutes but we pick it up somewhere in the middle.

10 **CHAIRPERSON:** Okay let me hear.

ADV SELEKA SC: Ja, they talk about this transaction and why they paid Tegeta R 659 million.

CHAIRPERSON: Okay.

ADV VAN HEERDEN: Chairperson, just one question.

CHAIRPERSON: Ja?

ADV VAN HEERDEN: Is Mr Molefe coming back to give evidence? Because my recollection is he is the person that speaks in this video and this was never put to him.

20 **CHAIRPERSON:** Well, let me – I do not know what is aid in the video, first or in the audio. Let me see that first and then whether it is warranted to ask anybody further questions. We will take it from there.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Ja. H'm?

ADV SELEKA SC: While they are getting the sound

correct. This is a press conference. It is a video clip of a press conference given by Mr Molefe. Next to him is Mr Singh. The date is the 5th of July 2016. And they are talking – the reasons – or advancing the reasons why the prepayment of R 659 million was made to Tegeta.

CHAIRPERSON: And is there a transcript of that interview?

ADV SELEKA SC: I have my own freehand transcript but we will do a formal transcript.

10 **CHAIRPERSON:** Ja, try and do a formal transcript of that.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay. Let us hear.

[Video clip played into record]

20 **Mr Molefe:** “Umzingeti said they are okay. They will continue supplying Arnot. Tegeta said: We can help you at Arnot with coal but there is a portion of the mine that Glencore was not mining, which was export coal, but Glencore had been saving the export coal quantity coal to export it when the price improved, not to give to Eskom, to export it. But Tegeta said: We will mine it but we have a problem. We do not have the capital to restart those operations. We do not have the capital to restart those operations because our bank

accounts have been closed. Nobody wants to give us credit and we have just paid Optimum for the – we have just paid Glencore for the Optimum Mine. Would you consider advancing to us the money to reopen the export side? And we will give you that coal. And we agreed because we have no reason not to do business with Tegeta. Nobody has told me why we cannot do business with Tegeta. We took the shares of Tegeta as security and said: If you do not pay us back this money, you will lose this company. And they agreed. They gave us the shares. They took the money, they restart the operation, they have been supplying to us at the higher price because that is export quality coal. But that higher price is five hundred and four-seventy. At 470. They have been supplying to us at 470 which is more than half of what we have been paying Exxaro. ...[Indistinct] did not pick that up. More than half of what we were paying Exxaro at 1132 per ton. We have not been paying them for the coal because we have been deducting the coal that we have received from...”

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay does that cover what you wanted?

ADV SELEKA SC: It covered it Chair because the reason they advance Mr Singh for giving money to them was because nobody wanted to trade with them, according to the statement, as their bank accounts were closed. I see ...[intervenes]

CHAIRPERSON: It is July 2016, *né*?

ADV SELEKA SC: That is July 2016, Chair.

CHAIRPERSON: H'm.

10 **ADV SELEKA SC**: That is shortly after April 2016.

CHAIRPERSON: And July is not shortly after April.
[laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: You have got May and June in between.

ADV SELEKA SC: Yes, Chair. [laughs]

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Singh, do you disagree with Mr Molefe?

MR SINGH: What is your proposition, sir?

20 **ADV SELEKA SC**: On the reason for the payment. Did you pay them because the bank accounts were closed and nobody wanted to do business with them?

ADV VAN HEERDEN: Chairperson, that is not what was said on the video clip ...[intervenes]

CHAIRPERSON: Yes, I think what he said is. In effect,

they paid Tegeta so that Tegeta could sell them the coal that Glencore had reserved for export. So they did not have – their accounts have been closed but they needed money so that they could access the export said, as he put it.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. Do you agree with that reasons, Mr Singh?

MR SINGH: Mr Chair, at the date of approval of these
10 transactions, obviously, I was not aware of that. But subsequent to that, obviously, yes. Through the media.

CHAIRPERSON: I mean, at the time of the interview, was that the reason as you understood it as well?

MR SINGH: Well, Mr Chair, at the time of the interview, no.

CHAIRPERSON: Yes.

MR SINGH: Yes.

CHAIRPERSON: But now when you hear it, you agree?

MR SINGH: Well, yes, Mr Chair through reading all the
20 documents and stuff because then – I think that was eluded to during the permission of the 11th of April.

CHAIRPERSON: H'm?

MR SINGH: So I would think that is what Mr Molefe is referring to.

CHAIRPERSON: H'm. But I – why would you not know

this? I mean, you were the CFO. Why would you not know why this money was being paid? Did you know a different reason from the one he gave at the time of the interview? In other words, did he give a reason that was not the same reason as the one you knew?

MR SINGH: No, Mr Chair. As I said. In terms of the documents that were available to me at the time, was only the BTC minutes or the BTC submissions of the 11th of April

10 **CHAIRPERSON**: Yes.

MR SINGH: Yes, Chair.

CHAIRPERSON: No, but my question is. You were sitting next to him as he gave this reasons for the payment.

MR SINGH: Correct.

CHAIRPERSON: If you – if you either both knew the same reason or you knew different reasons. Did you know the same reason which is the reason he gave?

MR SINGH: And I am trying to explain Mr Chair. Only where that I could know that reason was reference to the
20 BTC submissions on the 11th which ...[intervenes]

CHAIRPERSON: In other words, at that time ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: ...of the interview, he was giving a reason that was unknown to you?

MR SINGH: No, Mr Chair. Remember, I had reviewed ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...the BTC submission of the 11th ...[intervenes]

CHAIRPERSON: H'm?

MR SINGH: ...post a meeting, as I have explained to you. The meeting of the 11th happened.

CHAIRPERSON: Ja-no, do not go back to the meeting.

10 **MR SINGH**: Okay ...[intervenes]

CHAIRPERSON: The simple question is. You have listened to him giving a reason why ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: ...payment was made. You are sitting next to him.

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: My question is. As you were sitting next to him, the reason he gave, was it a new reason as far as you were concerned?

20 **MR SINGH**: No, sir. No.

CHAIRPERSON: Or did you know the same reason to be the reason for the payment?

MR SINGH: It was the same reason.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Ja. Thank you, Chair. Mr Singh, that

seems to resonate with that paragraph in the minutes of the 13th of April 2016 about the awareness that Tegeta's bank accounts had been closed and that they had growing concern issues. What Mr Molefe said there, seems to resonate with that.

MR SINGH: Yes, Mr Seleka.

CHAIRPERSON: Well, he is raising that Mr Singh, because you said that the minutes were incorrect to the extent that they said you had apologised and that they
10 reflected what they reflected. He is saying the reason, which you say was known to you, which he gives, is consistent with what was written in the minutes. What do you say to that?

MR SINGH: Mr Chair, in response to the accuracy of the minutes, I was referring to the proposition that Mr Seleka have me regarding the apology.

CHAIRPERSON: Yes.

MR SINGH: And I said to the extent that the minutes of courts me having given an apology ...[intervenes]

20 **CHAIRPERSON**: H'm?

MR SINGH: ...and having reviewed the minutes or the submission of the BTC of the 11th ...[intervenes]

CHAIRPERSON: H'm?

MR SINGH: ...prior to going to the BTC on the 11th, that part of the minutes is inaccurate.

CHAIRPERSON: H'm?

MR SINGH: But as it reflects, the issues relating to the bank accounts, the issue of the growing concern, for example, I would have raise it.

CHAIRPERSON: H'm?

MR SINGH: Because that emanated from the meeting of the 12th with Tegeta.

CHAIRPERSON: H'm?

10 **MR SINGH:** So the minutes as reflected in those aspects are correct, sir.

CHAIRPERSON: So are you saying that to the extent that the minutes reflect that you indicated that it appeared that Tegeta had growing concern issues, they are correct?

MR SINGH: That is correct.

CHAIRPERSON: Yes.

MR SINGH: Yes.

CHAIRPERSON: That you raised that issue?

MR SINGH: Yes.

20 **CHAIRPERSON:** Oh, okay. And that – because as I recall the minutes, I think that was mentioned together with the closure of the bank accounts.

MR SINGH: Mr Chair, [coughing] context... If I can give you the context and it will take two minutes, Mr Chair?

CHAIRPERSON: Ja.

MR SINGH: So, as I said, the 11th submission I have no

party to. I got to know it on the 12th but when I got to know it on the 12th, it then culminated in the meeting with Tegeta. Prior to that meeting with Tegeta, as I understood it, there was no security package that was provided by Tegeta. When we engaged with them, post the meeting of the 11th, because one of the issues that emanated from the 11th, was for me to obtain appropriate security.

When the engagement with Tegeta on the 12th, the issue of them providing a cession of revenue was put
10 as a security package by them. I then looked at this thing and I said: But you guys, it is common knowledge now because of the press reports that your bank accounts are closed. So of what use if the cession of revenue to me if your bank accounts are going to be closed, firstly?

And secondly, you are ceding your own revenue to me and I am your biggest creditor. So you are actually ceding my own revenue to you. But if you do not have working capital to run your mine because your banks are closed. Sorry, your bank accounts are closed. Then this
20 cession of revenue does not mean anything.

So it was for those two reason that we then said the security package proposed by Tegeta was not good enough. So that is where this issue of... [coughing] ...growing concern emanates.

CHAIRPERSON: H'm. I think Mr Seleka, you – when you

had raised the issue, initially, you had a certain line of questioning but... Okay do you – are you following up or not?

ADV SELEKA SC: Yes.

CHAIRPERSON: You want to follow up on or not?

ADV SELEKA SC: Well ...[intervenes]

CHAIRPERSON: I think you had asked a question ...[intervenes]

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** ...which was – I do not know whether you completed the question or you stopped and reformulated the question along the lines of why payment would have been made by Eskom at that time when it was known that – if it was already known that the bank accounts of Tegeta were closed. But I am not sure. That might trigger your response or it might not.

ADV SELEKA SC: Yes-no, correct, Chair because – well, it comes back to the way the minute is recorded. The minute says. The CFO: Recapped that the submission
20 tabled before this Special BTC Meeting on the 11th. So they say you recapped that. And then he apologised for having overlooked consideration of the current circumstances around Tegeta. There were various issues relating to the challenges the company was facing from its banking institutions. That was the closure of the bank

accounts. Now, the question was.

That brought a question mark in the BTC's mind as to whether it was safe to make that payment. And you talked about security but I remember the evidence of Ms Susanne Daniels. Sorry, I am just adding this. That even at the time when the payment was made, those securities were not in place.

MR SINGH: That is not correct, sir.

ADV SELEKA SC: That is?

10 **MR SINGH**: That is incorrect, sir.

ADV SELEKA SC: Well, it may ...[intervenes]

CHAIRPERSON: Let me put this question which might be connected with what you had in mind Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: And maybe I took you off your thoughts at the time. If, Mr Sing, before the payment was made to Tegeta it was known that its bank accounts had been closed. Why would Eskom proceeded to make the payment, nevertheless? Because the fact that its bank
20 account – I mean, Tegeta's bank accounts had been closed, meant that there was a serious risk whether it could continue operating and therefore, whether it could continue – it would be able to deliver the coal which was - what was of concern to Eskom?

Eskom, as you said, Eskom wanted – the reason

why Eskom was prepared to make the prepayment was to secure coal but if the entity that was supposed to provide that security was no longer allowed to operate a bank account, obviously, that must have been risky. Why continue to pay? Why not wait at least until that issue has been sorted out?

MR SINGH: Mr Chair, I think if I can answer it in two parts. Let me answer Mr Seleka's question first and then I will come back to yours Mr Chair. So in terms of the fact
10 that the security package was not in place, I think he is incorrect.

It is an incorrect assertion that is made by Ms Daniels. If you had regard for the testimony of Mr Snell Hager, who actually effected the payment. There were documents that were transmitted to him and there were various documents that were transmitted to him by paying Ms Mayabana from my office and that included, if I recall, the BTC resolution of the 11th of May, an invoice, and the underlining contract for the resolution that was taken for
20 the prepayment.

The underlining contract for the prepayment included a cession and security, I think it was cession and security and pledge of shares included, I think, in Clauses 5.1 and 4.5.2 of the... And that agreement was signed prior to the payment being affected by Mr Snell Hager and

his team. So Ms Daniel's assertion is incorrect in that regard.

Mr Chair, turning to your question in terms of the – why make the payment to Tegeta in the face of the fact that the bank accounts were closed. Mr Chair, that time, if I recall correctly, I think there were – I do not think all the bank accounts of Tegeta were closed. I think there was one – I think one bank that indicated that they were closing their accounts. And when we had raised this with, Mr
10 Chair, they had given us assurances that they had alternative measures in place to enable them to continue in operations at the time.

And lastly, Mr Chair, in terms of our objective as Eskom. I think the entire submission was premised on the basis of access to coal. The prepayment was made, as you know, and security that we had received from that was that in the event of default we will, basically, let us call it, own the Brakfontein Mine.

CHAIRPERSON: In the case of default, what would
20 happen?

MR SINGH: In the event of default, we would own the Brakfontein Mine. So Eskom would become the owner of the Brakfontein Mine, which in effect, would mean that it had access to coal.

CHAIRPERSON: Well, how was that going to help them?

MR SINGH: Because Mr Chair we had taken the cession of shares.

CHAIRPERSON: H'm?

MR SINGH: And they had pledged their shares to Eskom ...[intervenes]

CHAIRPERSON: H'm?

MR SINGH: ..in the event of default.

CHAIRPERSON: That is shares in OCM?

MR SINGH: No, no, no. So now we are not talking about
10 OCM, Mr Chair.

CHAIRPERSON: Ja. This is shares in what entity?

MR SINGH: In Tegeta itself.

CHAIRPERSON: Ja, but if Tegeta was not able to operate. How would it make a difference that you – that there was a change in ownership of shares?

MR SINGH: Mr Chair, remember we paid 650.

CHAIRPERSON: H'm?

MR SINGH: 659.

CHAIRPERSON: To Tegeta?

20 **MR SINGH**: To Tegeta.

CHAIRPERSON: H'm.

MR SINGH: And that was on the basis that they would deliver coal to us ...[intervenes]

CHAIRPERSON: H'm?

MR SINGH: ...over a period of six months.

CHAIRPERSON: H'm?

MR SINGH: So for that six month period we were exposed.

CHAIRPERSON: But remember, you paid on the 13th, is it not? Or what was the date?

ADV SELEKA SC: Yes.

MR SINGH: 13th of April...

CHAIRPERSON: Yes.

MR SINGH: Yes.

10 **CHAIRPERSON:** But... And my question requires you to look at before you make payment.

MR SINGH: Hence, Mr Chair ...[intervenes]

CHAIRPERSON: Because my question is. Once you were aware of this difficult situation in which Tegeta found itself.

MR SINGH: Yes.

CHAIRPERSON: How could you continue to make the payment? Because that would have nothing to do with security of coal because this entity was in serious risk of not being able to provide the coal if its accounts were
20 closed.

MR SINGH: Hence, Mr Chair, the meeting of the 12th at which these issues were discussed and I had put this to Tegeta and saying: Your cession of revenue is of no use to use because if you are not operating, you are not going to be able to generate revenue. And one of the reasons that

we cited was, the closure of one – I think one of their bank accounts.

In response to that Mr Chair. They gave us their assurances that it was only one of the banks that closed their accounts, I think, at the time and they were – if they were – and they had, I think, mitigating plans in place to be able to continue. Okay? At least for the six months period that we were exposed because we ...[intervenes]

CHAIRPERSON: But that could not be a good enough
10 reason for ...[intervenes]

MR SINGH: No, no I am coming ...[intervenes]

CHAIRPERSON: ...for Eskom to cling to.

MR SINGH: I am coming back to that, Chair.

CHAIRPERSON: Ja?

MR SINGH: Because remember, we were exposed for a period of six months.

CHAIRPERSON: Yes.

MR SINGH: Right. And this where now this security
20 package that we have taken comes into play. The security
package that we ended up in taking, Mr Chair, was a
pledge of shares in Tegeta. Now Tegeta's major asset at
the time was the Brakfontein contract that we had with
them. Remember, Tegeta owned the Brakfontein Mine.
That mine had value because there was underlining coal in
that mine. In the event of default, of Tegeta within the six

month period, had they defaulted, we would have become the owners of the Brakfontein Mine with the coal.

CHAIRPERSON: But you would be – your shares – the shares you talk about were in...

[Break in recording]

CHAIRPERSON: ...is it not? So if Tegeta becomes an entity that no banks want to deal with, you cannot do anything with those shares.

MR SINGH: No, Mr Chair we would then become owners
10 of Tegeta.

CHAIRPERSON: Ja ...[intervenes]

MR SINGH: Yes.

CHAIRPERSON: ...you would become owners of Tegeta but what is that you do with it?

MR SINGH: But then, effectively, Eskom would be able to fund the operations of Eskom to be able to access the coal.

CHAIRPERSON: You would be able to?

MR SINGH: Eskom would then become the funder of
20 Tegeta.

CHAIRPERSON: H'm?

MR SINGH: So, basically, effectively, Tegeta's bank account would close.

CHAIRPERSON: But – ja ...[intervenes]

MR SINGH: Right? Eskom would ...[intervenes]

CHAIRPERSON: Tegeta would not be able to – or to do business.

MR SINGH: That is the point, Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: Eskom would be become the owners of new coal.

CHAIRPERSON: H'm?

MR SINGH: Let us call it new coal. New ...[intervenes]

CHAIRPERSON: But why should you put yourselves in
10 that situation as if Tegeta is the only entity that you have
to deal with? Tegeta is in trouble. You are – you want to –
you are giving it a lot of money. It is in trouble. It might
go down. It might be liquidated. I do not now. It cannot
operate anymore. One would have thought that, to say the
least, you would hold back and look at the situation
properly by them pay immediately despite that situation.

MR SINGH: Well, Mr Chair I would assume that the BTC
made this weighing up of this decision that they needed to
make because ...[intervenes]

20 **CHAIRPERSON:** Were they aware of this – of this
situation of Tegeta when they made this decision, as far as
you know?

MR SINGH: Well, Mr Chair this was the feedback
...[intervenes]

CHAIRPERSON: ...closure of accounts.

MR SINGH: ...this was the feedback that I had give them on the 13th.

CHAIRPERSON: H'm?

MR SINGH: And at that meeting of the 13th, they then took the resolution ...[intervenes]

CHAIRPERSON: H'm?

MR SINGH: ...to take the pledge of shares.

CHAIRPERSON: Ja. Mr Seleka, I guess you had said you were rounding off.

10 **ADV SELEKA SC**: Ja, I was finished and I am – I see in the minute, Mr Singh, there are no – well, you have the file with you. That very minute of the 23rd of April 2016, is recorded there:

“It was noted that Eskom did not want to own the mine...”

On page 973. So Tegeta would be asked to provide the pledge agreement for the shares and be given a period of 14-days to put in place the alternative guarantee that would replace the shares. And it is
20 recorded there, also, that:

“The CFO confirmed that Eskom would draft a document governing the offered securities...”

So these things, at that stage, are not in place and the intention to own the mine, it seems to be disavowed there.

MR SINGH: No, no Mr Chair. I mean, at the end of the day, Eskom's intention is to generate electricity. It is not to own the mine. And that comment was made by myself.

CHAIRPERSON: H'm?

MR SINGH: And the reason why the comment was made Mr Chair, is not that we did not want to change the intention of Eskom from being an electricity generator to mine owners, notwithstanding the fact that we, you know, do cost plus mines and the like. It was really to give the
10 BTC the comfort that this was, in the even to default, that would happened.

CHAIRPERSON: H'm?

MR SINGH: Okay, firstly. Secondly. The issue was also limited to a period of 14-days that we gave to Tegeta to come up with alternative guarantees.

CHAIRPERSON: H'm.

MR SINGH: Ja.

ADV SELEKA SC: And the valid question from the Chairperson. Why did you have to go through this trouble
20 when Tegeta was owning the mine? Tegeta did not even had a contract to supply you with 1.2 million tons of coal. At that stage, they did not have that agreement with OCM. All this coal they supplied subsequent to this, was them purchasing from OCM and supplying Eskom at Arnot. Why did you go through all this trouble when OCM was there?

MR SINGH: But Mr Chair

ADV SELEKA SC: You could buy directly from OCM and not have the intermediary.

MR SINGH: Well, Mr Chair I am sure that these things were tabled at the meeting of the 11th of April.

CHAIRPERSON: What does that mean?

MR SINGH: Mr Chair, this issue that Mr Seleka is referring to in terms of the reasoning behind who supplied and why they supplied that, was cover in the meeting of
10 the 11th of April.

CHAIRPERSON: Well, he is going back to question of. Why was Eskom going through all of this trouble in respect of an entity that was not the owner of the mine at the time, that did not have an agreement with – at the time when OCM was there? So it is just to say. You know, you are taking such a big risk with this entity in respect of whom – I do not know whether Eskom or yourselves had been aware of any entity that had their bank accounts closed but for a lot of people when this happened and was in the
20 media.

It was something unusual to say have companies and their entities closed, you know, because of allegations of being involved in illegalities. To say it still want to have something to do with them.

One would have thought that what was coming

out with the closure of their accounts, would be – would make Eskom to say: Hey, this might not be the type of entity that we must deal with. It is too risky. We do not know what their future is like and we are interested of coal. That is the only reason why we are dealing with them and if they cannot – the banks are closing their accounts, we should be – we should go back and maybe talk to OCM.

MR SINGH: Mr Chair, as I originally gave a response. I think it is in the same line. From my perspective. The
10 issue was having access to coal because access to coal would provide security of energy for the country.

CHAIRPERSON: H'm.

MR SINGH: The underlining agreement that we had agreed to, provided us access to that coal. The security was in place in terms of the even to default. The BTC weighed up the issue and the factors relating to entering into this agreement and we then concluded the agreement, Mr Chair.

CHAIRPERSON: Mr Seleka.

20 **ADV SELEKA SC**: Chair, I think I am done.

CHAIRPERSON: Ja. Okay alright.

ADV SELEKA SC: H'm.

CHAIRPERSON: Do you contemplate that you do have some questions that you would like to send to him in writing?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Shall we then work on the basis of the tentative agreement that we discussed, namely that if Mr Seleka has further questions, he must put them in writing and that to the extent that you may wish to have certain issues clarified in terms of Mr Singh's evidence, you can prepare and then submit an affidavit that clarifies
10 those issues? Would that be fine?

ADV VAN HEERDEN: We are happy with that Chairperson as long as we are not under time pressure to do it this week.

CHAIRPERSON: No, no, no. I will not say do it this week. But let us have some timeframe because if we leave it open without a timeframe that might create problems. But I think before they prepare – they file, they need to get your questions so that their affidavit can cover everything ...[intervenes]

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: ...including your questions.

ADV SELEKA SC: Yes.

CHAIRPERSON: When would you propose to file your – to send them your questions?

ADV SELEKA SC: I can send them no later than Friday,

Chair.

CHAIRPERSON: No later than Friday?

ADV SELEKA SC: This coming Friday, yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: If we – if I fix Friday of next week for the affidavit, would that work for you?

ADV VAN HEERDEN: Chairperson, that is going to be problems for reasons I cannot ...[intervenes]

10 **CHAIRPERSON**: What date would you propose?

ADV VAN HEERDEN: I would suggest the week after the 11th, Chair.

CHAIRPERSON: The week of the 11th?

ADV VAN HEERDEN: Ja, it is the week in the 11th. So... Sorry, the week of the 18th. My attorney has just given me the ...[intervenes]

CHAIRPERSON: The week of the 18th?

ADV VAN HEERDEN: Yes, by the week of the 18th.

20 **CHAIRPERSON**: That is quite far. H'm? Can we make it about five days earlier than that?

ADV VAN HEERDEN: Chairperson, the problem is that ...[intervenes]

CHAIRPERSON: You are involved in other matters.

ADV VAN HEERDEN: We are not in the country.

CHAIRPERSON: Oh.

ADV VAN HEERDEN: We are dealing with another matter and that is why is why ...[intervenes]

CHAIRPERSON: Alright. So let us say the 18th then. Is that on or before the 18th?

ADV VAN HEERDEN: The 18th will be fine.

CHAIRPERSON: Okay alright. Let us leave it at that. And then, if you are – if you would like to submit written submissions in relation to what evidence I should accept or reject in regard to witnesses who gave evidence against
10 Mr Singh and in regard to evidence that he has given and so on. We need to fix that.

As things stand, I have only up to the end of June. We will ask for some extension but I do not think that we can work on the basis of anything based on a possible extension. Can we say you would submit whatever written submissions you wish to place before me on or before the 25th of June?

ADV VAN HEERDEN: We agree with that Chairperson.

CHAIRPERSON: Okay alright. Because there will not be
20 oral argument but at least there should be written submissions.

ADV VAN HEERDEN: [No audible reply]

CHAIRPERSON: Okay alright. Thank you very much, Mr Singh. Thank you to your legal team. We are going to adjourn then. And the arrangements about what still needs

to be done, are those that have been agreed. And I have already announced what evidence of witnesses I will be hearing tomorrow for the benefit of the public. Thank you very much to you Mr Seleka and your team, to the technicians and the staff. Thank you to everybody for staying until this time.

We now adjourn.

INQUIRY ADJOURNS TO 25 MAY 2021