

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**12 MARCH 2019**

**DAY 64**

20

**PROCEEDINGS HELD ON 12 MARCH 2019**

**CHAIRPERSON**: Good morning Ms Hofmeyr, good morning everybody.

**ADV KATE HOFMEYR**: Good morning Chair.

**CHAIRPERSON**: Are you ready to proceed?

**ADV KATE HOFMEYR**: We are indeed.

**CHAIRPERSON**: Thank you. You may.

**ADV KATE HOFMEYR**: Thank you Chair. Mr Bester and the Chair if I could ask you to take out Exhibit U4 File 4 which is where we completed the testimony yesterday and the relevant page is page 810. Mr Bester you will recall that this was the letter dated  
10 the 24 June 2015 that you wrote recording the material terms that the parties had agreed on at a meeting on the 19 June 2015, do you recall that?

**MR JOHANN ANDRIES BESTER**: Yes I do recall that.

**ADV KATE HOFMEYR**: We were dealing with some of the provisions of this letter the first of those which is reflected at paragraph 1 on the page is that the coal was going to be supplied from the colliery extension and it was stipulated that it would have to comply with the full combustion test to be conducted on that coal and we had spoken previously in the evidence about the necessity for that provision because that coal had not yet been mined nor had it been tested. Is that correct?

**MR JOHANN ANDRIES BESTER**: Correct.

20 **ADV KATE HOFMEYR**: We were then dealing with the second paragraph on that page. I would like to just look at that. What is set out there is that the proposed volume is 200 000 tonnes per month from October 2015 subject to all the required Eskom approvals including a requirement for the volume at the relevant power station. Mr Bester as I recall your evidence yesterday you place some emphasis on that as a protection for Eskom. Can you explain to us what you meant by that?

**MR JOHANN ANDRIES BESTER:** I can only try and think of what my reasoning was at the time and as I tried to indicate yesterday it may have been that this is a relatively new supplier. If it was to increase from 100 000 tonnes per month to 200 000 tonnes per month it would move from being almost a 10% supply to Majuba Power Station to almost being a 20% supply to Majuba Power Station. So if this supplier was to fail and was not able to deliver it would not be – it would not be good for Eskom and it would be more difficult to replace. 100 000 tonnes is something that we can probably manage, 200 000 tonnes would be more problematic.

**ADV KATE HOFMEYR:** So as I read this you not committing to taking the additional  
10 tonnes you are saying Eskom will take it if there is a need for that volume at the power station, is that a correct reading?

**MR JOHANN ANDRIES BESTER:** I agree with that yes.

**ADV KATE HOFMEYR:** Right. And then in the third paragraph on that page you stipulate that all contract conditions and subsequent modifications as per the current contract remain and you go on to say “further to the above it is important to note that the record of discussions on the abovementioned material terms are all subject to a duly signed modification to the current coal supply agreement between the parties and compliance with the following.” And then you stipulate a series of further conditions that we referred to yesterday. What I would like to focus on here is your insistence at  
20 the part of the letter that there be a duly signed modification to the existing coal supply agreement. I want to suggest to you that that is yet another protection or Eskom in relation to this engagement. Would you agree with that?

**MR JOHANN ANDRIES BESTER:** Yes I would agree with that but in hindsight now it would not have been proper to have signed an amendment to the original agreement on this basis. If you recall it would have been outside of mandate to modify an existing

contract to essentially double the volume on that. I think I would have been – it would have been incorrect to have signed an amendment. I may have erroneously worded it that that way but it would have been incorrect but there was an attempt to protect Eskom's interests.

**ADV KATE HOFMEYR:** Okay let us just pause on that for a moment. If it was outside the terms of the medium term mandate.

**MR JOHANN ANDRIES BESTER:** Ja.

**ADV KATE HOFMEYR:** Why is any agreement being forged at all with Tegeta?

**MR JOHANN ANDRIES BESTER:** As I indicated yesterday I penned this letter to  
10 acknowledge more than – it is not a contract so in my mind it was really to acknowledge the letter and the discussions that had – as I said probably being had with Ayanda and a letter that had been received.

**ADV KATE HOFMEYR:** Mr Bester we dealt with the point yesterday that this letter was only an acknowledgement.

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** And I put to you in the course of our discussion that at least the language of the letter does not convey that. Do you accept that?

**MR JOHANN ANDRIES BESTER:** I accept that may be the case yes.

**ADV KATE HOFMEYR:** Are you aware that Eskom regarded this as an agreement  
20 between itself and Tegeta?

**MR JOHANN ANDRIES BESTER:** I was not aware of that but I was subsequently – you subsequently informed me that Eskom used this in 2016 I think to attempt to approach National Treasury.

**ADV KATE HOFMEYR:** Correct we will come to that. I would like to then go to what happens with this letter if I may and Chair this is the aspect of the Brakfontein evidence

that has been derived from the hard drive data that the commission procured and had recovered overseas. You heard about that in the application to receive that. So this is not aspects of the hard drive data that we understand has previously been disclosed in the public domain and for that purpose we need to go to the previous page, page 809.

**MR JOHANN ANDRIES BESTER:** Alright.

**ADV KATE HOFMEYR:** You will see at page 809 that in the sort of the middle of the page there is a heading Forwarded Message and it is an email from Ms Nteta to Mr Nath. Do you see that Mr Bester?

**MR JOHANN ANDRIES BESTER:** I do yes.

10 **ADV KATE HOFMEYR:** And what it says is:

“Good day please find attached letter for your attention.

Regards.”

Now that letter that we have just been looking at is the letter that was attached to the email as it was retrieved from the hard drive. And what I would like to then focus on is the email that appears above that on the page. Mr Bester can you just indicate for us who is that from and to?

**MR JOHANN ANDRIES BESTER:** It appears to be from Mr Ravindra Nath and he send it to Mr Tony Gupta.

**ADV KATE HOFMEYR:** And can you tell us what time of the day that is on the 24  
20 June?

**MR JOHANN ANDRIES BESTER:** That appears to be ten o'clock in the morning I would guess.

**ADV KATE HOFMEYR:** Indeed. I think the precise time is seven minutes past ten.

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** And could you read for us the text of that email?

**MR JOHANN ANDRIES BESTER:**

“Dear Tony G please find enclosed the letter from Eskom and  
draft letter as discussed. Regard Ravindra.”

I am not sure why he would refer to it as a draft letter it was signed.

**ADV KATE HOFMEYR:** Well I can explain that to you in a moment because what he is actually signalling is that there are two letters attached. If you look at the sentence. “Please find enclosed the letter from Eskom” that is your letter.

**MR JOHANN ANDRIES BESTER:** Right.

**ADV KATE HOFMEYR:** And he is referring to a draft letter as discussed. So let us go  
10 to look at that draft letter. The draft letter which is an attachment then to that email you will find at page 812. Mr Bester this is a letter, draft letter which as I say was attached to that email when it was recovered from the hard drive that is entitled Coal Supply Offer; Tegeta Exploration Resources Brakfontein and Brakfontein Extension Collieries. Could you please then read the first sentence of that draft letter for us?

**MR JOHANN ANDRIES BESTER:**

“We refer to the above and wish to thank you for your offer to  
supply an additional 100 000 tonnes per month of coal from  
Eskom from” ...

**ADV KATE HOFMEYR:** To Eskom apologies.

20 **MR JOHANN ANDRIES BESTER:**

“sorry to Eskom from your Brakfontein and Brakfontein Extension  
Colliers.”

**ADV KATE HOFMEYR:** With effect from the 1 October 2015.

**MR JOHANN ANDRIES BESTER:** Correct.

**ADV KATE HOFMEYR:** Who is the purported author of that letter as you read it?

**MR JOHANN ANDRIES BESTER:** It should be from myself as I said Ayanda probably would have drafted this letter for me and I would have applied my mind to it and if I was comfortable with it I would have set that out. I would not have been aware that she was being prompted from outside of Eskom.

**ADV KATE HOFMEYR:** But this letter as it is attached to Mr Nath's email is a draft of a letter that Mr Nath prepared?

**MR JOHANN ANDRIES BESTER:** Yes I would guess that then it would have been him that drafted that. I would assume that yes.

**ADV KATE HOFMEYR:** Right but purporting to write what Eskom should be saying to  
10 Tegeta.

**MR JOHANN ANDRIES BESTER:** Correct.

**ADV KATE HOFMEYR:** Is that a fair reading?

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** Well let us go over the page to see how that draft gets Eskom and you will find that at page 813. This is a further email recovered from the hard drive, can you tell us who it is from and to?

**MR JOHANN ANDRIES BESTER:** It is from Ravindra Nath and it is to Ayanda Ntshanga.

**ADV KATE HOFMEYR:** And at what time is it send on Wednesday the 24 June?

20 **MR JOHANN ANDRIES BESTER:** Twenty past ten.

**ADV KATE HOFMEYR:** So just to get the time line right at seven minutes past ten Mr Nath sends to Mr Gupta the letter that he had received via Ms Ntshanga from you dated the 24 June.

**MR JOHANN ANDRIES BESTER:** Ja.

**ADV KATE HOFMEYR:** He forwards that to Mr Gupta together with a draft letter as

discussed quote. That is the draft that we have just looked at which is the wording of a letter that Tegeta would like to receive from Eskom and I say that because in the email we looking at at the moment thirteen minutes later Mr Nath sends that draft letter to Ms Ntshanga and if you could please read for us what is said in that email to Ms Ntshanga who at that stage I understand was in fact Ms Ntete but that is a detail.

**MR JOHANN ANDRIES BESTER:** That is probably still her email address.

“Hello Madam thank you for the letter however from our bankers purposes we need letter on the enclosed lines kindly help in this regard.”

- 10 **ADV KATE HOFMEYR:** And let us go over the page that 814 that is a replica of the draft email that we saw previously is it not?

**MR JOHANN ANDRIES BESTER:** It appears to be exactly the same wording as the – as on page 812 yes.

- ADV KATE HOFMEYR:** Right so thirteen minutes after Mr Nath forwards your letter and his draft to Mr Gupta Mr Ntshanga receives that draft. I would like to look at what this draft changes about the position that was reflected in your letter of that same day? Let us look first at – you have read for us the first sentence which is thanking Tegeta for their offer. The second sentence states the obvious which is that this is going to increase the total supply to 200 000 tonnes per month. And then it goes on to use the
- 20 wording of your previous letter “following our meeting on the 19 June 2015 Eskom wishes to record some of the material terms the parties agreed on.” And below that are the three aspects of the previous letter that you had written on the 24h. But with I am going to suggest some material modifications. And I am going to suggest to you Mr Bester for your comment that these modifications are ultimately to the detriment of Eskom and to the benefit of Tegeta. So let us go through them. You will recall that your



letter of the 24<sup>th</sup> required any new coal supplied from the extension to be subjected to a successful combustion test. That paragraph has now been amended to read as follows:

“The additional coal supplied must comply with the relevant specifications contained in the current contract.”

I just need to pause there to engage with the Chair about a debate we had at - towards the end of yesterday Chair. You will recall that you made the point that we could understand the letter to indicate that the parties did not regard the omission of that double asterisk to have taken place pursuant to the May 2015 letter. And I had  
10 indicated to you we would see a response from Tegeta.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: That suggested otherwise.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: This we submit is that response.

**CHAIRPERSON**: Yes.

**ADV KATE HOFMEYR**: Because what is only stipulated here is that it must comply with the relevant specifications contained the current contract but if those two asterisks are gone in the current contract and no reference is made here to the requirement for a successfully combustion test that has gone has it not Mr Bester?

20 **MR JOHANN ANDRIES BESTER**: Absolutely, absolutely.

**CHAIRPERSON**: Of course – of course you know when we were looking at that letter of the 24<sup>th</sup> it was on the assumption that it was accepted that it reflected both parties accepted that it reflected their agreement. So there seems to be something subsequently ja.

**ADV KATE HOFMEYR**: Indeed Chair.

**CHAIRPERSON:** Yes. Ja.

**ADV KATE HOFMEYR:** Let us see what happened with the volumes. You will recall your letter of the 24<sup>th</sup> put in a key protection for Eskom and you have explained to the Chair the rationale for it which was that Eskom was not to be obliged under the language of your letter to take additional tonnes. It was going to take them if it required them but let us see how that changes under paragraph 2. Could you read for us what is stated there?

**MR JOHANN ANDRIES BESTER:** On – from their draft?

**ADV KATE HOFMEYR:** From their draft yes.

10 **MR JOHANN ANDRIES BESTER:**

“Volumes the proposed volume is 200 000 tonnes per month  
from 1 October 2015.”

**ADV KATE HOFMEYR:** So what is missing from your previous letter is the further stipulation that Eskom would take it if it needed it, correct?

**MR JOHANN ANDRIES BESTER:** Correct.

**ADV KATE HOFMEYR:** And then the contract conditions at 3 are a replica as I have it what you had stated. It reads: “All conditions and subsequent modifications thereof as per current contract with a fairly long number remains.” But what it does not include is what you had inserted thereafter which was that requirement for a formal modification  
20 to the existing coal supply agreement in terms that satisfied the amendment requirements of that agreement. Do you accept that that is also gone?

**MR JOHANN ANDRIES BESTER:** I agree yes it is gone.

**CHAIRPERSON:** I am sorry I missed that last part which you say is gone. Just ...

**ADV KATE HOFMEYR:** Chair let me go over it again. You will see if we just compare it to 810 which is Mr Bester’s letter of that date.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** Towards the bottom of the page

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** There is that further stipulation which is that further to the above it is important to note that the record of discussions on the abovementioned material terms are all subject to a duly signed modification of the current coal supply agreement between the parties. So I am saying that has gone.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** There is no stipulated requirement now that we must do this  
10 all correctly and in accordance with the amendment requirements of the agreement.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** But Chair it goes further than that because after that paragraph on Mr Bester's letter of the 24<sup>th</sup> there were further conditions stipulated.

**CHAIRPERSON:** Yes three of them.

**ADV KATE HOFMEYR:** Three of them none of those make an appearance in the redraft.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** That is received from Tegeta.

**CHAIRPERSON:** Yes.

20 **ADV KATE HOFMEYR:** Mr Bester at this point I would just like to ask. Is it customary for Eskom to receive drafts of its letters from its suppliers?

**MR JOHANN ANDRIES BESTER:** Definitely not.

**ADV KATE HOFMEYR:** Had this ever happened before in your time at Eskom?

**MR JOHANN ANDRIES BESTER:** No well the other thing that – that is abnormal is if a – look I would normally not be involved with the medium term on – at this level. I think

another thing that probably would have happened under normal circumstances is that I probably would have – probably would have used firm language but being polite I would have to told the supplier to get lost in a polite way.

**ADV KATE HOFMEYR:** Well let us just pause on that for a moment if we may?

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** Why did that not happen on this occasion?

**MR JOHANN ANDRIES BESTER:** I mean overnight I have reflected a lot on that and I am trying to think where I was and I do recall as I have tried to indicate this is not something I should have been involved with at the level of detail. I should have been  
10 able to delegate to one of my delegates who should have had the best interests of – at heart. I – it is not evident whether – it was not evident that the time and I cannot make any allegations that – that she was aware of that or was trying to mislead me but it is quite – it may be possible. It may be possible that because of the flow of information that I did start missing things because of the pressure. I would admit that I – I would indicate that the one thing that I am glad that still remained and that maybe I insisted on that is that the last line but you may have a different interpretation. That it is still not a contractual commitment and the way I used to protect myself from a contractual commitment I did not always like to send letters to acknowledge this because they sometimes have a perceived commitment. But you always – you would then caveat it  
20 by saying that no liability is created here. But what I – but what was happening at the time I was negotiating as you will be – as you will be aware and I am not sure if we will have time to go into that. I was negotiating the Optimum contract, I was negotiating the Arnot Extension. I was negotiating the Empowerment of Angle American's Portfolio. I was negotiating the New Lager Portfolio. I was dealing with the war room and up to a year prior to that I had direct – I had reporting – I was reporting to Kiren Maharaj and

she was reporting before that time to Mr Dan Marikane and even Mr Darmis I would talk to from time to time about things and I trusted all three of those people and if I had taken a strong stance with the supplier they would have supported me if I had good reason to and not accepted this kind of behaviour. I had already been told by Mr Mboweni twice that he would replace me. The one was specific to this negotiation and the other one was related to another incident. I cannot offhand remember what it was related to and then I was also aware of the time I had heard it from internal sources and from external sources that they – that there were two people lined up to take my position and that they were looking for something to get rid of me. And I was not going  
10 to let something like this stand in the way of what was more important in my mind for Eskom. Those other – those other significant contracts. So I probably would have signed it to get it out the way so I can carry on with my business and I may not have applied my mind properly but I still feel comfortable that it is not a contract and it was an acknowledgement but yes it certainly does remove some of those protections that I would normally have applied specifically because we were dealing with these suppliers.

**ADV KATE HOFMEYR:** Mr Bester were you shown this draft that had been received from Tegeta at the time?

**MR JOHANN ANDRIES BESTER:** No. I would have been as gobsmacked as I am now. It is the first time I saw it when you showed it to me last week.

20 **ADV KATE HOFMEYR:** But then why did you reply the next day to change the letter in the precise terms that Tegeta wanted?

**MR JOHANN ANDRIES BESTER:** I am sorry I am saying I never – I do not think I would have seen the draft from drafted by Mr Nath.

**ADV KATE HOFMEYR:** I understand that but your letter.

**MR JOHANN ANDRIES BESTER:** But the second draft ...

**ADV KATE HOFMEYR:** But your letter.

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** Of the following day which you will find at page 816 gives Tegeta exactly what they wanted.

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** So how does that occur?

**MR JOHANN ANDRIES BESTER:** I do not – I do not recall this specific incidents but I cannot deny that I signed it. It does – it is my signature and it is probably – probably is.

**CHAIRPERSON:** Well maybe...

10 **MR JOHANN ANDRIES BESTER:** I, I. I beg your pardon?

**CHAIRPERSON:** Oh just finish.

**MR JOHANN ANDRIES BESTER:** No no I do recall that were one or two incidences where I had clearly frustrated them but I am not sure if it was because I saw it in the Gupta's leaks or someone had told me about that. But I cannot – I do – I must admit if I was to try and specifically say exactly why I signed the second letter, what the conversation was what led to that I cannot recall.

**CHAIRPERSON:** Were you during this period being assisted by anybody in your team or Ms Ntete in the drafting of the – of the letters that you were doing? You know in other words was there somebody doing a draft for you and bringing to you and would  
20 look at it, if you are happy sign or if you are not happy amend it or replace it altogether.

**MR JOHANN ANDRIES BESTER:** Correct Chair yes. Specifically in this – with the medium term mandates it would have been the norm that my direct reports would have written letters on my behalf. I did not give them a full mandate to do that. Commercial letters I wanted to still be from my office and my preference was that I would send it. And yes I sometimes got the wording wrong it appears as in a letter yesterday that it

gives the impression that I was there. But we tried to capture it always from my office yes so Ms Ntete would have drafted this. She may have been assisted from legal. I think at the time the lady I refer to quite often yesterday is my legal counsel I think she had also resigned by then. So whether there was any legal assistance to Ayanda to write the letter I cannot comment.

**CHAIRPERSON:** Then with special reference to the letter – your letter of the 19<sup>th</sup> June as well as that is the one at page 810 that we have dealt with as well as the one at page 816. Do you know whether Ms Ntete assisted you in any way by way of drafts or discussions with you as to what should go into those letters?

10 **MR JOHANN ANDRIES BESTER:** It is – it is more than likely that she would have held the pen and I would have approved it, yes. Or amended if I felt it needed to be amended.

**CHAIRPERSON:** Would she have got to you a draft or would you have drafted it and said to her what is your input and then she would bring it back to you or how would this have happened?

**MR JOHANN ANDRIES BESTER:** She would normally draft it and if it was acceptable I would sign it straight away and if not I would use my red pen that I was famous for.

**CHAIRPERSON:** But you – do you have any recollection not as to what would have happened but as to what actually happened in regard to the two letters or do you have  
20 no recollection?

**MR JOHANN ANDRIES BESTER:** Chair I do not recollect this instance.

**CHAIRPERSON:** Yes but to get drafts from her was normal in regard to letters that we are dealing with this topic?

**MR JOHANN ANDRIES BESTER:** Yes Chair it – the – my team would have draft – done most of my drafting for me at that level.

**CHAIRPERSON**: Ja of course one would have expected that if she brought you a draft that was significantly different from your letter of the 19 June the one at page 810.

**MR JOHANN ANDRIES BESTER**: Yes.

**CHAIRPERSON**: Subsequently if she brought you something that was significantly different or that sought to amend that letter.

**MR JOHANN ANDRIES BESTER**: Yes.

**CHAIRPERSON**: One would expect you to have raised the issue with her why are you changing this and..

**MR JOHANN ANDRIES BESTER**: Yes.

10 **CHAIRPERSON**: And do you remember whether you did ask her about that to the extent that she may have prepared a draft for you in regard to the letter at page 816?

**MR JOHANN ANDRIES BESTER**: Chair I cannot honestly recollect that instance and it would be yes it clearly would have been – would have been good to have been able to recollect it yes. And clearly there should have been some discussion I honestly cannot recollect.

**CHAIRPERSON**: Yes but you cannot remember any discussion?

**MR JOHANN ANDRIES BESTER**: Chair no it is about four years ago now.

**CHAIRPERSON**: Yes no, no that is fine. Did you think that there is a chance that you might not – you might have not applied your mind to this and signed without  
20 appreciating the difference between or the effect of your letter of the 6<sup>th</sup> of – at page 816 and your letter at page 810? Do you think you might not have applied your mind when there was such a big difference between the two and you signed but maybe now you look back and say I should not have signed without interrogating this?

**MR JOHANN ANDRIES BESTER**: Chair I would – I think I will always be reluctant to say I did not apply my mind but I cannot honestly reflect on that I think it was too long



ago. But as I tried to indicate I would have – I think in the frame of mind I was in at that time I think I would have frustrated and I probably would have been wanting to deal with it as quickly and as efficiently as possible so that I could get on with – with what I perceived as more important work to be done. I – and the fact that I – that [indistinct] was still included at the bottom which says Eskom – Eskom shall bear no liability for any costs or liabilities incurred by the supplier on the basis of this letter that may have given me sufficient comfort to sign the letter in any case even though I was not happy that it is not a contract. To my mind it is not a contract whether it was used later pretending to be a contract it is not contract I did not have the authority to sign and

10 contractually agree. That delegation of authority sits with the divisional executive not with me.

**CHAIRPERSON:** Well I can certainly understand your – your taking the view that that last line provides protection and it may well be that it does. But I wonder whether your inclusion of that provision in the letter, that part that statement in the letter may have come about because you could see that there could be problems with some of the things that were in the letter and you just wanted to make sure that if there was trouble Eskom could rely on that or you could rely on that to say well it was not something intended to give rise to any liabilities.

**JOHANN ANDRIES BESTER:** Chair that was, there was a line I think that I used from

20 previous correspondence. I had a couple of years earlier an instance where fortunately there was no paper that because we had been negotiating with the supplier there was a perception created with the supplier or an expectation, is probably a better word, an expectation created with the supplier, because we had been negotiating with them for a number months and there was an expectation that we would conclude a contract by a certain time and then one of, we had a technical failure at one of our power stations.

For example maybe it was Duvha, one of the Duvha units although they had a fixed supply. It may have been an incident like that where one of the units blew up and we did not coal. The coal supply plan changed. Until Eskom has actually signed the agreement there is no liability agreed. So having learnt from that experience every letter like this that we had a potential concern there. So, it almost tries to protect similarly to what the earlier letter did by saying that to the extent that Eskom required the coal. This also tries to protect that should the situation change should Eskom not have money, should Eskom not have a requirement that there is still no liability created. This is not a contract.

- 10 **CHAIRPERSON**: Well Ms Hofmeyr may take the issue further, but nevertheless what would remain troubling irrespective of that last, of that statement is simply that a situation existed where somebody from outside of Eskom was a supplier or potential supplier was dictating, a supplier was dictating to somebody at Eskom to say Eskom must draft a letter along these lines to us that is worrying.

**JOHANN ANDRIES BESTER**: Absolutely unacceptable.

**CHAIRPERSON**: Yes.

**JOHANN ANDRIES BESTER**: Had I been aware of that.

**CHAIRPERSON**: Yes.

**JOHANN ANDRIES BESTER**: I cannot think what my reaction would have been.

- 20 **CHAIRPERSON**: Yes, thank you. Ms Hofmeyr.

**ADV KATE HOFMEYR**: Thank you Chair. Just one or two follow up questions Mr Bester what you have indicated to the Chair in your last answer was that what might explain your willingness to sign these letters was an endeavour to deal with this efficiently get it out of the way. I recall you were saying it was something of an irritation. What I want to ask you in fairness is would not that most readily have been achieved by

simply saying no thank you to this offer?

**JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** And can I ask one other follow up question? You have emphasised the role that that last sentence on page 816 might have provided. Chair just a point of clarification, those two letters 810 and 816.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Were actually dated the 24<sup>th</sup> and 25 June. They are a day apart.

**CHAIRPERSON:** Oh.

10 **ADV KATE HOFMEYR:** They refer to the meeting of the 19<sup>th</sup>.

**CHAIRPERSON:** Yes, okay yes.

**ADV KATE HOFMEYR:** But that is not without significance, because it is a day later.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** That the fundamental changes are made.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** So I just did want to clarify that.

**CHAIRPERSON:** No that is important, *ja*.

**ADV KATE HOFMEYR:** But Mr Bester I understand your evidence to be you were not shown the draft that came from Tegeta, but I would like to ask you for your comment on  
20 the reason that is given to Ms Mishanga by Mr Nath for these changes, because you will see that at page 813 it is the email that he sends to her. He says:

“Thank you for the letter.”

That is the letter you wrote on the 24<sup>th</sup> with those key protections for Eskom and what he goes on to say is:

“However from our bankers’ purposes we need letter on the

enclosed lines.”

Why would Tegeta’s banker’ purposes be relevant at all to Eskom?

**JOHANN ANDRIES BESTER:** I think it is the same line he used a couple of months earlier.

**ADV KATE HOFMEYR:** Indeed.

**JOHANN ANDRIES BESTER:** *Ja*.

**ADV KATE HOFMEYR:** It does seem to be a trend.

**JOHANN ANDRIES BESTER:** *Ja*.

**ADV KATE HOFMEYR:** And would you confirm and give the same answer as you gave  
10 previously it would not be of a concern to Eskom?

**JOHANN ANDRIES BESTER:** Under normal circumstances not. I cannot recall whether Ayanda, what the motivation Ayanda; I absolutely cannot recall the motivation Ayanda made to me in terms of changing that letter whether she conveyed the same to me.

**ADV KATE HOFMEYR:** The reason why I wanted to emphasise that is would you accept that the letter at 816 might be read by a banker despite that last line to be a commitment to Eskom which could then be a further source of funding to Tegeta?

**JOHANN ANDRIES BESTER:** Yes, it would be unfortunate if they brought a lender under that impression, yes.

20 **ADV KATE HOFMEYR:** Yes.

**JOHANN ANDRIES BESTER:** But *ja* I would hope that a smart banker would not lend unless they had a contract.

**ADV KATE HOFMEYR:** But for the last sentence of the first paragraph of the letter that they received from you on 25 June which reads:

“Following our meeting on 19 June 2015 Eskom wishes to

record some of the material terms the parties agreed on.”

Do you accept that that might be interpreted to then contain a recordal of the agreed terms?

**JOHANN ANDRIES BESTER:** Yes, but I do not wish to take liability for a decision a bank made based on that.

**ADV KATE HOFMEYR:** No indeed. All I am asking you at the moment.

**JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** Is how it might be interpreted by the bank.

**JOHANN ANDRIES BESTER:** Correct.

10 **ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Let us go back to the two letters. The one at page 810 and the other at page 816, but actually I want to focus on the letter at page 816 and the draft at page 814. We all accept, do we not that if you look at the three items on the letter at page 816 under Coal Specification Volumes and Contract Conditions except for that last statement that you have pointed out, except for that do we all accept that those were the terms requested in the draft at 814?

**JOHANN ANDRIES BESTER:** Yes, they appear to be the same. Chair they also appear to be the same as the first letter I signed. So is [intervenes].

**CHAIRPERSON:** Sorry.

20 **JOHANN ANDRIES BESTER:** Chair I do agree that that wording is very similar to the or almost word for word the same.

**CHAIRPERSON:** Yes.

**JOHANN ANDRIES BESTER:** The same as the letter signed on the 25<sup>th</sup>.

**CHAIRPERSON:** Yes.

**JOHANN ANDRIES BESTER:** But it also appears to be the same as most of the

wording on.

**CHAIRPERSON:** Yes, okay.

**JOHANN ANDRIES BESTER:** On the 24<sup>th</sup>.

**CHAIRPERSON:** Okay. No that is fine, but we know what is different. Is it not? What has been omitted?

**JOHANN ANDRIES BESTER:** Yes Chair.

**CHAIRPERSON:** *Ja*. Now if you look at what has been omitted on the draft letter at page 814 which is also omitted on the letter at page 816. Would you not accept that the probabilities would be that in preparing your letter at page 816 you would only have  
10 written that letter omitting exactly what the draft at 814 wanted to be omitted. If either Ms [indistinct] or somebody else had prepared the draft for you who was aware of the draft from Tegeta or if you had seen the draft yourself. Otherwise it would be inexplicable how you would make those omissions that were made at page 814 when at, in your letter of the 24<sup>th</sup> you had written the letter the way you had. Would you accept that the probabilities would either be that somebody who was aware of this draft at 814 had prepared a draft for you or the draft for you?

**JOHANN ANDRIES BESTER:** Yes.

**CHAIRPERSON:** Or you had seen the draft at 814 yourself?

**JOHANN ANDRIES BESTER:** Yes, I would acknowledge the drafting of this letter very  
20 much would reflect someone having seen, let us maybe refer to it as the, *ja* the drafting on 814 that appears to have been drafted by Ravindra Nath. It appears to be the basis on which the Eskom letter was prepared. The choice of language and the order of the bullet points etcetera or, they are too close to be a coincidence.

**CHAIRPERSON:** Okay, thank you.

**ADV KATE HOFMEYR:** Thank you Chair. Mr Bester that concludes the aspects in

relation to your involvement on the Brakfontein Contract. There are two further items I propose to address with you in your evidence. The first is simply to deal with certain findings that were made against you in the Fundudzi Report, because in fairness to you I would like to put those to you for your comment and then Chair the second aspect which I neglected to recall yesterday when we were thinking about the timing this morning. There is an aspect of Mr Bester's statement that deals with the Optimum negotiations prior to the fourth addendum which are important and I propose to deal with those briefly thereafter.

**CHAIRPERSON:** That is fine.

- 10 **ADV KATE HOFMEYR:** Mr Bester you will find the Fundudzi Report in EXHIBIT U4 file 5. What I am going to propose in the interest of time and with your leave Chair is that I provide the references, but it is not essential to go to the actual pages.

**CHAIRPERSON:** Okay. That is fine.

**ADV KATE HOFMEYR:** I will simply summarise what those findings are and then ask for Mr Bester's comment.

**CHAIRPERSON:** That is fine.

- ADV KATE HOFMEYR:** But Mr Bester if you at any point would like me to give you the page and to turn it up please feel free to tell me that. Mr Bester the Fundudzi Report is as I read it makes three findings against you. The first of those is that your conduct in  
20 relation to the Brakfontein Coal Supply Agreement was irregular, because you allowed Tegeta to dictate the terms of the Coal Supply Agreement to the benefit of Tegeta and to the detriment of Eskom. Just for your reference Chair and Mr Bester you will find that in that file 5 at 1187 paragraph 6.13.12.23, but I can contend to you that that is a fairly verbatim recordal of what is said there. Do you have a response to that Mr Bester?

**JOHANN ANDRIES BESTER:** Yes. If I only respond to that point I can say that I in my mind I did everything in what I perceive in my power to put everything in place to number one, initially prevent the contract from even starting negotiations with our team. Well not the contract, but the supplier and then later on to try and put all the provisions that Eskom required to protect itself in there. I may have in the course of time with the constant pushing and as reflected in the last two letters it may appear as if I went soft on them, yes but it was not the intention to give them what they wanted.

**ADV KATE HOFMEYR:** I will come back to that in a moment. I would in fairness to you also like to just follow up a few other aspects of what we will submit in due course  
10 your evidence has presented in order to give you an opportunity to comment on those. As we read your evidence Mr Bester what it does show is that Tegeta secured a 10 year Coal Supply Agreement in a situation in which on your evidence a five year agreement with an option for another five years would have been in the interest of Eskom. Do you accept that?

**JOHANN ANDRIES BESTER:** It would have been a better situation for Eskom, yes.

**ADV KATE HOFMEYR:** Thank you. The second is that Tegeta was allowed to proceed with the contract despite a critical condition precedent that would have, which the non-satisfaction of which would have resulted in no agreement coming to be operative non the less continuing. Do you accept that?

20 **JOHANN ANDRIES BESTER:** I do.

**ADV KATE HOFMEYR:** And do you accept that Tegeta received the benefit of no one following up on that condition precedent?

**JOHANN ANDRIES BESTER:** Yes, I do agree on that.

**ADV KATE HOFMEYR:** And then the third is that Tegeta managed to dictate the terms of a further extension of the agreement on terms that were favourable to its bankers



and less favourable to Eskom?

**JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** Thank you. Mr Bester the second finding that was made against you in the Fundudzi Report, I hesitate to call it a finding because it is actually just a speculation on the part of the author of the Fundudzi Report, is that you may have received gratification for changing the conditions of the Coal Supply Agreement. Can you have, could we please have your response to that?

**JOHANN ANDRIES BESTER:** No and think if I had why would I have resigned from Eskom? I think I would have been in a good place. So the answer is no.

10 **ADV KATE HOFMEYR:** Thank you and then the third is that you breached Section 34 of the Prevention of Corruption Act by not reporting the corruption that was evident to have occurred in this contract. What is your comment on that?

**JOHANN ANDRIES BESTER:** My comment is that in my mind the contract, there was, the contract in itself was not, I am not sure the word you used. It was not fraudulent or.

**ADV KATE HOFMEYR:** Corrupt.

**JOHANN ANDRIES BESTER:** Corrupt.

**ADV KATE HOFMEYR:** Do you continue to hold that view now given everything that has been presented in the evidence at this Commission about that contract?

20 **JOHANN ANDRIES BESTER:** I continue to hold the view that the intention, my intention was not corrupt and I may have not followed up on those specific conditions, but there were processes in place that should have ensured that that happened. It, yes and then in particular what should have happened is that that if that contract had been managed and you have been through that in the previous few days, had that contract been managed as it was signed by the provision that that, that the burn test had not been done for the blend. The coal qualities and the price and the delivery mechanisms

everything else had that been contractually performed on there should not have been any reason for fraud to be committed or one cannot conclude that there was fraud committed.

**ADV KATE HOFMEYR:** If it had been implemented in accordance with its terms?

**JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** Thank you Chair. I propose to move to the Optimum aspects unless there are further issues.

**CHAIRPERSON:** Before you do that is it possible or how possible is it Mr Bester that in regard to that letter at page 816 that we looked at earlier what are the probabilities that  
10 at that stage with the threats to your job that you told me about and everything that was happening at the time around this issue and other issues what are the probabilities that you may have reached a point where you wanted these people to so to speak leave you alone, but you wanted to make sure that by putting that statement that there would as far as you are concerned be no liability for Eskom, but maybe they would think that they have got what they wanted?

**JOHANN ANDRIES BESTER:** I am not sure I understand the question 100 percent. Yes, it was the intention, you know, in hindsight I may have been, may have overthought my own ability to outplay or outmanoeuvre. It was my intention not to aggravate the situation. I was concerned about obviously losing my job. I was  
20 relatively comfortable that I would find employment fairly quickly after that. So it was not employment that I was worried about. I actually whether you believe it or not, I did feel that I had far important things to do and it was a sad day for me. Sorry, I need to compose myself.

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

**JOHANN ANDRIES BESTER:** Sorry Chair.

**CHAIRPERSON:** If you want us to take five minutes we can take five minutes.

**JOHANN ANDRIES BESTER:** No, no it is fine. I would rather continue Chair.

**CHAIRPERSON:** Hm.

**JOHANN ANDRIES BESTER:** There still is a lot to be done. I dedicated my five years to Eskom and I have sacrificed and, okay let us take five minutes.

**CHAIRPERSON:** Well I will take five minutes. We will take five minutes. We will take five minutes. Let us adjourn for five minutes.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Mr Bester how are you feeling?

**MR JOHANN ANDRIES BESTER:** I think I've composed myself Chair.

**CHAIRPERSON:** Okay, I just want to say this to you and I may have said it yesterday already, I am interested in knowing and hearing about whatever pain people may have suffered as a result of conduct that may be part of State Capture, may be part of corruption in general in Government Departments and parastatals, I do want to hear about that because that's important and I think the nation needs to know what suffering people may have gone through as a result of these things so I just want you to know that I am interested in your sharing that with the Commission, if you are able to.

20 **MR JOHANN ANDRIES BESTER:** Yes thank you Chair.

**CHAIRPERSON:** Thank you.

**MR JOHANN ANDRIES BESTER:** So even though I had been at Eskom probably not as long as some of the colleagues I referred to such as Ms Maharaj and Mr Brian Damas, Mr Dan Marikani who I reported to, who initially appointed me, he was also only there for a relatively short period, but these are people that I could look up to, that I

could trust and that supported me when I wanted to do things like renegotiate the Optimum contract, when I wanted to renegotiate the Medupi contract with Exxaro, when they had been removed or left I definitely didn't have someone in Mr Mboweni that I could confide in, he didn't give me guidance, he wouldn't give me guidance and I couldn't, it was clear that I couldn't trust him. I knew I couldn't trust Mr Koko, he was Mr Mboweni's direct report and it was clear that my – that Ayanda was being influenced and put pressure on from that – from the Executive, going over me, it was clear that they wanted to replace me. I think at the time I had a massive workload but I was prepared to shoulder that. Even the position I have now the company approached me

10 two years prior to that, I was always comfortable that I had somewhere to go but I was more passionate and I think I picked up some of that passion from some of the good colleagues at Eskom.

Sorry, it's just the tragedy what happened to some of the people. So ja, as I said there came a point when I think the last straw came when I still thought I could maybe make a difference, I could ...

**CHAIRPERSON:** You can drink some water as well.

**MR JOHANN ANDRIES BESTER:** I thought I could still make a difference, and there's a lot of important work and there is a train coming, I mean when I left Eskom had ten long-term supply contracts, twenty short-term supply contracts, it's enough work for

20 anybody in a day. A lot of the – you may be aware and some people have told you, and Mr Ephron even spoke a little bit about that, the Tide Collieries, those collieries where the coal comes across the conveyer belts, especially the Cost Plus Mines, they're important for Eskom's bottom line, that coal tends to be the cheapest coal. When Eskom doesn't continue investing in those contracts, and there was a – ever since I joined Eskom the two power stations that were being built and the Ingula Pump Storage

Scheme every single bit of money, and this is my perception, the accountants at Eskom may say I'm a little bit wrong here, it's my perception that all the cash that Eskom had went on those three projects. We were always told to make do Cost Plus Mines, those volumes kept dropping and I kept having to replace them from short-term contracts. Those short-term contracts come at a high price, number one, and the delivery cost adds another 30% onto that cost, so you are not doing what you should be doing for Eskom.

About a year before I resigned I think it was towards the end of 2014 I wrote a paper to the Board after having got several things in place, supported by my team, supported by Finance, supported by Coal Planning, and a number of other clever guys in the Primary Energy Department, we wrote a report that we wanted to table to the Board that if Eskom didn't spend R25billion over the next five years at the Cost Plus Mines that the cost of not doing that would be R92billion. Mr Mboweni signed that report but Mr Koko refused to sign it, it never reached the Board.

So those are the kind of things that started frustrating me. By – as you heard by Dan Mashigo's accounts now has 40 medium term supply contracts, and to my knowledge when I left Eskom was receiving about 20% of its coal from Medium Term Contracts, in other words delivered by road or rail. It is now receiving 40% of its coal on road or rail and that adds an immense cost burden to Eskom.

So I didn't only – I wasn't really that much, in all honesty I wasn't really that much worried about my job, I wanted to get the job done and this Brakfontein contract was actually just a frustration for me and I wanted to deal with it as efficiently and effectively as I could without jeopardising my position because I would quite easily, they would quite easily replace me with somebody else, that would not – I would maintain that would not have his eye on the ball, would potentially just be there at the behest of

outside parties, and not be focused on achieving the long-term strategy that Eskom still needs to actually implement to this day.

Thank you.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** Mr Bester thank you for that. I would like to move to your involvement in the Optimum negotiations. You will find that in your statement in Exhibit U4 File 3, and if you turn to page 16 of that file you will see where that discussion starts, at paragraph 38. Chair we are in file 3 at page 16, one six.

**CHAIRPERSON:** Okay thank you.

10 **ADV KATE HOFMEYR:** That is in Mr Bester's statement and we pick it up at paragraph 38 because that as I have it is where you commence your discussion of your involvement in the Optimum negotiations. Mr Bester I would like to turn over the page and just start at paragraph 40, because you give some introductory background, but what I would like to understand from you is your view in the course of these negotiations of Eskom's responsibility to ensure the sustainability of mines like Optimum as you have just described which were built adjacent to power stations and as a consequence of which could feed coal to power stations without the additional attendant costs of road and rail transport. Could you please just indicate to the Chair what role that sustainability played in your approach to these negotiations?

20 **MR JOHANN ANDRIES BESTER:** Chair the – I think until I arrived at Eskom there was a – with many suppliers there was almost like a them and us relationship, it was acrimonious at times I felt when I arrived there and I felt it wasn't – it didn't help always fighting with your supplier, there were always these penalties and – yes but they are there, you have to administer the contract, you have to keep your supplier honest otherwise they will take advantage of that. But in this – but this was a particular

problem, it is clear to me and anybody looking at the facts that the contract had good intentions initially and I don't want to go into the detail that Mr Clinton went into but the international coal price had dropped I think to about 75 dollars a ton, the long-term average for coal is about 95 dollars a ton, so then all export is making good money, when it drops to about 75 dollars a ton they're making money but they're not necessarily happy shareholders.

It was at this point that Mr Ephron started making noises about being unhappy with his contract because at those prices and the way the contract was structured it was exporting and it was supplying Eskom, so the price to Eskom was one  
 10 of the lowest priced contracts to Eskom, it was not the lowest but it was one of the lowest priced contracts and from my knowledge, from what costs should be from the underground section from a large mine like that they were a little bit higher than I anticipated from the studies that were done subsequently it didn't surprise me that Optimum were talking about declaring a hardship, that the initial intent of the contract was not at that stage being fulfilled, if I can put it that way. When the coal price dropped even further it actually I think went close to 53 dollars a ton on an export basis, to such a point that even Glencore stopped, or Optimum stopped exporting, it didn't even make sense for them to export coal, then there was no cross-subsidy obviously happening so they couldn't cross-subsidise the cost of supplying Eskom's coal.

20 There is one other, in fact there were two others, I am aware of one other mine where that is happening, where the coal is actually being supplied to Eskom at lower than the cost to produce it.

So this particular mine though is not part of a bigger company, so to sustain losses, although Glencore is the major shareholder it had other shareholders and it stands to reason that a company like that would eventually declare itself bankrupt so I

wasn't surprised when Mr Ephron told me that they would eventually, I think that it's not far from bankruptcy but would go into business rescue, so I think it was important for me before it got to that stage and so what had happened is already Optimum had said or Mr Ephron had said that they wanted to start that arbitration process which I think was discussed. The arbitration process would be – would take a long time, something as complex as this contract it could take the better part of a year, at least six months, and it would take the same resources out of my department and the Primary Energy Department, Legal etcetera, and cost, as it would be to accept that there was a problem and to try and renegotiate a new contract.

10 I had another objective, this contract would expire, it's not like some of the other contracts where Eskom had an option etcetera, this contract would expire December 31 2018, so it's last day was 31 December 2018, yet the power station's life was from – would start shutting down from 2023 to 2025 if I remember correctly but in that time frame, so I said to myself, and I probably engaged with Ms Maharaj as well, she was still there when I initially wanted to approach Optimum. I said to her look if I was Glencore or Optimum and we forced them to carry on supplying at R150 a ton we can guess what's going to happen on the 31<sup>st</sup> of December 2018, they will tell us they are no longer supplying us, they are no longer interested in supplying us or the alternative was they would dictate the price at which we – so if we waited till that point

20 we would have negotiating leverage, they would be quite happy to charge us R600 a ton or R900 a ton whatever they felt like, and if the relationship was really acrimonious they might refuse to supply us coal, so let's use this position and say we will come to sort of a middle ground.

I think that's maybe enough.

**ADV KATE HOFMEYR:** Thank you, just a few follow up questions, you've indicated



that at the time that these negotiations were embarked upon they were being paid effectively R150 per ton, that was pursuant to the long-standing coal supply agreement, is that correct.

**MR JOHANN ANDRIES BESTER:** Thereabouts yes.

**ADV KATE HOFMEYR:** Thereabouts. I think you record it as R154 in your statement. The other fact I just want to get your comment on is at paragraph 40 at page 17 because there you say in the second line it was clearly not sustainable if Optimum continued to lose R60million to R100million per month. Am I to understand that as being the consequence of being kept at a price of R154 per ton.

10 **MR JOHANN ANDRIES BESTER:** Yes and I used that range because that's what was verbally conveyed to me by Mr Ephron, we subsequently obviously checked those numbers.

**ADV KATE HOFMEYR:** Indeed. But that's the background as I have it to why you wanted to take this longer term approach to the negotiation, not allow it simply to come to an end at the end of 2018 and propose a price that as I read your statement you regard it as fair to ensure the sustainability of the mine and to secure an important resource of coal to the power plant, is that an accurate summary?

**MR JOHANN ANDRIES BESTER:** Correct, and the word "fair" I need to clarify, so the one thing, principle I made very clear to Mr Ephron and to Optimum is that whatever  
20 price we agreed on there would be no margin, it's not our problem that they bought the mine two or three years earlier that they didn't do their due diligence properly, that they didn't forecast the market properly, it's not Eskom's problem, however we wanted to make sure that the mine kept its doors open, or its gates open so when we did our due diligence on what their costs were it would be merely to cover their cost. They had a contract miner in there and there was obviously operating costs and there may have

been some debt, but there was no – Eskom would not pay a margin. As I mentioned yesterday it was fair for us to pay you your cost plus a margin, this was not going to be that case.

**ADV KATE HOFMEYR:** And as I have it you proposed after detailed investigations with your team a new price of R442 per ton, is that correct?

**MR JOHANN ANDRIES BESTER:** Yes it was really not much of a proposal, I think we both knew that – I mean we both agreed that the financial model actually gave us that number.

**ADV KATE HOFMEYR:** And just explain to the Chair if you will how you justified,  
10 when you sought to make this proposal to the executives of Eskom, how did you justify an increase of R154 to R442 for this coal source.

**MR JOHANN ANDRIES BESTER:** Ja, so obviously the next answer that they would have come from any executive, even at an executive level, even from my very next superior would be what is – what are your alternatives and because we do, we obviously procure coal and there was one other supplier already that was supplying and (indistinct) mentioned that name a couple of days ago, like it was already supplying some volumes to, so it's possible to supply some of the volume on road, so we did quite an extensive study, obviously not done by myself, but it was done by my colleagues and as I mentioned we had quite a good database and we had a pretty good idea  
20 where we could get coal, we did engage actually with potential suppliers and we modelled that so there were a number of suppliers we could get coal from but we wouldn't be able to get the volume from and the price was going to be relatively similar, some of the prices that were lower we wouldn't get the volume from and some of the more expensive suppliers, none of them would be able to reach the volume but there was a second probably bigger problem there, and that is the practically of actually

delivering into the Hendriena Power Station. This power station was built next to a mine that was supposed to supply across a conveyor belt, so the stockyard is not designed to take its full volume in by truck. When the truck goes into a stockyard, it's got to drive somewhere, it's got to tip its load over, it's got to go over a weighbridge, you can't depending on the size of the stockyard you can't allow maybe more than two or three trucks on that stockyard if it's very small because you get a traffic jam, as simple as that.

The road infrastructure around Hendriena town was also not conducive for road trucking. One of the things, I've got to be careful I don't get emotional here again  
10 because one of the things that putting more trucks on the road it does result in statistically there is a loss of life. I think on average when I was at Eskom there were at least six to twelve fatalities per annum as a result of the trucks on the road, I am not sure what the situation is now, putting more trucks on the road is something that you should avoid, even at all costs.

**CHAIRPERSON:** The fatalities how do they, how are they connected with the trucks on the road, was it drivers, or people who were, workers who were on the trucks or was it pedestrians, or how did it come about.

**MR JOHANN ANDRIES BESTER:** It's most often it would be other road users that would be affected by Eskom's coal trucking. Ja in my term there were two instances  
20 where school children were killed.

**CHAIRPERSON:** Ja, okay.

**ADV KATE HOFMEYR:** Mr Bester you've indicated that there were a series of factors you took into account in order to justify this increased amount and as I understand your evidence you will use the comparator well if we're not going to get it from Optimum what are the likely costs if we bring it in from outside and what I understand you to have

traversed now is some of the implications of bringing it in from outside with a power plant that's not designed to receive coal other than by way of conveyer belt, is that correct?

**MR JOHANN ANDRIES BESTER:** Correct the cost would have been fairly similar at best if not more and there would have been other knock-on effects which you can't price in, the loss of life and the logistics nightmare.

**ADV KATE HOFMEYR:** So as I understand your statement you then did this work, arrived at a figure of R442 per ton and you justified it with reference to this comparison, well if we're not going to take it from Optimum what are we likely to get it at from other  
10 suppliers, is that correct?

**MR JOHANN ANDRIES BESTER:** Yes, and I think it's maybe important to note at that stage there was distrust between the parties, maybe just to give more confidence around the figure, the mine had been exporting as well and it had been supplying Eskom and it's very important to have separated those costs and for a long time one of the reasons it took so long is we struggled to get information not an unwillingness necessarily from Optimum but an ability to distinguish what are Eskom costs and what are Optimum's costs and I think they stopped supplying the export market roundabout November so within a couple of months the audit firm that we were – well it wasn't an audit firm we appointed Basis Points Capital, it's a relatively small consultancy and then  
20 we also appointed Nedbank to assist us with that, just to – well it was to give our executives the comfort that it had been done by reputable parties, so we were relatively comfortable that that was the actual costs that Optimum was incurring and that they were not making any margin. I think a lot of people were hoping that there would be a golden wand that we would wave and there would be some magic fix and that there would be some better option but I had been busy with this for a year and a half and

there was really no other solution.

**ADV KATE HOFMEYR:** And as I understand your statement you then presented this to the Executive of Eskom, and can you tell us about that engagement?

**MR JOHANN ANDRIES BESTER:** Ja, so there are a couple of steps so the – I think it would have been an Exco and then it goes to a Board level as most large companies would, but even larger companies, you don't go straight to the full Board, you go to a Board Tender Committee, so it – something like that would normally have been able to be approved by the Board Tender Committee, I made mention in my statement that I wasn't surprised that the Board Tender Committee didn't approve it, they didn't not  
10 approve it but they felt that they wanted the full Board to be appraised or the full Board to make a decision on that matter, which also didn't surprise me.

**ADV KATE HOFMEYR:** If you turn to page 20 of your statement, the first paragraph on that page actually begins over the page, it's paragraph 46, but what I'm interested in in that paragraph is the sentence towards the end of the first paragraph which reads:

“I pleaded with my leadership not to allow a 15million ton per annum mine shut down, one of the largest in the country, probably in the top five biggest coal mines in the Continent.”

What gave rise to your need to plead with your leadership about this aspect?

**MR JOHANN ANDRIES BESTER:** I would have to reflect on the exact timing of that  
20 but I think it was at the time when Mr Molefe had just joined Eskom and the report had just been – he had just withdrawn the report from the Board Agenda and so it may have been the day after or he may have asked me to brief him, I can't reflect exactly on the date, but I remember my reference to that, I remember being in Mr Brian Molefe's office with Mr Vusi Mboweni and there was one other gentleman that I didn't interact with that much, but I think he was in the office of the CEO – I really went through this full

argument with those gentlemen again and I really tried to convey to them that there was really no other option and how important this mine is at the time. I wasn't seeing and you may be fully aware that there is not that much investment happening in the mining industry in South Africa as we would like there to be, especially in the coal industry a number of suppliers or mining companies were holding back, they were waiting to see how the new regulations would pan out. The coal price, I mean export coal prices were also low, so it was not likely that we would see anybody ever opening at that time, point in time it's not likely that somebody is ever going open another 15million ton per annum operation, nothing that size. I think it's got five drag lines, it's one of the – it used to be

10 one of the top performers, they're in an area where the geological conditions are different, they are one of the closest mines to Richards Bay so they have a cost advantage there, so whoever owns the asset, provided they can mine that resource efficiently, the coal resource isn't as great as it used to be but it was a fantastic mine.

The other consideration I had which in hindsight I should not have conveyed, and I don't really recall if I conveyed it at that meeting or whether it was subsequently in the private meeting with Mr Koko, where I conveyed to them that we were having problems, and as I said it may have been to Mr Koko, my memory is maybe a little vague on this and I have to refer to the affidavit but I think I also conveyed that the mine is one of the closest other resources we have to Arnot Power Station, Arnot Power

20 Station would also be struggling with its own supply over the next couple of years, I was trying to renegotiate a new contract with Arnot as well from their open cast section, and that it would be effective to supply it from there, so instead of letting the mine shut down, instead of forcing it to shut down it would end up in somebody else's hands and we would negotiate from a zero base and they would dictate the terms.

If we even – if they really didn't want to reach an agreement with Glencore

well then let's buy the mine, you've heard big numbers Chair for Eskom to buy a mine and pay R2.5billion, whatever the figure is we would have come up with, for Eskom to spend R2.5billion on a - to secure its supply would not have been a bad judgment call either in my mind.

**ADV KATE HOFMEYR:** And what was Mr Molefe's response to this argument that you presented to him about continuing with Optimum at a more reasonable price?

**MR JOHANN ANDRIES BESTER:** I will have to refer to that, but I think I remember the one thing he did say is we will build a railway line and I said to him it doesn't make sense to me, by the time you've finished building that the power station will be in its  
10 shut down years.

**ADV KATE HOFMEYR:** Just take us through I know these facts are well known to you but did Mr Molefe agree with you that you should enter into negotiations for a longer term contract at R442 a ton?

**MR JOHANN ANDRIES BESTER:** Look the negotiations were concluded so no he was clear that he did not want to agree to that.

**ADV KATE HOFMEYR:** And how did the railway line come up in that discussion?

**MR JOHANN ANDRIES BESTER:** So I said to him we had no alternative and I think it was at the point when I explained to him it doesn't matter, even if he wanted Plan B, even if he wanted me to go and buy the coal for him for Eskom from medium term  
20 suppliers if I managed to get ten different suppliers to – I can't – I'm guessing at what the figure would be, it would be maybe something like 800 to 1 000 trucks delivering there every day. I told him it's physically impossible. I myself do admit I have never been to the mine, but I rely on my technical colleagues they told me the stockyard is too small, there's a sub-way that you need to drive through, there's a particular point in accessing the power station where only one truck can pass that section of road in one

time, so that's a congestion point.

There were an number of points that, so the size of the stockyard, the road infrastructure around Hendriena town that would prevent you actually from practically delivering the full power station burn on road, and then he said well we will build a railway line, and I said to him Mr Molefe with all due respect by the time we've got the EIA approved and the railway line built the power station will be in its shutdown years, which would be 2023 to 2025 in my memory.

**ADV KATE HOFMEYR:** Mr Bester has ...(intervention)

**CHAIRPERSON:** Sorry. That engagement that you had with Mr Molefe on this issue  
 10 was it an engagement which you felt was on the part of both of you in terms of which were – both of you were looking at trying to find genuinely trying to find a solution to the issue in terms of you raised arguments supporting your view. He dealt with them in a rational way. You might have disagreed with him but the – he was putting across rational arguments based on somebody who was genuinely looking at trying to find a solution or is it something that you could – you cannot tell – you could not tell?

**MR JOHANN ANDRIES BESTER:** Maybe I should mention one other aspect. As I said Mr Mboweni was there as well and everything Mr Molefe said he agreed with wholeheartedly and I was the only body – I was the only one arguing the other point. Strangely enough even though Mr Mboweni had supported my document to the board it  
 20 was as if he was not going to challenge Mr Molefe. So – but to get back to your question Chair ja it is maybe not fair but to my mind the options – and there were not many the options that Mr Molefe had put to me were not thought through to my mind they were very quick responses to everything I said. They were not considered.

**CHAIRPERSON:** Yes, yes. But that is how far you can – you can go in terms of describing his approach or attitude to the issue that is how far you can go you cannot



go beyond that?

**MR JOHANN ANDRIES BESTER:** I cannot – yes I – it would be difficult to speculate further.

**CHAIRPERSON:** Ja okay. No that is fine thank you.

**ADV KATE HOFMEYR:** You go on in your statement to record the response from Glencore or let me be specific from Optimum to the rejection of the fourth addendum. As I have it that was to counteroffer to supply the coal at R300.00 per tonne is that correct?

**MR JOHANN ANDRIES BESTER:** Yes that is correct.

10 **ADV KATE HOFMEYR:** We have gone through some of that evidence with Mr Opperman and the documents attached to your affidavit on the score are actually also annexures to his statement so I do not propose to go through them again. What I am interested in was the interaction that you had with Mr Molefe after that counteroffer was received from Optimum. You will find that at page 20 of your affidavit at paragraph 47. What was Mr Molefe's response to that counteroffer?

**MR JOHANN ANDRIES BESTER:** I think the first part does not deal with the counteroffer. Ja so the first part I mean it was fairly public and then – but maybe I just – just summarise. So there was a counteroffer and it was copied to me. So I drafted a response. I would be the one who would draft a response in any event. So I am trying  
20 to think what the date was?

**ADV KATE HOFMEYR:** Well I can give you the reference. The counteroffer appears at page 110 of that file and you will see that it is the letter from Optimum Coal Mine dated the 30 June 2015.

**MR JOHANN ANDRIES BESTER:** Okay if it was June then I still would have been quite busy. But that is the only thing I am trying to reflect on. So I drafted two letters.

One was an outright rejection and one was an acceptance. And it was – I took it to Mr Mboweni's office for him to take to see if Mr Molefe was happy with the drafting. Because at that stage the other thing that happened with Mr Molefe acting in that way he basically took the negotiations out of my hands. It – and that is also the other abnormality when you – he had elevated the negotiations to his level. Well maybe if you have a big problem like this it should be. So those letters all would have to go from – it was just customary to go from his office. So I drafted those letters and Mr Mboweni I think it Mr Mboweni told me that I should not even acknowledge the letter.

**ADV KATE HOFMEYR:** You should not acknowledge it at all?

10 **MR JOHANN ANDRIES BESTER:** At all yes. I think that is what my paragraph says I have not read it.

**ADV KATE HOFMEYR:** Indeed.

**MR JOHANN ANDRIES BESTER:** Ja.

**ADV KATE HOFMEYR:** Indeed. Your draft just for your reference is at page 114.

**MR JOHANN ANDRIES BESTER:** I only found the one yes. I did not find the other one.

**ADV KATE HOFMEYR:** But are we to understand that those drafts were rejected and you were told not to communicate in relation to the counteroffer?

20 **MR JOHANN ANDRIES BESTER:** Yes and my understanding is that at the time there was no – there was no correspondence on that. There may have been a meeting afterwards which I have heard about subsequently.

**ADV KATE HOFMEYR:** What did you make of the counteroffer? Would you have accepted it?

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** It was R140 odd less than what you were proposing.

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** Eskom should pay was it not?

**MR JOHANN ANDRIES BESTER:** Ja. Look we would have had to do some calculations so then maybe it is not that relevant. The one thing that I had included in our negotiations is that post 2018 I still reserved the right for Eskom to go out on tender and to try and find its own alternative coal. And if I reflect correctly on the letter without having to – without going to it now specifically I think what Optimum had done there they had reserved their – a price to supply post that period. So they almost did build in a little bit of a claw back and when it is – I cannot remember now not having looked at  
10 the letter recently whether they had the right to or whether there was a commitment.

**ADV KATE HOFMEYR:** Well we did go through it with Mr Opperman but it is a point of some significance because it – we will submit bears out the reasonableness of the counteroffer. The counteroffer comes in at R300,00 per tonne.

**MR JOHANN ANDRIES BESTER:** Yes

**ADV KATE HOFMEYR:** Which is about R140,00 off what you were proposing should be paid.

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** But in addition to that it allows this tender process to be conducted.

20 **MR JOHANN ANDRIES BESTER:** Ja.

**ADV KATE HOFMEYR:** So the post 2018 Eskom can ensure that it has tested the market.

**MR JOHANN ANDRIES BESTER:** Yes.

**ADV KATE HOFMEYR:** That it sees what price it could get there

**MR JOHANN ANDRIES BESTER:** Ja.

**ADV KATE HOFMEYR:** And all that Optimum retains is an option to meet the price.

**MR JOHANN ANDRIES BESTER:** So then it would absolutely ...

**ADV KATE HOFMEYR:** So it absolutely protected Eskom.

**MR JOHANN ANDRIES BESTER:** Ja.

**ADV KATE HOFMEYR:** We submit in relation to testing the market.

**MR JOHANN ANDRIES BESTER:** And the – yes so I mean with not having looked at the letter recently based on what you have conveyed Ms Hofmeyr I would say it is a no brainer. We should have accepted that.

**ADV KATE HOFMEYR:** Thank you. Chair those are the aspects in relation to  
10 Optimum that we wanted to traverse with Mr Bester unless there is anything else?

**CHAIRPERSON:** No. Are you otherwise done with him?

**ADV KATE HOFMEYR:** I am otherwise done and I will hand over to Mr Maleka for the next witness.

**CHAIRPERSON:** Okay alright. And we can excuse Mr Bester now.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Okay. Mr Bester thank you very much for coming to give evidence. You are excused and if a need arises for the commission to ask you to come back you will be contacted.

**MR JOHANN ANDRIES BESTER:** Thank you Chair.

20 **CHAIRPERSON:** Thank you. Mr Maleka.

**ADV VINCENT MALEKA SC:** Chair I see it is ten – five past eleven.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** I wonder whether we could not take an earlier tea adjournment and resume earlier than normal.

**CHAIRPERSON:** The tea might be not be ready.

**ADV VINCENT MALEKA SC:** Okay. Well let us use the commission's resources.

**CHAIRPERSON:** That is fine use the time that we have.

**ADV VINCENT MALEKA SC:** Chair there are some housekeeping matters that I would like to bring to your attention and seek your direction.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** By now we are running a bit late in terms of the witness scheduled.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** There are three witnesses who are here present whose  
10 evidence we need to deal with.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA SC:** It is unlikely that we will deal with all three of them today. Subject to your direction we have arranged with the last of the three to be excused and return tomorrow.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** And that is Doctor Ramontja.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** So if it suits you Chair will ask him to go and do other better things in his life.

20 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And come back tomorrow.

**CHAIRPERSON:** No that is in order.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** That is in order.

**ADV VINCENT MALEKA SC:** That leaves two remaining witnesses the first is Mr

Sinton.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: He is here and he will be able to testify. The second is Mr Pers Marsden.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: Supported by his colleague who at the time was the co-business rescue practitioner for Optimum Coal?

**CHAIRPERSON**: Yes.

10 **ADV VINCENT MALEKA SC**: He comes all the way from Canada in order to assist the commission.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: And he has constraints of time he would like to complete his evidence by tomorrow so that he gets back to Canada.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: I am fairly confident that we should be able to complete his evidence tomorrow.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: Subject to other more important intervening issues Chair around tomorrow.

20 **CHAIRPERSON**: YEs.

**ADV VINCENT MALEKA SC**: But we would ask you to allow his evidence to be completed immediately after Mr Sinton's – Sinton completes his evidence?

**CHAIRPERSON**: Okay no that – what is your estimate of how long Mr Sinton...

**ADV VINCENT MALEKA SC**: I would like to complete Mr Sinton by three o'clock this afternoon.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: And his evidence is quite important.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: And it has attracted all manner of attention some of which I will bring to your attention before I start. That leaves...

**CHAIRPERSON**: Yes. And Mr – and the other two witnesses are likely to take how long each more or less?

**ADV VINCENT MALEKA SC**: Only one of them will testify Chair the other has made a confirmatra affidavit to confirm matters that are referenced.

10 **CHAIRPERSON**: Okay.

**ADV VINCENT MALEKA SC**: To his participation in the BR process.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: Yes. So I estimate that if I were to start with Mr Piers Marsden today

**CHAIRPERSON**: Ja.

**ADV VINCENT MALEKA SC**: At around three – three thirty.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: I should be able to conclude his evidence tomorrow by tea time.

20 **CHAIRPERSON**: Okay, okay. No that is fine. I think that is in order. Ja the witness that you thought maybe should be released for today and come back tomorrow is released and must come back tomorrow.

**ADV VINCENT MALEKA SC**: Thank you very much Chair I will then indicate to my colleagues that they can tell Doctor Ramontja that he is released for now.

**CHAIRPERSON**: Ja. Okay.

**ADV VINCENT MALEKA SC:** Chair before I start with Mr Sinton well I see he is ready here.

**CHAIRPERSON:** Well I think he must go to – he must [indistinct] as well go and sit there he is not unfamiliar with that place. He has given evidence before.

**ADV VINCENT MALEKA SC:** Ja you can give it to him. Chair we propose to deal with Mr Sinton's evidence through a set of documentation which was previously handed up to you.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** It is a file which is marked U10.

10 **CHAIRPERSON:** It is marked U?

**ADV VINCENT MALEKA SC:** U10 and you will see just below U10 it is marked IHS Sinton. Chair if you do not have it readily available we have an extra copy.

**CHAIRPERSON:** Well I think the one I found should be the one. It is marked Volume U10 and then it is written his initials and his surname.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** It is supposed to be Exhibit what?

**ADV VINCENT MALEKA SC:** U10.

**CHAIRPERSON:** U10?

**ADV VINCENT MALEKA SC:** Yes.

20 **CHAIRPERSON:** Can I ask for the umpteenth time will the legal team make sure it is written Exhibit number.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** U10 and all the others because when I look for them that is what I look for.

**ADV VINCENT MALEKA SC:** Yes.



**CHAIRPERSON**: What the exhibit number is.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: I am going to mark this one Exhibit U10.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: That is on the spine. If they can just write that on the spine it will make things easier for me.

**ADV VINCENT MALEKA SC**: Chair I feel sabotaged because I have conveyed your requirements.

**CHAIRPERSON**: Yes.

10 **ADV VINCENT MALEKA SC**: Umpteen time to the staff.

**CHAIRPERSON**: Ja.

**ADV VINCENT MALEKA SC**: And at some point I..

**CHAIRPERSON**: You threatened something?

**ADV VINCENT MALEKA SC**: I threatened something which did not endear me.

**CHAIRPERSON**: Ja.

**ADV VINCENT MALEKA SC**: But I really would take it back again.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: To make sure that your requirements are met.

20 **CHAIRPERSON**: Yes please I mean even among those that are here apart from this one I see another one that is market Volume 5 but it is on the spine but it is not marked what exhibit number it is.

**ADV VINCENT MALEKA SC**: Yes. I believe that [Rivedan Stimela] is here and he would intervene on my behalf.

**CHAIRPERSON**: Ja. Okay alright.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: What we have discovered as we read through the statement and annexures of Mr Sinton's file Exhibit U10 is that there was one document or page that was missing and we asked him to bring it today and the page is going to become important when we deal with his evidence concerning what he was told regarding the relationship between Regiments on the one hand and McKinsey on the other. So he has given us that page Chair and I have taken the liberty of marking it as page 107A which will follow 107.

**CHAIRPERSON**: Okay.

10 **ADV VINCENT MALEKA SC**: And secondly Chair if you go to that file at page 143.

**CHAIRPERSON**: What page?

**ADV VINCENT MALEKA SC**: 143.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: You will see that there is Exhibit C there.

**CHAIRPERSON**: Yes 143 I have got ja.

**ADV VINCENT MALEKA SC**: Chair I have tried even with my magnified glasses to read that document I failed and I asked Mr Sinton to see whether or not he cannot get an A3 size copy of that document. He has kindly done so Chair.

**CHAIRPERSON**: Okay.

20 **ADV VINCENT MALEKA SC**: And I have marked it page 143 Exhibit C.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: And I would ask your permission to place both these documents in your file?

**CHAIRPERSON**: Yes thank you very much.

**ADV VINCENT MALEKA SC**: And Chair that document is going to become important

as and when Mr Sinton tracks and traces various transactions and money flow.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: Relating to accounts that he had some concerns with so I would ask you to place Exhibit C A3 size next to Exhibit 3 A4 size.

**CHAIRPERSON**: Just hang on one second. Let me put these where they belong. Page 107A should come...

**ADV VINCENT MALEKA SC**: Immediately before 10 – well immediately after 107.

**CHAIRPERSON**: Immediately after 107?

**ADV VINCENT MALEKA SC**: Yes. Chair you will see page 107 at the bottom is

10 **CHAIRPERSON**: Marked 3.

**ADV VINCENT MALEKA SC**: Internally paginated 3

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: And then if you go to the next page.

**CHAIRPERSON**: It is marked 5.

**ADV VINCENT MALEKA SC**: 5 so there is page 4 missing.

**CHAIRPERSON**: Okay. Thank you.

**ADV VINCENT MALEKA SC**: And Chair whilst you are there can I ask you to make a note if not highlighting that section of 107A the heading Regiment To Essa.

**CHAIRPERSON**: Yes thank you.

20 **ADV VINCENT MALEKA SC**: We will come back to it in due course.

**CHAIRPERSON**: Okay thank you. Probably we can take the tea adjournment now or are you...

**ADV VINCENT MALEKA SC**: Chair can I complete the documentation.

**CHAIRPERSON**: Ja.

**ADV VINCENT MALEKA SC**: Before we start I think it will make it much easier and

convenient.

**CHAIRPERSON**: Yes, yes okay.

**ADV VINCENT MALEKA SC**: Chair we have given several notices to various persons who are or may be implicated by the evidence of Mr Sinton. They all come down to about 19 at this stage the list may grow or not.

**CHAIRPERSON**: Yes, yes.

**ADV VINCENT MALEKA SC**: We have not yet disclosed or included the notices in your file.

**CHAIRPERSON**: Yes.

10 **ADV VINCENT MALEKA SC**: In line with your previous directions.

**CHAIRPERSON**: Ja.

**ADV VINCENT MALEKA SC**: But I have a copy here in case anything arises from the notices.

**CHAIRPERSON**: Yes. Ja no that is fine.

**ADV VINCENT MALEKA SC**: We have only received two responses. The one is from Mckinsey. We have communicated their stance to you in chambers and therefore nothing further tends from what they had indicated in that response.

**CHAIRPERSON**: Ja.

20 **ADV VINCENT MALEKA SC**: I shall not deal with that response any further except to say that their attorneys are present here.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: And if there is anything that arising and they want to take up with Mr Sinton.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: He is here. We would simply ask them to comply with

the rules to the extent possible.

**CHAIRPERSON**: Ja. Ja.

**ADV VINCENT MALEKA SC**: The next set of response Chair comes from Regiment.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: And I am afraid here I have to give you a bundle of documents. Chair can I ask for your Registrar's permission to give you two sets of documents. The one is the response from Regiment and the commission's reply thereto.

**CHAIRPERSON**: Yes.

- 10 **ADV VINCENT MALEKA SC**: The next is a copy of the Financial Intelligence Centre Act and I will indicate to you where that legislation becomes important. But first thing first can I take you through the response?

**CHAIRPERSON**: I will tell you well I think we must take the break.

**ADV VINCENT MALEKA SC**: Okay Chair.

**CHAIRPERSON**: Where you can take me through when we resume.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: I see if we break at exactly quarter past it makes it easier to say we come back at half past.

**ADV VINCENT MALEKA SC**: Yes my apologies Chair, my apologies.

- 20 **CHAIRPERSON**: If we break at 17 minutes past it becomes a problem.

**ADV VINCENT MALEKA SC**: No I have...

**CHAIRPERSON**: Because if I say half past it is less than the time and there are people who need some comfort break.

**ADV VINCENT MALEKA SC**: I really apologise.

**CHAIRPERSON**: Might – okay we will take the tea break and resume at twenty five to.

**ADV VINCENT MALEKA SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Mr Maleka.

**ADV VINCENT MALEKA SC:** Chair thank you very much. Before the tea break I had handed up to you correspondence.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Chair we bring to your attention the body of the  
10 correspondence just to keep you up to speed about where things are in relation to Regiment.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Unfortunately our administration has arranged the correspondence in reverse order. I would ask you Chair to go to the last tagged document. I have taken the liberty of putting the post-it stickers, the last one you will see it is a Notice under Rule 33.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** To Regiment.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA SC:** In response to that notice Chair the attorneys of Regiment wrote a letter to the Commission dated 9 March 2019. You will find it as a second last tagged document.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** All I wish to bring to your attention in that regard Chair is their confirmation in paragraph 2 of that letter that they received the notice and

paragraph 3 they indicated that they had previously made themselves available to cooperate with the Commission and make statements to the Commission and that their position in that regard has not changed.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And then Chair if you go to page 2 paragraph 8 of that letter you will see that they report the following:

10                    “We accordingly request that the publication and presentation  
                         of Mr Sinton’s evidence be postponed for 30 days so as to  
                         afford our client an opportunity to make its application and/or  
                         and the Commission to rule thereon and to afford our client an  
                         opportunity to consult with counsel and prepare for cross-  
                         examination.”

                         Of course the Commission via the Legal Team responded to that letter and the  
                         response is dated 11 March 2019. It is the document which is tagged in the middle of  
                         that bundle and the sum total of the Commission’s response via Mr Pedlar was that we  
                         do not accept that the evidence of Mr Sinton be postponed and what followed thereafter  
                         Chair is the document which is the first in the bundle. It is dated 12 March 2019. Sorry  
                         is the one before, 12 March 2019. The letter from the same attorneys of Regiment and  
                         you will see Chair in paragraph 2 they accept that the Commission had informed them  
20                    that they are entitled to make an application for cross.

**CHAIRPERSON:** Which one now? Not the last one, not the top one?

**ADV VINCENT MALEKA SC:** The.

**CHAIRPERSON:** Second top?

**ADV VINCENT MALEKA SC:** The second top.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** Where they confirm what the Commission told them, but of importance Chair is paragraph 3 where they say we appreciate the need to do so and our letter was not meant to circumvent due process, but rather to avoid our client the opportunity to prepare the requisite application and in paragraph 4 the note that Mr Sinton's evidence will proceed today.

**CHAIRPERSON:** I am sorry Mr Maleka. Let us start again. You have four dividers here?

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** If you start from the top one.

10 **ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Which one are you on right now?

**ADV VINCENT MALEKA SC:** The second one. The first.

**CHAIRPERSON:** Is that the letter from the Commission to Smit Sewgoolam Incorporated?

**ADV VINCENT MALEKA SC:** No, the letter from Smit Sewgoolam Incorporated Attorneys dated 12 March 2019.

**CHAIRPERSON:** Well I see one dated 9 March.

**ADV VINCENT MALEKA SC:** That we have dealt with. It was a request for a postponement for 30 days. From the top Chair you could page two pages.

20 **CHAIRPERSON:** Oh, okay. Okay, I found it. Thank you. Yes, you were referring to paragraph 3 of the letter?

**ADV VINCENT MALEKA SC:** Yes. You will see there that their request for postponement was not meant to circumvent due process, but afford their client an opportunity to prepare for the applications which it may be advised to make in terms of the rules and if you go to page 2 on paragraph 5 you will see the requested



confirmation of when Mr Sinton's evidence will be presented.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And then the Commission did inform them about those requests in terms of the letter of 12 March 2019.

**CHAIRPERSON:** Huh-uh.

**ADV VINCENT MALEKA SC:** Where they were told that Mr Sinton's evidence would proceed.

**CHAIRPERSON:** Huh-uh.

**ADV VINCENT MALEKA SC:** And they are entitled to get the statement and a  
10 transcript of his evidence after he testified. Chair we have brought your attention to these matters simply to show that there is no basis to postpone Mr Sinton's evidence.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And we will therefore with your leave proceed to present that evidence before you.

**CHAIRPERSON:** Ja. That is in order.

**ADV VINCENT MALEKA SC:** The next issue Chair is I have presented a copy of the Financial Intelligence Centre Act 38 of 2001 before you and I would like to take you to some of the provisions and explain why it is important. Chair the first is page 18 of that bundle where you will find Sections 20A, 21 and 21A.

20 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** These provisions impose obligations on accountable institutions and other persons who conduct business such as Standard Bank to ensure firstly in terms of Section 20A that they do not deal with fictitious persons and in terms of 21 there is an obligation for them to ensure that they know who their clients are and they can verify their identity and also verify the sources of funds in the accounts opened

by their clients and they have to do so in terms of a Risk Management and Compliance Program. The Act provides for the elementary aspects of that Compliance Program in a section which I will get to you Chair. I just think it is, it has escaped me now, but I will get it to you Chair and then the next section that I would like to bring to your attention Chair is Section 21B on page 19 which impose additional obligations on the part of the accountable body to take additional due diligence matters relating to incorporated entities such as companies or unincorporated entities such as trusts and partnership and the obvious need for that provision Chair is clear that an entity that is required to report ought not to take a defence that it was dealing with a legal person and did not

10 know who was behind that cooperate veil and Chair we would therefore suggest that it was proper and right for Mr Sinton to report the transactions around which he had suspicion and on which he is going to testify by reason amongst others of this provision and then Chair the next provision is the obligation to report suspicious or unusual transactions. You will get that in Section 29 on page 29 of the Legislation. The obligation is wide Chair. It includes amongst others in terms of Section 29(1)(A) the obligation to report transaction around which you conclude or have a reasonable suspicion that funds in the account in your bank constitutes proceeds of unlawful activities and then C is important because it is the one that Mr Sinton appears to have relied on that is the obligation to report money which may constitute money laundering

20 or for the purposes of facilitating money laundering and Chair the next section which is important is the Protection of Confidential Information because all of these things you report them to the Financial Intelligence Centre and you do so in terms of the various reports which are called STRs, Suspicious Transaction Reports, and I will in a moment indicate to you why that is important and as you report them you do confidentially to protect the identity and further details of the person on whom you report and the centre

itself has an obligation to protect the confidentiality of that information, but the confidentiality and protection of the information concerned it is not without exceptions. Section 41 provides for exceptions and you will find Section 41 at page 37 and one of the exceptions Chair is in paragraph D of that section where the information is sought for legal proceedings including any proceedings before a Judge in chambers. We would submit that that is broad enough to include proceedings such as the present and it is for that reason that we by way of subpoena secured the presence of Mr Sinton before you and we called upon him not only to provide information by way of affidavit, but also to produce several suspicious transaction reports which Standard Bank may  
10 have filed in regard to those transactions that he had some suspicions on. He has done so Chair and has produced a bundle of STRs under a subpoena, but they have been produced and they have been addressed to you. We have not looked at them, because we do not want to violate any confidentiality protection. We will only do so if you give us permission for us to look at them. For now Chair I merely want to record that the reports are here and we would ask for your direction that we begin to look at them.

**CHAIRPERSON:** Well I will need to apply my mind.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** To them. Of course a question that arises in relation to Section 41  
20 whether proceedings such as this are legal proceedings.

**ADV VINCENT MALEKA SC:** Oh yes Chair.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** We submit that they are.

**CHAIRPERSON:** And it may well be that you are right and they are legal proceedings, but one might just need to reflect.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** On that.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** In part maybe because; so one might just need to reflect maybe on that, but I; one would, the one approach would be to take the view that even though a Commission is not a Court of Law. It is the function of a Commission such as this is such as to place its proceedings within the ambit of that term.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** But it may well be that there may be an argument that its  
10 proceedings are not legal proceedings in a certain sense and administrative proceedings.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Or something along those lines.

**ADV VINCENT MALEKA SC:** Chair you will see that.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA SC:** The Act does not define legal proceedings.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** There is no definition.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA SC:** And therefore it will boil down to.

**CHAIRPERSON:** Interpretation.

**ADV VINCENT MALEKA SC:** Interpretation.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** But on the interpretation we contend.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA SC:** The Commission is a product of the Commissions Act

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Which gives the Commission and especially you Chair.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** The power to subpoena persons.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** By means of a subpoena properly issued under your direction.

**CHAIRPERSON:** Yes.

10 **ADV VINCENT MALEKA SC:** And a subpoena is a legal process.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And that process has been issued to secure the presence of Mr Sinton here.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And we would therefore submit that the Commission processes such as these.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Are legal proceedings within the broad definition or understanding of that.

20 **CHAIRPERSON:** Yes and the Commissions Act says something to the effect that the bringing of witnesses to appear before the Commission happens or is required to happen following the same process as is used in the High Court. I think there is a provision to that effect.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** So that may support that submission.

**ADV VINCENT MALEKA SC:** Yes and Chair my colleagues.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA SC:** Especially Ms Hofmeyr wants me to make another point.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** In order to justify the production of these reports.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** May I ask you to go to Section 41 again?

**CHAIRPERSON:** Section 1?

**ADV VINCENT MALEKA SC:** 4-1.

10 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** On page 37.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** You will see that another exception is where a person acts within the scope of his or her powers and duties in terms of any legislation.

**CHAIRPERSON:** What paragraph of 41 is that?

**ADV VINCENT MALEKA SC:** 41, paragraph A.

**CHAIRPERSON:** “No person may disclose confidential information held by

or obtained from the centre except within the scope of that

persons powers and duties in terms of any legislation. No

20 person may disclose confidential information held by or

obtained from the centre except within the scope of that powers

and duties in terms of any legislation.”

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Now the no person in this case would be Mr Sinton.

**ADV VINCENT MALEKA SC:** Sinton.

**CHAIRPERSON:** *Ja*, Sinton.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** So it would have to be that he makes the disclosure within the scope of his powers and duties in terms of any legislation. Is it not?

**ADV VINCENT MALEKA SC:** Yes. We make two points there Chair.

**CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA SC:** These reports were filed by him in terms of Section 34 of PRECCA which is the Prevention and Combating of Corrupt Activities Act and secondly flowing from that duty he had under Section 34(1) he also has a duty to disclose the  
10 information before you via a subpoena which you issued in terms of section, I think it is three of the Commissions Act read together with the rules and the regulations. So he had the duty the moment that you say under that legislation I call upon you to produce the information and to that extent the confidentiality provided for in the general provisions of Section 41 would be overridden by reason of that exception. In other words he, once you issue a subpoena and you issue it in terms of the Commissions Act he has a duty to comply with that legislation and the process issued under that legislation.

**CHAIRPERSON:** You see my inclination right now is that this might be something that one needs more time to reflect on.

20 **ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Than just to deal with it in this fashion and that it would be good to get something in writing that deals with the issues properly.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Now it maybe that to the extent that I may be required to; you may be needing my order or directive to see the information that is confidential there. It may

be that I need an application.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** That sets out the background and everything and some of the points that you have made and makes reference to the legislation to say such a directive or order may be made because of A, B, C, D, E.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Then I can look at that properly and then take an informed decision.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** So that is my inclination

10 **ADV VINCENT MALEKA SC:** Alright.

**CHAIRPERSON:** I do not know what you have [intervenes].

**ADV VINCENT MALEKA SC:** Chair that is fine.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** We are grateful for that suggestion.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA SC:** We will then not refer to.

**CHAIRPERSON:** Yes, for now.

**ADV VINCENT MALEKA SC:** The contents.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA SC:** Of the STR.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** But they need to be in safekeeping.

**CHAIRPERSON:** Safe custody.

**ADV VINCENT MALEKA SC:** For the time being.

**CHAIRPERSON:** Yes.



**ADV VINCENT MALEKA SC:** And the best we know is your office.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA SC:** Can I ask your permission to leave this documentation in the safe hands of your Registrar?

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

**ADV VINCENT MALEKA SC:** And there may be retrieved.

**CHAIRPERSON:** The envelope is sealed I assume?

**ADV VINCENT MALEKA SC:** Chair, I think.

**CHAIRPERSON:** It needs to be properly.

10 **ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Closed.

**ADV VINCENT MALEKA SC:** We will ask for the Commission's staff to make sure that it is sealed before it is [intervenes].

**CHAIRPERSON:** Well I would rather you keep it and you make sure that it is properly sealed, because on its way from you to wherever before it comes back there may be a risk of it being disclosed.

**ADV VINCENT MALEKA SC:** Yes, okay.

**CHAIRPERSON:** Or you can give it to Ms Hofmeyr.

**ADV VINCENT MALEKA SC:** I believe that.

20 **CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA SC:** Ms Hofmeyr has.

**CHAIRPERSON:** And if it is sealed in front of us it would be all the better.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** She has a double pair of safe hands than me.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Chair then that paves the way to the presentation of Mr Sinton's evidence, because that is not affected by.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** The niceties of the debate we have just had.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA SC:** May I then ask for your registrar to administer the prescribed oath.

**CHAIRPERSON:** Yes. Do that registrar.

10 **REGISTRAR:** Please state your full name for the record.

**MR IAN HAMISH SCOTT SINTON:** Ian Hamish Scott Sinton.

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

**MR IAN HAMISH SCOTT SINTON:** No.

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

**MR IAN HAMISH SCOTT SINTON:** Yes.

**REGISTRAR:** Do you 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 IAN HAMISH SCOTT SINTON:** So help me God.

20 **MR IAN HAMISH SCOTT SINTON:** (duly sworn, states)

**ADV VINCENT MALEKA SC:** Mr Sinton good morning and welcome once again. You are no stranger to the proceedings or the Commission. Correct?

**MR IAN HAMISH SCOTT SINTON:** Correct Mr Maleka.

**ADV VINCENT MALEKA SC:** Yes. You have previously testified in relation to paragraph 1.7 of the Commission's terms of reference and your evidence is on record,

but you appear here for the second time as a result of the subpoena which the Commission served on Standard Bank. Correct.

**MR IAN HAMISH SCOTT SINTON**: That is correct.

**ADV VINCENT MALEKA SC**: Yes and in response to that subpoena you have produced a statement which comprises not only the body of the statement itself, but also several annexures attached to it?

**MR IAN HAMISH SCOTT SINTON**: That is correct.

**ADV VINCENT MALEKA SC**: Can I make sure that you are aware of what statement we will be dealing with and make sure that it is your statement? Before you there is a  
10 bundle of documents which has now being presented before the Chairperson as EXHIBIT U10 and I see that you are paging through that bundle.

**MR IAN HAMISH SCOTT SINTON**: Yes, I have it in front of me.

**ADV VINCENT MALEKA SC**: It is properly paginated from page 1 until the end. Can I take you to page 1?

**MR IAN HAMISH SCOTT SINTON**: Yes.

**ADV VINCENT MALEKA SC**: You recognise that document?

**MR IAN HAMISH SCOTT SINTON**: I do.

**ADV VINCENT MALEKA SC**: It is headed "Witness Statement of Mr Ian Sinton". It is your witness statement?

20 **MR IAN HAMISH SCOTT SINTON**: It is, yes.

**ADV VINCENT MALEKA SC**: Can you go to page 27 of that bundle?

**MR IAN HAMISH SCOTT SINTON**: I have it.

**ADV VINCENT MALEKA SC**: There is a signature there. Whose signature is it?

**MR IAN HAMISH SCOTT SINTON**: That is my signature.

**ADV VINCENT MALEKA SC**: Do you confirm that you appended that signature on that

page?

**MR IAN HAMISH SCOTT SINTON:** Chair, yes I am willing to say I confirm. I would like if I may just to correct an aspect of the submissions made by Advocate Maleka.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** He as is clear is he does not have any knowledge of the content of the sealed envelope which I brought with me.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And I would like to emphasise that we received, I received personally a subpoena to give evidence to you about our dealings with a range of named companies considering a range of named accounts.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And included in the subpoena was a request that I deliver all Suspicious Transaction Reports which may have been submitted in terms of the Financial Intelligence Centre Act. Now I must make it clear that as a bank we are obliged to report to the Financial Intelligence Centre on suspicious transactions. That reporting is undertaken by a division in the bank that is dedicated to that role.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And because of the prohibitions on disclosure of whether a report has been submitted or not that division is in our terms behind an information barrier. I personally have no knowledge of any Suspicious Transaction Reports.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** What I can attest to here is that quite independently of suspicious transactions that have been reported to the Financial Intelligence Centre we have ongoing surveillance of clients for suspicious transactions

generally to make a decision as to whether we can continue to deal with them or not.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And it is that function that I performed while at Standard Bank and it is information that I feel is confidential in performing that function in particular reports submitted under Section 34 of the Prevention and Combating of Corrupt Activities Act. That is a; it is reckless to me in the sense that the Financial Intelligence Centre Act says that any person who submits a report to the Financial Intelligence Centre is immune from either civil or criminal proceedings flowing from the fact of that making that report.

10 **CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** PRECCA as we call it, the Prevention and Combating of Corrupt Activities Act obliges any Manager who has knowledge of corruption to report that to the Hawks.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** But there is no equivalent protection. So if those reports are passed on to the Hawks it is possible that the person who makes that report can become exposed to criminal or civil proceedings.

**CHAIRPERSON:** Yes.

20 **MR IAN HAMISH SCOTT SINTON:** And for that reason that I have included in a separate affidavit information concerning those types of report which I think it would be hopefully inappropriate for me to talk about on national TV.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** I would prefer that to be a subject matter that comes to your attention. You can, may rule on it and it's for your knowledge only at this stage, if that makes sense.

**CHAIRPERSON**: Yes, what you are talking about now is it what is in the envelope that Mr Maleka sought to give to me?

**MR HAMISH SCOTT SINTON**: That's correct Judge, what's in my statement here is information which is wholly unrelated to Suspicious Transaction Reports made to the Financial Intelligence Centre.

**CHAIRPERSON**: Yes, so the point you are making is that what is in your statement you have no problem talking about it openly but what is in that envelope is something that you would like to be dealt with differently.

**MR HAMISH SCOTT SINTON**: On a confidential basis yes.

10 **CHAIRPERSON**: On a confidential basis.

**MR HAMISH SCOTT SINTON**: Yes Chair.

**CHAIRPERSON**: Okay, well Mr Maleka does hear that, I hear that, I think that the legal team will reflect on that in the context of what you have just said and the discussion I had with Mr Maleka a few minutes ago and at a certain stage, they would indicate to you or Standard Bank's lawyers what they – how they propose it should be dealt with before I make any decision probably Standard Bank's lawyers, it might be a good thing for Standard Bank's lawyers to make some submissions as well as to how it should be handled, I just mention that, would that be fine with you?

**MR HAMISH SCOTT SINTON**: That's fine Chair, thank you.

20 **CHAIRPERSON**: Okay, thank you. Mr Maleka is that fine?

**ADV VINCENT MALEKA SC**: Yes, I understand but there's a reason why firstly we did not open the reports, there is also the reason why we thought we should get the guidance of the Chairperson, but Mr Sinton if I can give you the assurance that at the right time and once we get the direction of the Chairperson we would be able to authenticate the reports we have received from you, from the Financial Intelligence

Centre itself because the Commission has been designated as an investigative body for purposes of cooperation with the Financial Intelligence Centre and to the extent that the information which you have made available to the Commission requires further verification we will do so with the Financial Intelligence Centre, through the cooperative relationship it has with the Commission.

**MR HAMISH SCOTT SINTON:** Thank you.

**ADV VINCENT MALEKA SC:** Yes, Chair we will get to that issue after we have addressed you on the legal niceties.

**CHAIRPERSON:** Yes thank you.

10 **ADV VINCENT MALEKA SC:** But you were comfortable to testify today based on your statement openly and before national TV?

**MR HAMISH SCOTT SINTON:** Yes I am.

**ADV VINCENT MALEKA SC:** Okay, can I make sure that as you testify based on your statement you accept that you have read it before you took the witness stand, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Is there any aspect of the statement you would like to reflect upon with the view to modify it, alter it, or in any way change its context?

**MR HAMISH SCOTT SINTON:** No.

**ADV VINCENT MALEKA SC:** You confirm that that statement is true to the best of  
20 your knowledge and ability?

**MR HAMISH SCOTT SINTON:** I do.

**ADV VINCENT MALEKA SC:** Yes. Mr Sinton I am going to confirm quite quickly background matters without repeating the contents of your statement given the time constraints we have. Can I ask you to go to page 1 of Exhibit U10.

**MR HAMISH SCOTT SINTON:** I have it.

**ADV VINCENT MALEKA SC:** You indicate there that up until last year June you had been the General Group Counsel of Standard Bank Group Limited including its subsidiary Standard Bank of South Africa Limited, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you say that from June 2018 you stepped down, but you are still with Standard Bank?

**MR HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** What do you?

**MR HAMISH SCOTT SINTON:** I remain in the Legal Division Standard Bank  
10 managing its engagements with specific issues such as this Commission and other litigation.

**ADV VINCENT MALEKA SC:** Yes, and you have an interest in matters that are presently being investigated by the Commission, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you cooperate with the Commission from time to time?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** It is in that context that as a result of the subpoena you responded cooperatively to present your evidence today?

20 **MR HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Yes. Mr Sinton if you go to page 2 in paragraph 2 you confirm that you received a subpoena from the Commission, identifying various entities who held accounts with Standard Bank in which there was a movement of cash relating to those entities, correct?

**MR HAMISH SCOTT SINTON:** That is correct yes.



**ADV VINCENT MALEKA SC:** And you confirm that after receiving that subpoena you did your own investigation relating to those entities and movement of cash in the accounts held by them with Standard Bank?

**MR HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** I am not suggesting that you yourself did the exercise, you did so with the help of your colleagues, is that correct?

**MR HAMISH SCOTT SINTON:** That's correct yes.

**ADV VINCENT MALEKA SC:** Now you say that you had previously testified before the Commission with reference to paragraph 1.7 of the terms of reference, we say so in  
10 paragraph 3 of our statement and you explain the risk management policy of Standard Bank relating to the accounts held by its clients with it from paragraph 6, do you see that?

**MR HAMISH SCOTT SINTON:** Yes I do.

**ADV VINCENT MALEKA SC:** And as I understand your evidence that risk management exercise has two components to it, the one is statutory obligations imposed upon Standard Bank, correct?

**MR HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Can you just give us the highlights of those statutory obligations.

20 **MR HAMISH SCOTT SINTON:** There are many obviously but in the context of the business of this Commission ...(intervention)

**ADV VINCENT MALEKA SC:** The major ones.

**MR HAMISH SCOTT SINTON:** The major ones are the Financial Intelligence Centre Act, the Prevention of Organised Crime Act and the Prevention and Combating of Corrupt Activities Act. All the Acts prohibit certain conduct and all the Acts impose

severe penalties for non-compliance. From the Financial Intelligence Centre Act point of view the prohibition most relevant to us on an ongoing basis is the prohibition on entering into transactions that are suspicious and has not been reported to the Financial Intelligence Centre, that of itself is a crime. Under the Prevention of Organised Crime Act there are various provisions but the one that matters most to us is the prohibition on dealing in the proceeds of crime effected in money laundering and then the third is the Prevention and Combating of Corrupt Activities Act which prohibits us as a bank from in any way knowingly facilitating corrupt activities.

Judge it's important to appreciate that in all three of those statutes they – the  
 10 offence is knowingly doing a prohibited act but importantly knowingly is defined as actual knowledge that what is being done is a prohibited act but there's also deemed knowledge ie what would a reasonable person – it's an objective test, what would a reasonable person in the circumstances should/ought such a person to suspect and has that person with that suspicion done enough to satisfy him or herself that proceeding is not committing the offence itself, so it's not good enough to say well we had no knowledge of wrongdoing, we have to worry about whether there are suspicions of wrongdoing, have we investigated the facts to determine whether or not the wrongdoing is occurring before we can proceed with any transaction.

So based upon this policy we monitor all of our clients activities on an  
 20 ongoing basis and where we have reason to believe quite apart from what is reported on the Financial Intelligence Centre where conduct appears to us to be suspicious we will investigate and if we think that conduct is such as it will expose us to contravention of any of these acts we typically prefer to terminate the relationship, rather than face the risk of prosecution ourselves.

**ADV VINCENT MALEKA SC:** Mr Sinton the second leg of that risk management policy

and process your bank pursues is based on something less than the statutory obligation to report which in your affidavit you call a reputational risk?

**MR HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: From your testimony that you gave previously you peg or base reputational risk on a private loyal relationship between a bank and a client?

**MR HAMISH SCOTT SINTON**: That is correct yes.

**ADV VINCENT MALEKA SC**: Can you just take us through the highlights of why Standard Bank would at some point as part of its risk management policy a reputational risk test to determine whether or not it should hold, continue, or terminate accounts of  
10 its clients?

**MR HAMISH SCOTT SINTON**: Chair yes we obviously as a bank we have various stakeholders who are very concerned with the reputation we have for integrity and honesty, clearly many of our, not many, most of our customers, I would say probably all of our customers are concerned to be dealing with a bank that does not knowingly expose itself to wrongdoing. We obviously are a regulated entity, we are highly regulated, we have ongoing oversight from the regulators both here and internationally, they are very concerned to know that we do not knowingly engage in activities which would seem to be wrongdoing. We clearly have shareholders who invest in our bank and expect us management to behave in a way which is beyond reproach and we also  
20 have employees who insist that if they work for us they like to know they're working for a business that has a reputation for integrity and ethics, and all these considerations put together really give rise to the idea that if we find ourselves dealing with counterparties generally, it's not only just customers, some of the people who supply us are also in the same category, and some people to whom we supply services are in the same category, where we think we're being exposed to dealings which are considered

illegal or immoral, unethical we reserve the right contractually, ie in terms of the common law, to terminate those dealings, and that is because we think that we're exposed to reputational risk which we regard to be unacceptable.

**ADV VINCENT MALEKA SC:** Thank you Mr Sinton. If I may take you back to the first leg of your risk management process and policy. You identified money laundering as one of the transactional activities that you would be required to report on. Now for those of us who are not steeped in your industry can I ask you to decode the meaning of the term, how does money laundering manifest itself practically?

**MR HAMISH SCOTT SINTON:** The most typical format is where money is used or  
10 generated in the commission of a crime the source of the money being crime is sought to be hidden often through the banking system, ie it is paid to numerous accounts in different denominations, different multiples in order to disguise its origin and so that money being the proceeds of crime will end up ostensibly being for a legitimate purpose like bank salaries and wages and there are multiple transactions in between and the banking system is enjoined by the statutes to be particularly alert to this and to report it when it sees it.

**ADV VINCENT MALEKA SC:** As I understand your explanation it is an attempt to hide or conceal the original source of the money.

**MR HAMISH SCOTT SINTON:** That is correct.

20 **ADV VINCENT MALEKA SC:** It is what I think one of the bankers described as using a banking system as a Laundromat to wash dirty money?

**MR HAMISH SCOTT SINTON:** That's a fair description Mr Maleka.

**ADV VINCENT MALEKA SC:** Mr Sinton you being to address the concerns you had relating to entities that you described as Gupta hold or Gupta related entities or persons associated with the Gupta Family from page 5 of your statement, correct?

**MR HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Can you just summarise if you could quickly what gave rise to your concerns in that regard and how you dealt with those concerns

**MR HAMISH SCOTT SINTON:** In the second half of 2015 Chair we obviously noticed the well publicised reports concerning the – in terms of commerciality, there was the prior landing of an aircraft at an air force base a couple of years before which was deemed suspicious but it didn't necessarily impact upon any banking relationship but from 2015 ABSA Bank announced that it had terminated all dealings with the Gupta family an entities that it controlled. Obviously they are subject to the same laws as us, 10 they apply in our view similar reputational standards they would have had good cause to that, that was concerning and that was followed soon thereafter by KPMG announcing that they are withdrawing all their audit services from those same entities, citing reputational risk and then I think their sponsor for Oakbay on the Stock Exchange similarly said they are withdrawing. Now obviously those are for us red flags, we considered that if other banks had information which they found concerning enough to warrant termination of relationships we ought to investigate ourselves so we then set about an analysis in our records as to which entities we had dealings with which were linked in any way to the Gupta family and that was done both using internal resources and we also used external investigative resources to gather together information with 20 which we could then make our own independent assessment of whether we could to the extent that we may have these entities banking with us continuing the relationship in the light of what other banks have done and other entities have done.

**ADV VINCENT MALEKA SC:** Yes, Mr Sinton you canvassed what you did from paragraph 12 on page 5 of your statement and it is essentially a repeat of the evidence you have previously given. I don't think that there is a need to repeat it unless you

insist that it should be repeated.

**MR HAMISH SCOTT SINTON:** No, no need to.

**ADV VINCENT MALEKA SC:** Yes, but you mention in paragraph 16 on page 7 the fact that Optimum Colliery was a customer of Standard Bank, we have received a lot of evidence about the relationship between Optimum Coal Pty Limited and Optimum Coal Holdings and Glencore AG, Glencore International AG. I take it that you are aware of those entities?

**MR HAMISH SCOTT SINTON:** I am yes.

**ADV VINCENT MALEKA SC:** Can I ask you which of those entities at that point in time  
10 held transactional accounts with Standard Bank?

**MR HAMISH SCOTT SINTON:** Optimum Coal Mine itself had transactional accounts with Standard Bank, there was a trust, a rehabilitation trust set up by Glencore for Optimum Coal Mine that also had an account with Standard Bank, I don't – I can't tell you now whether Optimum Coal Holdings, the parent company, had an account with us, but I would surprised they didn't because generally we have banking relations with the Glencore Group so I can't say precisely which entities but certainly Optimum Coal Mine did.

**ADV VINCENT MALEKA SC:** Yes, you are aware that in terms of the mining legislation those who conduct money activities or own mines are required to provide some sort of  
20 funds or guarantee for the rehabilitation of the damage to the environment caused by the mining entities.

**MR HAMISH SCOTT SINTON:** I'm aware of that yes.

**ADV VINCENT MALEKA SC:** I think they call them the rehabilitation funds?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Are you aware whether there were any rehabilitation

funds which were created by or on behalf of Optimum Coal Mining or Optimum Coal Holdings or an entity called Koorfontein?

**MR HAMISH SCOTT SINTON**: I am aware we – Optimum – I can't remember the correct name of it but the Optimum Rehabilitation Trust was a trust set up to house the rehabilitation fund for the Optimum Coal Mine and those funds were deposited with Standard Bank and they were with Standard Bank at the time of the change in control.

**ADV VINCENT MALEKA SC**: Yes. And you – those accounts were held with Standard Bank by the Trust?

**MR HAMISH SCOTT SINTON**: The Trust.

10 **ADV VINCENT MALEKA SC**: So the Trust was your client?

**MR HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: Yes, now in paragraph 16 you talk about what happened in relation to the change of ownership relating to Optimum Coal, correct?

**MR HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: And then you take the development further from paragraph 17 on the same page, and there you talk about the involvement of persons who at the time I suppose were acting on behalf of the new owner of Optimum Coal which was Tegeta?

**MR HAMISH SCOTT SINTON**: Correct yes.

20 **ADV VINCENT MALEKA SC**: Can you just give us the highlights of what happened in relation to your engagements with those who represented the new owner at the time.

**MR HAMISH SCOTT SINTON**: Shortly after the change in control of the Optimum Coal Mine was announced we were contacted by a representative of Oak Bay who were the ultimate owners I think or controllers of Tegeta to ask whether we would continue to provide banking services to Optimum Coal Mine in the light of, the chain of control

where they had acquired control but also in light of our stated desire to terminate all dealings with them and that was a consideration which we had to take into account. At the same time we received an email from a Ms Veronica Ravagahn of Oakbay asking us to transfer the funds we're holding on behalf of the trust to Oakbay, there were R1.7billion odd, I think it was, we refused to transfer the funds held for the trust because we said we required a directive from the trustees themselves, not from the new shareholders of the mine, and within a few days the trustees were changed and Oakbay appointed new trustees to the trust and the new trustees gave us instructions to transfer the funds to the Bank of Baroda. And we still resisted, we still we would like,

10 because the beneficiary of the trust was the Minister of Mineral Resources, we wanted his permission to transfer the funds to the Bank of Baroda and that permission was forthcoming in the form of a letter that these funds could be transferred from us to the Bank of Baroda.

**ADV VINCENT MALEKA SC:** Yes.

**MR HAMISH SCOTT SINTON:** As far as the mine was concerned we decided that the new controlling shareholders were directly and indirectly the same entities with whom we decided to terminate all dealings so we gave notice that we could not continue to provide transactional services to Optimum Coal Mine, as a result of the change in control.

20 **ADV VINCENT MALEKA SC:** So that was the end of your transactional relationship between you and Optimum Coal Mine?

**MR HAMISH SCOTT SINTON:** That's correct yes.

**ADV VINCENT MALEKA SC:** Do you know who then provided transactional activities to Optimum Coal Mine after you terminated your relationship with it?

**MR HAMISH SCOTT SINTON:** No I have no knowledge.



**ADV VINCENT MALEKA SC:** You have no knowledge, okay. You say that in the course of your discussions with the new owners or their representatives of Optimum Coal you had occasion to peruse the share sale agreement that was executed between Optimum Coal or Optimum Coal Holdings with Tegeta and/or Oakbay?

**MR HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** And you realised that it provided for several conditions, one of which was the release of a guarantee. Can you just give us some sense of what the share sale agreement provided in relation to that guarantee? Chair we will deal with that issue in detail when Mr Marsden takes the stand but I think it's important from  
10 the perspective of Mr Sinton to tell us what he noticed and what was so important about it.

**CHAIRPERSON:** Yes, thank you.

**MR HAMISH SCOTT SINTON:** Our understanding Chair is that Optimum Coal Holdings was the parent company of Optimum Coal Mine. Optimum Coal Holdings in its capacity as the parent had given a guarantee in favour of Eskom for the due performance by Optimum Coal Mine's obligations to Eskom that Eskom had imposed a penalty of about R2.1billion upon Optimum Coal Mine for allegedly defective coal delivered and had then issued a summons out of court for recovery of that amount from both the Coal Mine as the principal obligor and from Optimum Coal Holdings as the  
20 surety or guarantor, and we noticed that it was a condition precedent in this transaction that the buyer, Tegeta, procure that Optimum Coal Holdings and its parent companies and all employees of its parent companies be released from this claim against the guarantor and for a R2.1billion claim and we out of interest asked Mr Naziem Howa at a meeting we had with him, he represented the Oakbay Group of Companies, what consideration had been given by Tegeta to persuade Eskom to effectively release

Optimum Coal Holdings and its shareholders and employees etcetera from this R2.1billion claim and he told us that there had been no requirement other than that Tegeta step into the shoes of the guarantor.

There may well have been other compelling commercial reasons around that but from our perspective as bankers we thought that it be highly unusual that if Eskom genuinely believed they had a claim for R2.1billion that they would waive it to enable Tegeta to acquire control of the mine, so we were not satisfied that that was an arm's length arrangement at the time.

**ADV VINCENT MALEKA SC:** Well Mr Sinton you will be interested to know that the  
10 Chair has heard a lot about how the condition in this new agreement dealt with the question of the guarantee. There was the release of the guarantee then in existence that was provided by Optimum Coal Holdings on condition that Tegeta and Oakbay put up a substitute guarantee and that never happened. Are you aware of that fact?

**MR HAMISH SCOTT SINTON:** I am aware only to the extent that at the time I spoke to Mr Howa I asked whether the substitute guarantee had been provided, his words were "not yet", yet the transaction had been completed.

**ADV VINCENT MALEKA SC:** Yes, and the Chair has heard evidence about the implication of the failure to put up that substitute guarantee firstly any liability arising from the R2.1billion arbitration claim will be gone, but secondly continuing obligations  
20 under the CSA were not secured by means of a guarantee, and to the extent that there were penalties for the defective coal Eskom was not secured by means of a guarantee, but anyway can I get back to your statement. You deal with several meetings you had between yourself and some of your colleagues with representatives of Oakbay from paragraph 19 on page 9. You have previously said a lot about this and I am not going to ask you to repeat what you said in that regard, unless you want to reflect on it and

deal with it?

**MR HAMISH SCOTT SINTON:** I have nothing to add at this stage.

**ADV VINCENT MALEKA SC:** Yes, I then would like to take you to the substance of this round of your evidence. You begin with it from paragraph 23 on page 11. Are you happy that we should go there?

**MR HAMISH SCOTT SINTON:** I am.

**ADV VINCENT MALEKA SC:** The heading on that page before paragraph 23 is Regiments Capital Pty Limited, do you see that?

**MR HAMISH SCOTT SINTON:** I do.

10 **ADV VINCENT MALEKA SC:** Can you just explain to us who Regiment is and what relationship if any it had with Standard Bank at the time?

**MR IAN HAMISH SCOTT SINTON:** Regiments Capital PTY Limited was at the time well – from as early as about 2012 conducted transactional accounts with Standard Bank and he had acquired a reputation as being an advisor of choice of black owned advisor of choice to many of the SOE's and so we encountered it in various guises in the market as being advisor to SOE's but in this context it was – had transactional accounts with Standard Bank.

**ADV VINCENT MALEKA SC:** How many accounts to the best of your recollection?

**MR IAN HAMISH SCOTT SINTON:** I am aware – I am aware of only one.

20 **ADV VINCENT MALEKA SC:** Alright. And in paragraph 23 you say that what was of concern to you regarding Regiments and your relationship with it is a media article that appeared that you annex on page 77 of your statement. Correct?

**MR IAN HAMISH SCOTT SINTON:** That is correct yes.

**ADV VINCENT MALEKA SC:** Can I ask you to look at page 77 and tell us what was of concern to you that impacted on your relationship with Regiments? If necessary you

can read out portions of the article that you relied on to form the view you express in paragraph 23 of your statement?

**MR IAN HAMISH SCOTT SINTON**: It is not mentioned specifically in the statement but in – there was a report commissioned by the Chairman of Trillian by Advocate Budlender SC into Trillian's dealings at Eskom and that had been published and that led to a lot of media attention being placed on Eskom and Eskom's reliance upon Trillian. At the time McKinsey which is mentioned in that report was a supplier of services to Standard Bank and therefore the whole adverse media reports caused us concern.

10 **ADV VINCENT MALEKA SC**: Can I ask you to pause there. You talk about McKinsey supplying services to Standard Bank?

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: Can you elaborate a bit about what sort of services?

**MR IAN HAMISH SCOTT SINTON**: Consultancy services they were advising the bank on strategy and adapting our processes for the New Age for technology and what have you.

**ADV VINCENT MALEKA SC**: Yes.

**MR IAN HAMISH SCOTT SINTON**: It was quite wide scale services.

**ADV VINCENT MALEKA SC**: McKinsey is a management services global entity?

20 **MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: Yes. So was it providing management consulting services to you?

**MR IAN HAMISH SCOTT SINTON**: To Standard Bank yes.

**ADV VINCENT MALEKA SC**: And it would therefore have access to your management processes?

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: Part of which will include the obligation to report?

**MR IAN HAMISH SCOTT SINTON**: I would imagine so yes.

**ADV VINCENT MALEKA SC**: Yes.

**MR IAN HAMISH SCOTT SINTON**: At page 77 there is a news report where it says it reads as follows:

10                    “After a week of global consulting firm McKinsey trying to  
distance itself from the Gupta’s and questionable contracts at  
Eskom more details have emerged of kickbacks to Gupta linked  
shelf companies. AmaBhungane is reporting on Monday how  
McKinsey and Regiments Capital scored a massive consulting  
tender at Transnet but Regiments internal records show half of  
the profits were siphoned off to so called business development  
partners. In 2015 Transnet awarded at R375 million consulting  
project to Regiments Capital and McKinsey. Regiments Capital  
Director Eric Wood would later join Gupta Associate Salim Essa  
to start Trillian. Regiments internal documents reveals that it  
paid over half its contract income to facilitators including shelf  
companies linked to the Gupta and their associates. Records  
20 show that over a ten month period it diverted 55% of its income  
from the deal to so called business development partners.  
Coming records reveal that these development partners have  
direct link to the Gupta’s.”

That was one such report that obviously ...

**ADV VINCENT MALEKA SC**: Yes. Of course these are media reports?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** They may be true, they may not be true but what did you do you were Standard Bank after you got to know about this media report relating to firstly your service provider being McKinsey, secondly your client being Regiment – Regiments?

**MR IAN HAMISH SCOTT SINTON:** We requested a meeting with senior management of McKinsey.

**ADV VINCENT MALEKA SC:** Who were they?

**MR IAN HAMISH SCOTT SINTON:** And the initial meeting was the head of risk the  
10 senior people from the country – South Africa country office and the head of risk from the UK. That was the initial meeting and then was then escalated to a Mr Dominic Barton I think is the Global Head for McKinsey or he was at the time and their global general counsel Jean Malena her name was they were all flown to South Africa to meet with us so we could express to them our concern about this adverse information as had emerged about their dealings at Transnet and at Eskom. Their response was to say... I am sorry.

**ADV VINCENT MALEKA SC:** Yes. Mr Sinton I mean – I am sorry to take you back and I am sorry to ask you to recall things that may have happened months if not years ago. But I think it is important for us to get matters of detail. You seem to indicate that  
20 there was an initial and a follow up meeting with McKinsey?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Are you able to tell us more or less the dates?

**MR IAN HAMISH SCOTT SINTON:** I cannot tell you now but I can certainly get the dates for you and tell you in due course.

**ADV VINCENT MALEKA SC:** It will be helpful if you could. In relation to the initial

meeting who attended that meeting on behalf and representing Standard Bank?

**MR IAN HAMISH SCOTT SINTON**: Again I will have – I have – I will have a record but I certainly recall it was myself and the head of compliance for our corporate investment bank.

**ADV VINCENT MALEKA SC**: And from...

**MR IAN HAMISH SCOTT SINTON**: Was in the meeting.

**ADV VINCENT MALEKA SC**: From the part of McKinsey?

**MR IAN HAMISH SCOTT SINTON**: It was a Mr Levi who was introduced as the head of risk based in London and then there were two or three partners from the  
10 Johannesburg office. Again I can get their names for you I do not know I cannot recall offhand.

**ADV VINCENT MALEKA SC**: Can I just rattle one or two names and see whether...

**MR IAN HAMISH SCOTT SINTON**: Yes.

**ADV VINCENT MALEKA SC**: They would ring a bell to you. Do you know Mr Vikas Sagar?

**MR IAN HAMISH SCOTT SINTON**: He was not at the meeting.

**ADV VINCENT MALEKA SC**: He was not at the meeting. Do you know Doctor Eric Weiss?

**MR IAN HAMISH SCOTT SINTON**: Yes the name rings a bell.

20 **ADV VINCENT MALEKA SC**: Was he to your recollection at or not at the meeting?

**MR IAN HAMISH SCOTT SINTON**: I cannot say.

**ADV VINCENT MALEKA SC**: Okay. Do you know the name I think it is Yungling?

**MR IAN HAMISH SCOTT SINTON**: The name rings a bell.

**ADV VINCENT MALEKA SC**: Lawrence Yungling?

**MR IAN HAMISH SCOTT SINTON**: I would hesitate to say he was at the meeting.

**ADV VINCENT MALEKA SC:** Do you know the name David Fine?

**MR IAN HAMISH SCOTT SINTON:** I know the name but no he was not at the meeting as far as I can recall.

**ADV VINCENT MALEKA SC:** Okay. So we would proceed on the basis that you cannot recall the names of the representatives of McKinsey at the first meeting?

**MR IAN HAMISH SCOTT SINTON:** Apart from Mr Levi?

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** I certainly remember him [indistinct].

**ADV VINCENT MALEKA SC:** Yes okay. You will come back to us about the date?

10 **MR IAN HAMISH SCOTT SINTON:** I will yes.

**ADV VINCENT MALEKA SC:** And were these discussion recorded or not in any form to the best of your recollection?

**MR IAN HAMISH SCOTT SINTON:** The actual discussions themselves were not recorded but the import of the discussion was that the adverse reports had taken McKinsey by surprise and McKinsey the international firm by surprise. That they had appointed both local and international lawyers to do a thorough investigation of the information to try and get to the truth of the matter and that they would share that information with us in due course. There was subsequent correspondence between us and McKinsey where we reminded them of that – of that promise a few times.

20 **ADV VINCENT MALEKA SC:** We will get back to the promise because it is one matter where I would like to get your evidence. That was the first meeting. We go to the follow up meeting. Again you will come back to us with the date.

**MR IAN HAMISH SCOTT SINTON:** I will yes.

**ADV VINCENT MALEKA SC:** And was it ever recorded or was the end points of the meeting ever recorded?



**MR IAN HAMISH SCOTT SINTON:** There were exchanges of mails and correspondence around it but there was no minute produced of the meeting that I am aware of.

**ADV VINCENT MALEKA SC:** Okay. Subject to questions of confidentiality are you able to and prepared to produce the exchange of correspondence for the benefit of the commission?

**MR IAN HAMISH SCOTT SINTON:** Yes I am.

**ADV VINCENT MALEKA SC:** Okay. Would you please give them to us in due course and if you claim confidentiality let us know

10 **MR IAN HAMISH SCOTT SINTON:** Yes I have no difficulty it is – it really consists of us asking if there are any news about their own investigations and them telling us that they could find no wrongdoing.

**ADV VINCENT MALEKA SC:** Yes. It seems to me from your evidence that you took this matter fairly seriously because you thought that it is a matter that ought to be dealt with and resolved just between you and your service provider?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** You mentioned that McKinsey undertook to come back to you on what they were doing with those media reports. The question is did they ever come back to you?

20 **MR IAN HAMISH SCOTT SINTON:** They did – they did eventually come back to say that they had done their own investigations and had found evidence of choose my words carefully – reckless behaviour, bad mistakes made but no wrongdoing of the type that had been suggested in the media.

**ADV VINCENT MALEKA SC:** Ja these are generalities and commercial camouflage not to tell the details. With this behaviour...

**MR IAN HAMISH SCOTT SINTON:** I am just summarising what they told us yes.

**ADV VINCENT MALEKA SC:** Ja, ja but did you ask them what did they mean by suggesting that they found reckless behaviour or bad mistakes?

**MR IAN HAMISH SCOTT SINTON:** Yes for example one of the issues raised in the Budlend Report was a letter written by Mr Vikas Sagar to Eskom authorising that a substantial sum of money be paid to Trillian and they described that letter as a bad mistake and I took issue with that description of that letter and I do not recall ever receiving a response.

**ADV VINCENT MALEKA SC:** Was that the only indication of bad mistake or reckless  
10 behaviour which came up in the course of your conversation with them?

**MR IAN HAMISH SCOTT SINTON:** Well shortly after they commenced with their own investigations we took a decision to terminate all dealings with McKInsey and so I really had no reason to push hard after that for an explanation.

**ADV VINCENT MALEKA SC:** But before you terminated the relationship all I wanted to establish really was did they share with you any documentation or investigative reports of the outcome of investigations that they said they undertook?

**MR IAN HAMISH SCOTT SINTON:** No we requested such information but it was declined.

**ADV VINCENT MALEKA SC:** Do you know why it was declined? I mean did you find  
20 out?

**MR IAN HAMISH SCOTT SINTON:** I – I – my understanding based upon one conversation with one of the attorneys is that the investigation reports were provided by lawyers under the cloak of legal privilege and therefore they did not want to waive that privilege.

**ADV VINCENT MALEKA SC:** Alright. You say then you decided to terminate your

relationship with McKinsey?

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: When more or less did you do so?

**MR IAN HAMISH SCOTT SINTON**: It was shortly – it was shortly after the initial meeting when they undertook to do that investigation so we said well pending your investigations we would have no further dealings with you. When you come back with the exculpatory report well then perhaps we can resume but until then we cannot deal with you.

**ADV VINCENT MALEKA SC**: Okay.

10 **MR IAN HAMISH SCOTT SINTON**: The date I can get it was a formal meeting with formal conveyance of that I can get that for you.

**ADV VINCENT MALEKA SC**: Yes. And I understand these sort of relationship or relationships Mr Sinton there is a closure process that takes place. Correct? I mean you do not terminate the relationship and parties walk away without finalising.

**MR IAN HAMISH SCOTT SINTON**: As luck would have it at this time McKinsey when we terminated had just completed a major piece of work for us and we were about to commence a new – a new round of work and we said they need – we terminate – we said we are not going to sign you up for the new round until this is all clarified.

**ADV VINCENT MALEKA SC**: Alright. That completes the risk that you identified in  
20 relation to McKinsey. Unless you have further information to share with us in that connection I would like you to talk about the risk that you identified in relation to Regiments and what you did in that regard? You begin to deal with that issue from paragraph 26 on page 12 of your statement.

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: You mention two entities in that regard. Well let me start

first with the transactional account that you say you recall Regiments had at Standard Bank. You identify it by a number there. Again I would like to confirm with you that that is the only banking account you are aware of that Regiments had with Standard Bank?

**MR IAN HAMISH SCOTT SINTON:** Certainly that I am aware of yes I cannot say that there are not others but that was the one that was flagged for me as being one warranting in a further investigation.

**ADV VINCENT MALEKA SC:** Yes. Chair you would recall that Mr Sinton in his statement annexes extracts of the bank accounts under that account number. They begin from page 80.

10 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** I will get to them in some detail.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** I am just mentioning them purely for orientation purposes.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** Mr Sinton in paragraph 26 you begin to mention two entities Chivita, C-h-i-v-i-t-a Trading PTY Limited and Homix PTY Limited.

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Yes. Did any or all of those entities hold accounts with  
20 Standard Bank to the best of your recollection?

**MR IAN HAMISH SCOTT SINTON:** Homix did yes.

**ADV VINCENT MALEKA SC:** Homix did?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Chivita?

**MR IAN HAMISH SCOTT SINTON:** No I do not recall Chivita having an account with

us.

**ADV VINCENT MALEKA SC:** Alright. You say something about those entities and I would like you to reflect on what you say about them in paragraph 26 and tell us your concern in your own words relating to those entities?

**MR IAN HAMISH SCOTT SINTON:** Chair in the light of the adverse media reports suggesting that Regiments Capital had been guilty of wrongdoing especially at Transnet I asked people who are responsible for managing accounts and on myself to look through the accounts and to highlight if they could transactions which looked out of the ordinary. And they brought to me a pack of a printout of the statement some of which  
10 are attached to my affidavit. And if you looked in the statements you could see there was – there were large transfers into the account in other words you could day to day transactions, salaries and payments to SARS and some things that look like rent payments what have you but from time to time there would be a large amount coming in that seemingly came from Transnet and then shortly thereafter were – there were amounts large amounts paid away. You could see that often the directors of Regiments would each take an amount typically about R2 million each out of the monies deposited and then there were big payments made initially to a company called Chivita Trading and then also – and then later on to a company called Homix PTY Limited and those I thought because it was my call at the time needed to be explained. We had no idea  
20 what source the money was the application was. Advocate Maleka did mention to you that we need as bankers to be on top of what those are.

**ADV VINCENT MALEKA SC:** Chair I am going to go with some reasonable detail to the accounts that reflect movement of bank balances.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** From page 80. If you could go there Mr Sinton. You will

see that that is a bank statement dated 28 February 2014 covering the transactional period 1 February 2014 to 28 February 2014 so it is a period of a month. And its statement number 31 correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you will see that the banking statement was provided through a pack of pages beginning from page 1 to page 17, correct? For the present purposes you chose to give us page 9 of

**MR IAN HAMISH SCOTT SINTON:** Oh yes that is correct I extracted this – these statements were attached to a letter which I wrote to Regiments.

10 **ADV VINCENT MALEKA SC:** Yes. We will get back to the letter.

**MR IAN HAMISH SCOTT SINTON:** Well I took the whole pack I took out of the pack numbered 1 to 17 those which contained the transactions which I wanted explanations for and only sent those to Regiments.

**ADV VINCENT MALEKA SC:** Yes the point really is that and let us be clear here all you was to take the bank statements for February which was in more than one page.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** But for the present purposes or the purposes of the commission you merely extracted one page of concern to you. In other words a page that reflected a transaction of concern to you?

20 **MR IAN HAMISH SCOTT SINTON:** Yes if you go to the previous page, page 79.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** You will see in the fourth paragraph I say to Regiments “I attach our statements for your kind – with us numbered 31, 32, 33, 34, 36, 37, 38, 40 and 41 so I only sent them certain of the pages from the compensate February statement

**ADV VINCENT MALEKA SC:** And that is understandable because they would have received the full statement.

**MR IAN HAMISH SCOTT SINTON:** They would have yes.

**ADV VINCENT MALEKA SC:** Yes. Now page 9 which is of concern to you and which is on page 80 reflects an entity called Chivita, do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do.

**ADV VINCENT MALEKA SC:** And it reflects an amount as a debit on the account of Regiments, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** And by debit on a statement it means that money flew from Regiments account to the account of Chivita?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** How much was it?

**MR IAN HAMISH SCOTT SINTON:** R5 130,000,00.

**ADV VINCENT MALEKA SC:** Alright. We will get back to what you did once you picked up this debit entry on Regiments account. Can we go to the next statement? Again it is for the same period 1 Feb to 28 Feb 2014. Again it is part and parcel of statement 31 but this is page 10 of that statement, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

20 **ADV VINCENT MALEKA SC:** It reflects an amount under an entity called Group Serve. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do.

**ADV VINCENT MALEKA SC:** From your investigations who is Group Serve?

**MR IAN HAMISH SCOTT SINTON:** That is Transnet.

**ADV VINCENT MALEKA SC:** Transnet?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And there there is an amount which is not squarely fitted alongside debits. It covers both the debit and the credit columns, do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do.

**ADV VINCENT MALEKA SC:** When I do the mathematics here it seems as if that amount was – it seems as if that amount was a credit because immediately after that entry the balance which is reflected on the last right hand column of that statement increases from R5.9 million to R11.65 million.

**MR IAN HAMISH SCOTT SINTON:** That is correct.

- 10 **ADV VINCENT MALEKA SC:** So in other words it is money coming into the account of Regiments.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes. So the bank balance improves. What is a reasonable conclusion you draw from this?

**MR IAN HAMISH SCOTT SINTON:** Well that was a payment made by Transnet to Regiments in that amount.

**ADV VINCENT MALEKA SC:** Yes. Let us go to the next one which is page 82. What I picked up there again it is part and parcel of statement 31 but this time it is page 11 of it, do you see that?

- 20 **MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** I picked up an entry there of concern because it is a substantial amount of R15 million. It is described as an interbank credit transfer, do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do yes.

**ADV VINCENT MALEKA SC:** And from the mathematics of it it improves the balance



from R10 million to R25 million so it seems as if it is inflow funds.

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Do you know who paid this money into the account of Regiments?

**MR IAN HAMISH SCOTT SINTON:** No I do not.

**ADV VINCENT MALEKA SC:** You do not?

**MR IAN HAMISH SCOTT SINTON:** No.

**ADV VINCENT MALEKA SC:** Have you managed – have you not made an investigation in that regard?

10 **MR IAN HAMISH SCOTT SINTON:** We would have but I do not know the answer now.

**ADV VINCENT MALEKA SC:** Okay. Won't you reflect on it and if necessary come back to us with ..

**MR IAN HAMISH SCOTT SINTON:** Yes I will.

**ADV VINCENT MALEKA SC:** Yes. I would like to complete two more before lunch. The next one is page 83. Page 12 of the same statement 31, do you see that?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And there there are two names that appear which I would like you to deal with. The first is under the name Mohamed Bobat FSF1113.03 do you see that?

20 **MR IAN HAMISH SCOTT SINTON:** I do.

**ADV VINCENT MALEKA SC:** What is that amount for?

**MR IAN HAMISH SCOTT SINTON:** It is R560,00 I think. Oh no sorry R177 515,00

**ADV VINCENT MALEKA SC:** Yes that is how I read it.

**MR IAN HAMISH SCOTT SINTON:** That is the payment to Mohamed Bobat ja.

**ADV VINCENT MALEKA SC:** Do you know who is Mohamed Bobat?

**MR IAN HAMISH SCOTT SINTON:** I do not know who he is but I have heard of him as being associated with Mr Salem Essa.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And Trillian.

**ADV VINCENT MALEKA SC:** The next payment is Chivita, do you see it?

**MR IAN HAMISH SCOTT SINTON:** I do.

**ADV VINCENT MALEKA SC:** How much was it?

**MR IAN HAMISH SCOTT SINTON:** R1 385 100,00.

**ADV VINCENT MALEKA SC:** When was it paid?

10 **MR IAN HAMISH SCOTT SINTON:** On the 27 February.

**ADV VINCENT MALEKA SC:** And the mathematics show that there was a reduction in bank balance which suggests that this money had flown from Regiments account to that of Chivita?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes. Chair can I deal with the last one before the tea adjournment – the lunch adjournment?

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA SC:** We go to page 15 of the same statement number 31. There are five huge debit amounts. The first is the one on I think it is second entry from  
20 the top described as Cats Fed Party Payment. How much is the amount there?

**MR IAN HAMISH SCOTT SINTON:** R5 171 765.00.

**ADV VINCENT MALEKA SC:** Again the bank balances – the bank balance decreases and therefore there is money flowing out of Regiments account to that third party.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Do you know whose that third party?

**MR IAN HAMISH SCOTT SINTON:** It says her SARS.

**MR IAN HAMISH SCOTT SINTON:** SARS?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Okay. The next amount is Group Serve and it is in the order of R45.4 million. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Is it the same entity that you described as Transnet?

**MR IAN HAMISH SCOTT SINTON:** Correct that is a Transnet payment.

**ADV VINCENT MALEKA SC:** The bank balance increases to R55 odd million.

10 **MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** So money had flown in from Transnet into that account of Regiments?

**MR IAN HAMISH SCOTT SINTON:** Corect.

**ADV VINCENT MALEKA SC:** And the last one is Chivita how much is the amount there?

**MR IAN HAMISH SCOTT SINTON:** R5 643 00,00 on the 28 February. It was paid from this account to Chivita.

**ADV VINCENT MALEKA SC:** Yes because the bank balance decreases there, correct.

**MR IAN HAMISH SCOTT SINTON:** Correct.

20 **ADV VINCENT MALEKA SC:** Yes. Chair would this be a convenient stage to take the lunch adjournment?

**CHAIRPERSON:** Yes Thank you very much we will take the lunch adjournment and we will resume at two. We adjourn.

**ADV VINCENT MALEKA SC:** Thank you.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Yes you may proceed Mr Maleka.

**ADV VINCENT MALEKA SC:** Thank you Chair. Mr Sinton can you go to page 86?

**MR IAN HAMISH SCOTT SINTON:** Yes, I have it.

**ADV VINCENT MALEKA SC:** You will see for the first time we see a big jump in the debits relating to Chivita. How much is the debits in this statement?

**MR IAN HAMISH SCOTT SINTON:** R19 494 000.

**ADV VINCENT MALEKA SC:** Yes. Then you go to page 87? How much are the debits of funds going to the account of Chivita?

10 **MR IAN HAMISH SCOTT SINTON:** The first one is R2 233 393.

**ADV VINCENT MALEKA SC:** And then? I only picked up that debit and that is.

**MR IAN HAMISH SCOTT SINTON:** That is right. That is the only one.

**ADV VINCENT MALEKA SC:** *Ja* and then if you go to page 88 it is the statement for the period the 1<sup>st</sup> to 30 April 2014. It is statement number 33. Correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** There is a deposit from Group Serve. How much is it?

**MR IAN HAMISH SCOTT SINTON:** R5 848 085 or 86, I am not sure.

**ADV VINCENT MALEKA SC:** And the next day there is a payment to Chivita. How much is it?

20 **MR IAN HAMISH SCOTT SINTON:** R1 897 074.

**ADV VINCENT MALEKA SC:** And then almost three days later that is 15 April there is another payment to Chivita. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** How much is it?

**MR IAN HAMISH SCOTT SINTON:** R12 428 793.

**ADV VINCENT MALEKA SC:** Of course the effect of that payment was to put the Regiments account into a negative balance. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Did Standard Bank allow that payment in R12-odd million to be affected even though it would create a negative balance in the account of Regiment?

**MR IAN HAMISH SCOTT SINTON:** [Intervenes].

**ADV VINCENT MALEKA SC:** [Intervenes].

**MR IAN HAMISH SCOTT SINTON:** I do not have the detail if there was an agreement  
10 to allow an overdraft then it would have been permissible.

**ADV VINCENT MALEKA SC:** Well.

**MR IAN HAMISH SCOTT SINTON:** If there was no such an agreement they would have been called upon to rectify it.

**ADV VINCENT MALEKA SC:** And that is the point I am trying to find out from you whether, do you know offhand if you do not can you please establish whether or not Regiment had an overdraft account with Standard Bank.

**MR IAN HAMISH SCOTT SINTON:** Yes. I do not offhand and I will establish that, yes.

**ADV VINCENT MALEKA SC:** Thank you. The next is page 6 of the same statement which you find on page 89. Are you there?

20 **MR IAN HAMISH SCOTT SINTON:** Correct, yes.

**ADV VINCENT MALEKA SC:** For the first time we see payment to an entity called Albatime, A-L-B-A-T-I-M-E. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do.

**ADV VINCENT MALEKA SC:** How much is it?

**MR IAN HAMISH SCOTT SINTON:** R1 397 233,87.

**ADV VINCENT MALEKA SC:** Have you conducted investigations about this entity, Albatime?

**MR IAN HAMISH SCOTT SINTON:** To the best of my knowledge they do not bank with Standard Bank. So I have not had reason to investigate them, but I have seen media reports to the effect that they are part of the Gupta entities.

**ADV VINCENT MALEKA SC:** Yes. Chair you will hear a lot about it when the colleagues from Transnet begin their fair share of presenting evidence on Transnet.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** Then there is payment to Chivita, how much is it?

10 **MR IAN HAMISH SCOTT SINTON:** It is on 19 April. It was R11 913 000.

**ADV VINCENT MALEKA SC:** Mr Sinton if I look at the total of the money that had been paid to Chivita for April out of Regiments' account. It comes to a total of about R24-odd million if you take the payments on page 88, add those on page 89.

**MR IAN HAMISH SCOTT SINTON:** That would be about right, yes.

**ADV VINCENT MALEKA SC:** It is more than the amount which was in the account of Regiments for that month.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Given that fact that it went into a debit or a negative balance?

20 **MR IAN HAMISH SCOTT SINTON:** Yes, correct.

**ADV VINCENT MALEKA SC:** Ja. If you go to the month of May it is from page 90. You will see page 1 of statement number 34. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do, yes.

**ADV VINCENT MALEKA SC:** By that time the negative balance had been rectified because the opening balance which is brought forward, it is about R80 million. Do you

see that?

**MR IAN HAMISH SCOTT SINTON**: Correct, yes.

**ADV VINCENT MALEKA SC**: And on the same day that is 2 May there is a R20 million payment made to Chivita. Do you see that?

**MR IAN HAMISH SCOTT SINTON**: I do, yes.

**ADV VINCENT MALEKA SC**: A day later there is another amount paid to Chivita from the same account.

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: How much is it?

10 **MR IAN HAMISH SCOTT SINTON**: R20 million.

**ADV VINCENT MALEKA SC**: So only on two days alone R40 million exits the balance of Regiments account?

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: If you go to the next page which is page 94. It is page 2 of statement 34.

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: Further payments are being made to Chivita.

**CHAIRPERSON**: I am sorry. You are now going to what page?

**ADV VINCENT MALEKA SC**: 91.

20 **CHAIRPERSON**: Oh, okay.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: Thank you Chair. It is page 2 of 16, statement number 34.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC:** It is for the same period, 2 May to 31 May 2014. I suppose the reporting period is 2 May because 1 May is a holiday.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA SC:** Mr Sinton what is the payment that goes to Chivita?

**MR IAN HAMISH SCOTT SINTON:** On 5 May there was an amount of R5 856 500 paid to Chivita.

**ADV VINCENT MALEKA SC:** So the amount increases to about 45.8 million for that month alone?

**MR IAN HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** There are three other payments of R2 million each made to Directors of Regiments. I am not going to ask you to mention names, but can you identify them in terms of amounts only and the dates possibly?

**MR IAN HAMISH SCOTT SINTON:** On 6 May R2 million was paid to each of the three Directors of Regiments.

**ADV VINCENT MALEKA SC:** Yes. That is the amount of R2 million that you talked about earlier?

**MR IAN HAMISH SCOTT SINTON:** Hm.

**ADV VINCENT MALEKA SC:** Can you go to page 92? It is for the same period beginning of the 2<sup>nd</sup> and 31 May 2014. There is a huge deposit from Group Serve that  
20 is Transnet. How much is it?

**MR IAN HAMISH SCOTT SINTON:** R22 800 000.

**ADV VINCENT MALEKA SC:** And the next day payment leaves that balance in favour of Chivita. How much is it?

**MR IAN HAMISH SCOTT SINTON:** R3 990 000.

**ADV VINCENT MALEKA SC:** And there is another amount which is paid to Albatime.



**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** I think you have identified that entity, but you do not know its details. I think you confirmed that it does not hold an account with Standard Bank. How much is the amount paid to it?

**MR IAN HAMISH SCOTT SINTON:** R399 000.

**ADV VINCENT MALEKA SC:** And for the first time we see payment to Homix the same month payment was made to Chivita?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** How much is it?

10 **MR IAN HAMISH SCOTT SINTON:** R15 500 00.

**ADV VINCENT MALEKA SC:** And the next day there is further millions of Rands paid to Homix?

**MR IAN HAMISH SCOTT SINTON:** The next day another R6 160 00 to Homix.

**ADV VINCENT MALEKA SC:** In two days alone 21.7 million leaves the funds of Regiments to Homix?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes and then from page 93 there are further payments to Homix. Page 93 Mr Sinton as I have it is for the month July 2014. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do, yes.

20 **ADV VINCENT MALEKA SC:** Statement number 36?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** How much was paid to Homix?

**MR IAN HAMISH SCOTT SINTON:** On 16 July R14 525 802 was paid to Homix.

**ADV VINCENT MALEKA SC:** If you go over to the next page there are further payments to Homix.

**MR IAN HAMISH SCOTT SINTON:** Correct on 18 July, R3 990 000 was paid to Homix.

Then on 22 July another R3 799 050 was paid to Homix.

**ADV VINCENT MALEKA SC:** So if you do a quick mathematical calculation for that month alone how much would have been paid to Homix? On my calculation it is almost R22 million.

**MR IAN HAMISH SCOTT SINTON:** That is correct, yes.

**ADV VINCENT MALEKA SC:** Yes. Then I want you to look at the period August, the 1<sup>st</sup> to August, the 30<sup>th</sup>. It is on page 95.

**MR IAN HAMISH SCOTT SINTON:** Yes.

10 **ADV VINCENT MALEKA SC:** Transnet put a deposit of R34 million. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do, yes.

**ADV VINCENT MALEKA SC:** And then thereafter payments are made to Homix?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Can we identify them? The first is on 7 July. How much is it?

**MR IAN HAMISH SCOTT SINTON:** R4 902 000 was, sorry 7 August?

**ADV VINCENT MALEKA SC:** Yes. 7 August.

**MR IAN HAMISH SCOTT SINTON:** R4 902 000.

**ADV VINCENT MALEKA SC:** And on the same day payments of R2 million is made to  
20 each of the Directors. Correct?

**MR IAN HAMISH SCOTT SINTON:** That is correct, yes.

**ADV VINCENT MALEKA SC:** And then there is another amount that is paid by Group Serve on 8 August. How much is it?

**MR IAN HAMISH SCOTT SINTON:** R22 296186.

**ADV VINCENT MALEKA SC:** On the same date payment is made to Homix?

**MR IAN HAMISH SCOTT SINTON:** Correct. R12 108 620.

**ADV VINCENT MALEKA SC:** And three days later another amount is paid to Homix.

How much is it?

**MR IAN HAMISH SCOTT SINTON:** R11 148 092.

**ADV VINCENT MALEKA SC:** So in total how much was paid to Homix?

**MR IAN HAMISH SCOTT SINTON:** Hm.

**ADV VINCENT MALEKA SC:** I come to the conclusion of 25 million more or less.

**MR IAN HAMISH SCOTT SINTON:** That seems about right, yes Mr Maleka.

**ADV VINCENT MALEKA SC:** Then let us look at September. It is on page 96. How

10 much is paid to Homix?

**MR IAN HAMISH SCOTT SINTON:** It seems on 30 September an amount of R8 027 025 was paid to Homix.

**ADV VINCENT MALEKA SC:** And then if you go to page 97 or know sorry that is for November. So in September that is the only payment I could pick up of concern to you?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Then November is page 97. How much is paid to Homix?

**MR IAN HAMISH SCOTT SINTON:** [Intervenes] November paid to Homix

20 R16 521 968.

**ADV VINCENT MALEKA SC:** That is the only payment I could pick up in November?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Then on page 98 is the statement for December. I am not too sure if I understand why you had some problem with transactions on this statement, because I could not pick up any payment to either Homix, Chivita or

Albatime.

**MR IAN HAMISH SCOTT SINTON:** On 5 December you will see R1 688 000.

**ADV VINCENT MALEKA SC:** Oh, yes.

**MR IAN HAMISH SCOTT SINTON:** R187 to Homix.

**ADV VINCENT MALEKA SC:** I see. Chair it is about the sixth from the top. I missed that one.

**CHAIRPERSON:** Yes, I have found it.

**ADV VINCENT MALEKA SC:** Is the reason why you give us this document?

**MR IAN HAMISH SCOTT SINTON:** Yes.

- 10 **ADV VINCENT MALEKA SC:** Okay, thank you. We have explored the details relating to these payments and thereafter you did something about these statements. You explain what you did at page 12 paragraph 27.

**CHAIRPERSON:** That is of his statement?

**ADV VINCENT MALEKA SC:** Of his statement, Chair. Page 12 paragraph 27. You say if I may summarise your evidence that you then wrote to Mr Niven Pillay who is a Director at least at that point in time of Regiments and called for him to explain these transactions. Correct?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Your letter is at page 79. Correct?

- 20 **MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** What happened after you addressed this letter calling for explanations of the transactions we have dealt with?

**MR IAN HAMISH SCOTT SINTON:** There were responses from Regiments in which they indicated would take them a while to gather the information I had asked and they asked for forbearance and eventually contacted me to say they would like a meeting.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** To give us, to convey their response to my letter.

**ADV VINCENT MALEKA SC:** And that meeting as I have our statement took place on 6 October 2017. You say so in paragraph 28.

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Yes. So it took them almost a month and three weeks to gather the necessary information so that they could respond to you at that meeting. Correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** Just take us through what happened at that meeting.

**MR IAN HAMISH SCOTT SINTON:** The meeting was held at Standard Bank's Offices. Regiments was represented by Mr Niven Pillay who for basic purposes was the Chief Executive Officer and Mr Litha Nyhonyha who was a Director of Regiments and a Mr John Rossouw who was described as being the Chief Operating Officer of Regiments. I represented Standard Bank in that meeting and I was accompanied by Ms Suzette Els is a Senior Compliance Officer of Standard Bank.

**ADV VINCENT MALEKA SC:** And you started to pose oral questions to them and they responded orally?

**MR IAN HAMISH SCOTT SINTON:** Correct.

20 **ADV VINCENT MALEKA SC:** Can you just give us a sense of the oral questions you posed?

**MR IAN HAMISH SCOTT SINTON:** I basically as far as I can recall repeated my need to understand what the source was of the deposits which seemingly came all from Transnet and these payments that had been made. There were three companies that we were interested in because we needed an explanation. One was Chivita Trading.

The other was Homix and the third was an entity by the name of Kupanua Investments. They explained to me that Kupanua Investments was an advisory company that they had subcontracted work for at Transnet and the Director of that company is well known to Standard Bank and we were satisfied that there was no need to pursue that enquiry. As regards the other two however he explained to us that in or about October 2012 Mr Niven Pillay and Mr Eric Wood who were both Directors of Regiments at the time had been invited to a meeting in Sandton Johannesburg by Mr Kuben Moodley who was well known to Mr Niven Pillay and he had some form of arrangement whereby he would look for the opportunity for Regiments in the Public Sector. When they arrived

10 for the meeting they met for the first time Mr Vikas Sagar who was introduced as being a partner of McKinsey based in Johannesburg and Mr Salim Essa was at that meeting. In summary it was explained to me that the people who, Mr Sagar and Mr Essa explained that McKinsey had secured consultancy work with Transnet. That Transnet required that McKinsey have a black owned supplier development partner for at least 30 percent of the work that had been allocated by Transnet and they were offering that role to Regiments because Regiments was a black owned firm with the requisite skills. However there was a condition attached to that and that is that Regiments was obliged to pay 30 percent of all fees earned to Mr Salim Essa as a condition for getting this appointment and.

20 **ADV VINCENT MALEKA SC:** Can I ask you to break it down?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** You have talked about this meeting and at that meeting they told you about the engagement of Regiments as DL partner of McKinsey in regard to Transnet work?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** For that partnership how much would Regiments have earned?

**MR IAN HAMISH SCOTT SINTON:** Regiments could have earned 30 percent of the fees to be paid by Transnet for that work. So for the consultancy contract awarded to McKinsey, McKinsey would get to keep 70 percent and have include Regiments for the other 30 percent.

**ADV VINCENT MALEKA SC:** Yes and you say there was a condition attached to that relationship?

**MR IAN HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** What was the condition as far as?

**MR IAN HAMISH SCOTT SINTON:** That.

**ADV VINCENT MALEKA SC:** It was conveyed to you?

**MR IAN HAMISH SCOTT SINTON:** For Regiments to be appointed as a supplier development partner for work at Transnet Regiments had to agree to give 30 percent of its fees i.e. 30 percent of the 30 percent.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** To Mr Salim Essa and they were not explained that they also had an existing arrangement with Mr Kuben Moodley that he would be paid five percent of all fees that might be earned from work with Public Sector entities. So  
20 the effect of all of this was they had to agree to pay away 35 percent of their revenues from Transnet work to five percent to Mr Moodley, 30 percent to Mr Salim Essa and from there they went on to say that Chivita Trading and later Homix were the corporate entities that had been put up by Messieurs Moodley and Essa as the entities to receive that money.

**CHAIRPERSON:** So Transnet would pay Regiments a certain amount of fees for work

done?

**MR IAN HAMISH SCOTT SINTON**: Correct Chair.

**CHAIRPERSON**: And Regiments would take 30 percent off their fees and pay to McKinsey.

**MR IAN HAMISH SCOTT SINTON**: [Intervenes].

**CHAIRPERSON**: Is that right? The other way around?

**MR IAN HAMISH SCOTT SINTON**: No, not McKinsey.

**CHAIRPERSON**: *Ja*.

**MR IAN HAMISH SCOTT SINTON**: To Mr Salim Essa.

10 **CHAIRPERSON**: Oh, okay and then there were other entities in the picture that would come after that as well?

**MR IAN HAMISH SCOTT SINTON**: Correct.

**CHAIRPERSON**: The last ones that you mentioned?

**MR IAN HAMISH SCOTT SINTON**: Yes. Mr Salim Essa nominated two companies to receive the money that had been promised to him. Initially it was Chivita Trading and there after it was Homix. The two entities that we have just been talking about.

**CHAIRPERSON**: Okay.

**ADV VINCENT MALEKA SC**: So Chair the pyramid is this. You have Transnet at the top.

20 **CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: It pays fees to two entities. One is McKinsey, 70 percent of the fees earned. The remainder is 30 percent to Regiment.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: Regiment itself has to pay.

**CHAIRPERSON**: Fees.



**ADV VINCENT MALEKA SC:** 35 percent in total.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA SC:** 30 percent to Mr Essa and five percent to Mr Moodley.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA SC:** All of that Chair is said in express details at paragraph 28.1.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And you will see Chair the fifth or sixth sentence from the bottom, if you could read it Mr Sinton?

10 **MR IAN HAMISH SCOTT SINTON:** On page 13/

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** “Regiments informed us that they accepted McKinsey’s offer and was constantly appointed as a supplier development partner to Transnet with McKinsey for consultancy work for Transnet. Regiment stated the amounts transferred to Chivita and Homix...”

Which according to my calculations exceeded R210 million in aggregate with the bank statements we have just been through.

20 “...were the agreed five percent for Mr Moodley plus the agreed 30 percent for Mr Essa. Mr Pillay and Nyhonyha then explained to us that without their knowledge subsequently Mr Eric Wood agreed with Mr Essa to increase the amount due to Mr Essa from 30 percent to 50 percent.”

So there was a time after this agreement was reached when half of Regiments revenue from work at Transnet was being paid to Mr Essa.

**ADV VINCENT MALEKA SC:** Alright.

**MR IAN HAMISH SCOTT SINTON:** In the form of Chivita and.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And [intervenes].

**ADV VINCENT MALEKA SC:** We were not there and we can miss, we might miss a bit of detail of the oral conversation that took place there. From your evidence I understand that this opportunity was introduced to Regiments by Mr Moodley?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** I can see his relevance to a discussion about whether  
10 he should be paid something. Forget about whether or not that arrangement would be lawful or not. Let us take that. He gets five percent of the 30 percent paid to Regiment, but someone else whose relevance in your explanation I do not pick up and that is Mr Essa.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Who gets the lion's share of Regiments portion of fees, 30 percent?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Did you find out why that is the case? Firstly did you find out who is Mr Essa? What is he doing in this relationship?

20 **MR IAN HAMISH SCOTT SINTON:** I did enquire as to why Regiments would agree to pay a stranger who they just met for the first time 30 percent of the revenue earned from a consultancy contract and they said, their understanding was that he had brought about the whole opportunity to get work at Transnet and therefore this was his reward for having secured the work at Transnet.

**ADV VINCENT MALEKA SC:** Did he explain what did he have to do?

**MR IAN HAMISH SCOTT SINTON:** He did not offer any explanation. He just said that he was told this was the, this was a condition of Regiments being appointed and they were happy to pay it.

**ADV VINCENT MALEKA SC:** But Mr Sinton I mean you know that Transnet is a state owned entity which is obliged under Section, I think it is Section 51(1) paragraph A.III or its equivalent to procure goods and services through a public open procurement process unless there are exceptional circumstances.

**MR IAN HAMISH SCOTT SINTON:** Mr Maleka I am very aware of that.

**ADV VINCENT MALEKA SC:** Yes.

- 10 **MR IAN HAMISH SCOTT SINTON:** So what was relevant is our surprise at the open admission that he had agreed to give up 30 percent of the revenue to a person who had no mandate from Regiments to find business in the first place. If he had any mandate at all it would have come from McKinsey, but certainly not what they told me not from Regiments. Secondly you are correct that to get work at Transnet you would expect there would be either an open competitive tender or a negotiated I think it is called a confinement arrangement where it is done due to urgency and this did not seem to be like one of those.

**ADV VINCENT MALEKA SC:** If.

- 20 **MR IAN HAMISH SCOTT SINTON:** I therefore asked Regiments if they could explain how as a professional firm they could give up 30 percent of their revenue and still remain profitable. As I heard later they said in fact it was increased to 50 percent and the answer he gave me was that the rates that McKinsey had negotiated with Transnet without [indistinct] they were 400 percent more than would have been charged by Regiments had they negotiated directly with Transnet. So they felt they were comfortable to pay away 30 percent of revenue. In those circumstances for us as the

bank to be told that Transnet was paying 400 percent more than it needed to pay in circumstances where the advisors were happy to give away up to 50 percent of the revenue rang alarm bells, gave up red flags of the type that the crime prevention statute say ought to be investigated.

**ADV VINCENT MALEKA SC:** Yes. I understand your position and I can understand why ultimately you took the view that you had to terminate the banking contractual relationship with Regiments, but what I do not still understand is this and I would like your assistance if you could provide it to the Judge, because as you know the Judge would like to get to the bottom of this. How does Mr Essa procure work for a professional consultancy entity which it itself could not do through the normal legal lawful permissible processes?

**MR IAN HAMISH SCOTT SINTON:** I am afraid Mr Maleka I do not know the answer to that, but he was handsomely rewarded for whatever he did do.

**ADV VINCENT MALEKA SC:** I am struggling to find out but what did he do. Did you manage to find out yourself what did he do?

**MR IAN HAMISH SCOTT SINTON:** I was told only that he was the person responsible for procuring this work at Transnet. What he did to get the work procured, I do not know.

**ADV VINCENT MALEKA SC:** Did they show you any tender submissions that he would make?

**MR IAN HAMISH SCOTT SINTON:** No.

**ADV VINCENT MALEKA SC:** Did they show you any projects or business processes of Transnet which required professional services?

**MR IAN HAMISH SCOTT SINTON:** In the meeting they explained, well we went on other stuff which I deal with in my statement but in the meeting they explained why they

paid Chivita Trading, why they paid Homix in terms of this arrangement and then they also provided other information and at the end of the meeting I asked if they would please reduce what they told us to writing so to get whatever supporting documentation they had available to demonstrate what they said was the legitimacy of all of this and that they (indistinct), so the only documentation we obtained in response to our enquiries was given to us later in a letter from Regiments and I've included that in the bundle.

**ADV VINCENT MALEKA SC:** We'll get to that later, can I explore one matter of detail that you have dealt with in paragraph 28.2 of your statement and you said that they indicated to you, that Mr Wood decided to increase Mr Essa's share of the fees paid by Transnet. Did you get details from them about how he increased it and why he increased it?

**MR IAN HAMISH SCOTT SINTON:** They claimed in the meeting they had no knowledge of the increase, they say he was in control of the finances of the firm and he set about doing this without their knowledge or consent and that was the subject matter of later litigation. The best information I got was, in a subsequent letter they sought to elaborate on that but that's all they explained.

**ADV VINCENT MALEKA SC:** Alright let me take you to that letter, Chair you'll find it Annex IS8 of – from page 105.

20 **CHAIRMAN:** Yes I've got it.

**ADV VINCENT MALEKA SC:** You will see that, that letter is dated 10 November 2017, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And it is addressed to you?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And it confirms the meeting that you held on the 6<sup>th</sup> of October 2017.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And then it is dealing with different headings, the first of which is the relationship between Mr Moodley and Mr Essa, do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do see that.

**ADV VINCENT MALEKA SC:** There's a background to it which they give to that relationship, can you deal with the background, you can read the letter if you want to or you can summarise it.

10 **MR IAN HAMISH SCOTT SINTON:** I would prefer to use their words if I may Mr Maleka. "Kuben Moodley has been known to our Mr Niven Pillay they use – they call him thereafter Niven, since 2005 initially as a golfing partner and subsequently in 2008 as a family friend. He approached Regiments in 2012 with a suggestion that we consider procuring a strategic business partnership with an international consulting firm. After discussing the suggestion between the Regiment's directors there was consensus to authorise Moodley to source a strategic global business partner. A meeting was duly arranged by Moodley in October 2012 which Niven attended in Sandton where he was introduced to Vikas Sagar a senior McKinsey partner. Sagar was accompanied by Salim Essa and a strategic business partnership was discussed  
20 which Sagar was happy to recommend to his McKinsey leadership. Regiments would become a supplier development partner (sub-contractor) to McKinsey. In turn Moodley and Essa would participate in an introductory revenue share in the sub-contract revenue paid to Regiments".

**ADV VINCENT MALEKA SC:** Can I stop you there and ask you the following. It is clear from this version of Regiment put down in writing that there was some relationship

between Mr Essa and Mr Vic Sagar of McKinsey.

**MR IAN HAMISH SCOTT SINTON:** That is what we were told and that is confirmed in this writing yes.

**ADV VINCENT MALEKA SC:** What I want to ask from you is whether in any dealings you had with McKinsey did you put this part of the relationship to them and if so what was the response of McKinsey?

**MR IAN HAMISH SCOTT SINTON:** I never put this particular relationship to them, but I did urge them to include in their investigations being conducted the circumstances under which the relationship between Regiments, McKinsey and Transnet arose. I  
10 urged them to include that as part of their investigations, I didn't actually refer them to this letter, this letter was marked privileged and confidential, I thought it would be dangerous for us to...

**ADV VINCENT MALEKA SC:** No I understand the disclosure of confidence is one thing but an investigation of a relationship of concern to you from your supplier is a totally different matter.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes, alright you say you did not raise that in these terms?

**MR IAN HAMISH SCOTT SINTON:** Not in these terms but I did urge them to pay  
20 particular attention to how this relationship came to be established as part of their own investigation.

**ADV VINCENT MALEKA SC:** Yes, the next issue that I'd like to ask you before your proceed is on their own understanding, when I say their own understanding I mean Regiments understanding they describe the division of revenue Regiments earns from Transnet as a revenue sharing arrangement. Now I know that English is not my

language but that's a fundamental different structure of dividing up revenue from paying a fee, do you see that?

**MR IAN HAMISH SCOTT SINTON:** I can understand the legal distinction but in the hands of a professional firm fees earned is revenue, it's the same thing.

**ADV VINCENT MALEKA SC:** Yes and revenue is important because it doesn't matter what costs you incur to generate revenue, whatever costs you incur to generate revenue doesn't matter, as long as the revenue is there you divide that revenue regardless of the costs required to generate that revenue.

**MR IAN HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** Yes, so this scheme implied that if anything is to be said about the description that Regiment would go and earn money, it does not matter what the cost of raising that revenue is and simply divide it on the ratios that you have indicated, 5% and 30% to both Mr Moodley and Essa respectively.

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Did you ask them why this is the case, I mean it's something odd for a stranger outside a discussion you had and for them to confirm in writing that arrangement?

**MR IAN HAMISH SCOTT SINTON:** Their explanation, I did ask, as I said, on what basis a professional firm could give away 30% of revenue and still be sustainable and  
20 they said because the amount being earned was so excessive that they could afford that but once Mr Wood increased the amount to 50% they started incurring losses, that was the explanation.

**ADV VINCENT MALEKA SC:** Yes so in their explanation, they were quite comfortable because on an open and public tender process they would not code the fees that McKinsey had arranged for them.



**MR IAN HAMISH SCOTT SINTON:** That was my understanding of their explanation yes.

**ADV VINCENT MALEKA SC:** Chair I believe that some of us would have to leave law and go to the business consultancy world.

**CHAIRMAN:** Well, let's continue Mr Maleka.

**ADV VINCENT MALEKA SC:** Alright do you want to proceed Mr Sinton under the heading Regiment due diligence on Essa?

**MR IAN HAMISH SCOTT SINTON:** It says here, "at the time Essa was unknown to Regiments, he had no business or political profile based on our google search on his  
10 background, there was no hint of any Gupta association. Regiments had no reason to decline these strategic business partner opportunity on account of Essa's participation".

**ADV VINCENT MALEKA SC:** Can I stop you there and ask you this, did you accept this explanation by Regiment representatives that at that point in time, and I'm talking around 6 October 2017, there was nothing in the public domain or open source information, giving a hint of who Mr Essa was?

**MR IAN HAMISH SCOTT SINTON:** I think, Mr Maleka what he's trying to say is that when they met Mr Essa in 2012 there was at that stage, they had no reason to suppose that he had any Gupta relationship. It was, frankly not something that was persuasive to us, we believe that securing work with a State owned enterprise, whereas a condition of  
20 getting the work you need to pay a stranger 30% of revenues of itself, whether that stranger is known to you or not or has a reputation or not is – ought to be a red flag and to proceed with that arrangement, I think was – would be, based on my experience in other jurisdictions, would be considered by the authorities as knowing participation in suspicious transactions.

**ADV VINCENT MALEKA SC:** I really understand your explanation around how they

used the date of 2012 as a basis that, at that point in time there was not publically available information to give them a hint but I'm going to take you to parts of this explanation which shows that they maintained this relationship with Mr Essa progressing to even a different form of revenue services that took place well after 2012.

**MR IAN HAMISH SCOTT SINTON:** That certainly seems to be their – that seems to be correct yes.

**ADV VINCENT MALEKA SC:** Yes and therefore that explanation cannot stand. My invitation to you is, were you satisfied with the explanation?

**MR IAN HAMISH SCOTT SINTON:** No.

10 **ADV VINCENT MALEKA SC:** Anyway we'll get to other revenue sharing schemes that took place well after 2012. Under the heading McKinsey due diligence and Regiment, what explanation do they give?

**MR IAN HAMISH SCOTT SINTON:** They say "the McKinsey due diligence of Regiments was conducted and approved by their international office. Regiments was in turn duly approved as one of its supplier development partners alongside a number of – the other existing sub-contractor relationships".

**ADV VINCENT MALEKA SC:** So McKinsey was quite satisfied about the property and propriety of Regiment as a partner, from what they told you?

**MR IAN HAMISH SCOTT SINTON:** That's what they told us yes.

20 **ADV VINCENT MALEKA SC:** Yes, Chair that issue will become important when we look at subsequent McKinsey relationships with (indistinct). Subject to your views Mr Sinton, I'm going to ask you to jump to the last heading on page 106 which talks about the role of McKinsey.

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Do you want to deal with that?

**MR IAN HAMISH SCOTT SINTON:** Yes, again I prefer to read out their explanation, “in terms of the agreement McKinsey would be responsible for procuring contracts with clients, this would include fee negotiations and more specifically approval of all sub-contract fees allocated to and billed by Regiments under the contract. They would also retain ultimate leadership of any client relationship together with ultimate leadership over any contract”.

**ADV VINCENT MALEKA SC:** And then over the page.

**MR IAN HAMISH SCOTT SINTON:** “McKinsey would specify resource requirements from Regiments and would retain ultimate quality assurance of all Regiments client  
10 work product. They would further ensure transfer of skills to Regiments staff and contract resources throughout the engagement”.

**ADV VINCENT MALEKA SC:** Yes I have asked you to deal with that part of their explanation because on their own explanation it is McKinsey who’s doing the hard labour of procuring business for them. It is McKinsey who’s doing the hard work of negotiating the fees. I don’t see anything that Mr Essa and/or Mr Moodley do in this regard to procure business for Regiment.

**MR IAN HAMISH SCOTT SINTON:** Again, my understanding from the meeting I had with Regiments and it’s partly confirmed elsewhere in this letter, apart from the initial introduction of Regiments to Transnet and McKinsey Mr Essa played no further role, he  
20 provided no further services in this relationship.

**ADV VINCENT MALEKA SC:** And that’s the point Mr Sinton that they’re paying an introduction fee of 30% initially, later 50% just for the pure introduction and nothing more.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Subject to your guidance, I’m going to ask you to deal

with the question of fees which is discussed from almost the middle of that page.

**MR IAN HAMISH SCOTT SINTON:** “Fees and expenses, all proportioned Regiment fees would be agreed between McKinsey and their client on a mandate by mandate basis. This would range between 30% to 50% of the McKinsey/client contract value as determined between the parties. The resources provided by Regiments and work done was also commensurate with the fees allocated. Expenses were billed individually by the respective parties as incurred. The attached Annexure A outlines the agreement between McKinsey and Regiment relating to four of the key mandates which Regiments worked on”.

10 **ADV VINCENT MALEKA SC:** Chair you’ll see the key mandate set out in Annexure A, begin from page 114 and they are identified on page 115 with reference to specific requests for proposal RFP37, 38, 39 & 40 2014.

**CHAIRMAN:** Yes.

**ADV VINCENT MALEKA SC:** But what is important Chair in relation to this is that the relationship does not end there it continues as set out in paragraph 1.2, can you go to paragraph 1.2 page 115.

**MR IAN HAMISH SCOTT SINTON:** Yes this is the consortium agreement that they said had been concluded between Regiments and McKinsey. In paragraph 1.2 it reads as follows, “Regiments and McKinsey have agreed to combine their resources, skills  
20 and information and form a consortium to be known as the Regiments McKinsey consortium for purposes of responding to the RFP’s and performing the services required under any contracts to be executed by Transnet and/or Regiments and/or McKinsey in respect of the work set forth in the RFP’s defined as the contracts.

**ADV VINCENT MALEKA SC:** Then part of the relationship between those parties, highlights the fact that it’s a JV between two entities for the present mandate and future

mandate arising from Transnet (indistinct) and that does not provide for a third party to come into the JV.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes, Chair I'm just going to draw your attention to other parts of the JV agreement I'm not going to ask Mr Sinton to deal with them.

**CHAIRMAN:** Okay.

**ADV VINCENT MALEKA SC:** The first is page 114 paragraphs 4.1 and 4.2 and then the next is page 119 paragraph 6 which is the implementation methodology of the JV through an executive committee comprising two directors each from the JV partners.

10 **CHAIRMAN:** I'm sorry Mr Maleka you're – I thought you had said 114 but I referred to paragraphs 4.1 and 4.2 but I think you must have said 118 is that right?

**ADV VINCENT MALEKA SC:** 118.

**CHAIRMAN:** Because that's where 4.1 and 4.2 are.

**ADV VINCENT MALEKA SC:** Indeed, my apologies.

**CHAIRMAN:** Okay I got the page the wrong okay and next after those two paragraphs?

**ADV VINCENT MALEKA SC:** Is how the partners implement the JV arrangement, first they establish an executive committee, you will see on page 119 and they give you the name and numbers from paragraph 621 and it goes to paragraph 624 and the  
20 names are important Mr Sinton because you have dealt with some of them. You've dealt with Mr Pillay who attended the meeting and gave you the explanation and you've dealt with, I think Mr Vikas Sagar correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** So they were part and parcel of this executive committee.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** They understood the relationship?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And then on page 121 paragraph 6.9 is the responsibilities of the executive do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** I'm not going to ask you about it and then I'd like to take you to the termination clause on page 128. Sorry before I do that Chair, my apology, before I do that, can I ask you to go to page 124 paragraph 9.1 are you there?

10 **MR IAN HAMISH SCOTT SINTON:** I am yes.

**ADV VINCENT MALEKA SC:** It is an exclusivity provision which is quite key to that relationship, do you see that?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And as I read it, or maybe let me read it out, "the parties in respect of the object of the consortium as described in the recitals and clause 4.1 (indistinct) shall work exclusively together and shall not in any manner whatsoever, either now or at a future time, attempt to circumvent same in any of the transactions either entered into or which the respective parties are desirous of entering into as contained in this agreement". So they seal their marriage with that exclusive  
20 arrangement that neither party would do what the purpose of the agreement requires.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** In the context of that exclusivity provision can I take you to the termination clause on page 128, you will see that there's a normal termination clause in 13.3 – 13.1 I'm sorry and 13.3 provides for a remedy at an instance of an innocent party, do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes I do.

**ADV VINCENT MALEKA SC:** “It provides that the innocent party, shall in the event of it cancelling this agreement in accordance with clause 12 above, be entitled to submit a response to the RFP with the other defaulting party”. So this is the only time when a party to the marriage would be entitled to go it alone for future business, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes, so Chair, that is the nature of the arrangement – contractual arrangement that has been explained to Mr Sinton by the directors of Regiment at page 107. Mr Sinton I’m going to ask you to complete the explanation  
10 given by Regiment in relation to Mr Moodley at page 107 that is at the bottom.

**MR IAN HAMISH SCOTT SINTON:** Yes, “Moodley provided the idea of seeking out a strategic business partner to grow the Regiments strategy advisory business. At the time Regiments already had a strategy advising business Burlington which complimented the client solution value offering provided by the Regiments debt capital market advisory division. He also provided introduction to Essa/McKinsey that gave rise to the revenue opportunity. In exchange he would be entitled to a 5% introductory revenue participation share that flowed from the McKinsey sub-contracts and other resultant business. Regiments struck a normal business relationship with Moodley to this affect in terms of which agreement Moodley would nominate an entity/account into  
20 which payments would be received, McKinsey was aware of this arrangement”.

**ADV VINCENT MALEKA SC:** Did you put this version of Regiments to McKinsey?

**MR IAN HAMISH SCOTT SINTON:** No I didn’t.

**ADV VINCENT MALEKA SC:** Okay is there an explanation why you did not?

**MR IAN HAMISH SCOTT SINTON:** I thought it – by the time I received this information we had already terminated dealings with McKinsey, there was no need to

keep belabouring the point we had exited the relationship so I did, as a courtesy call upon them to include all the circumstances surrounding this appointment in their own investigations, for their own benefit. There's no rationale for me to put it to them after the relationship had been terminated.

**ADV VINCENT MALEKA SC:** Yes but the point is, you'd be aware, at that point in time that Regiments takes a view that the revenue sharing scheme between it and Mr Moodley was something that was known to its partner, McKinsey and we have looked at the contractual relationship between McKinsey and Regiments, it does not make provision for this 5% revenue sharing scheme.

10 **MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** If on the version of Regiments, McKinsey would be aware of a revenue sharing scheme which falls outside their contractual relationship, what would you have expected Regiments to do in relation to its partner about something outside the terms of the agreement?

**MR IAN HAMISH SCOTT SINTON:** I would have assumed that Regiments had disclosed this to McKinsey, I wouldn't expect them to have a so-called silent partner that McKinsey was unaware of.

**ADV VINCENT MALEKA SC:** Maybe that's the reason why they say that McKinsey was aware of this, anyway lets deal with the heading Regiments to Essa.

20 **MR IAN HAMISH SCOTT SINTON:** "It was Essa who brought McKinsey to the relationship notwithstanding the introduction facilitated by Moodley. In exchange Essa would be entitled to a 30% introductory revenue participation share that flowed from the McKinsey sub-contracts and other resultant business. Regiments struck a normal business relationship with Essa to this effect in terms of which agreement Essa could nominate an entity/account into which payments would be received, McKinsey was



aware of this arrangement”.

**ADV VINCENT MALEKA SC:** Alright, they keep on emphasising both in relation to Mr Essa and in relation to Mr Moodley that McKinsey was aware of that.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** I mean it's not a mere matter of throwing an idle line it's a point of emphasis.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes, did you ask them what entities did each of Mr Moodley and Mr Essa nominate for the payment of their share of the revenue?

10 **MR IAN HAMISH SCOTT SINTON:** I did ask them in the meeting and they told me it was Chivita and then Homix. If you look to page 110 you'll see they deal with that.

**ADV VINCENT MALEKA SC:** 110?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Oh I see payments to Chivita – Chair are you there at page 110?

**CHAIRMAN:** I'm going there, yes I'm there.

**MR IAN HAMISH SCOTT SINTON:** It reads:

20 “Chivita was the entity nominated by Moodley/Essa to receive their introductory revenue share participation with regard to the McKinsey relationship. It needs to be noted that these payments of the agreed 35% to Chivita [and Essa nominated entity] included the 5% due to Moodley paid to him in turn by Essa. We have not yet been able to locate a formal agreement with Chivita to this effect but our investigation is ongoing. We suspect in the absence of an agreement that Wood in his capacity as the

nominated Regiments official for the relationship discussed and agreed to this with Essa orally.”

**ADV VINCENT MALEKA SC:** So all of this thing boils down to an oral agreement?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Alright. Can I take you back to an explanation they give around their involvement in the so called 1064 locomotive engagement by Transnet? I will be quick on this because Chair this is a matter which is going to be presented to you in detail by our colleagues for Transnet. It is at page 108. All I want you to confirm there is the second last paragraph. Are you there?

10 **MR IAN HAMISH SCOTT SINTON:** Yes I am yes.

**ADV VINCENT MALEKA SC:** Yes. Can you confirm what they told you in regards to this locomotive project?

**MR IAN HAMISH SCOTT SINTON:** Do you want me to repeat what they say here or give what they told me in the meeting as well?

**ADV VINCENT MALEKA SC:** You prefer to read their version.

**MR IAN HAMISH SCOTT SINTON:** Their version here is:

20 “The 1064 mandate was awarded to McKinsey and Regiments was initially not a party to it. On very short notice Regiments was requested by McKinsey to assist with financial risk modelling. Shortly thereafter the remainder of the mandate was assigned to Regiments.”

**ADV VINCENT MALEKA SC:** Alright.

**MR IAN HAMISH SCOTT SINTON:**

“The attached copies of the relevant LIO letters and session and correspondence which gave effect to this arrangement.”

**ADV VINCENT MALEKA SC:** Alright can I ask you to go to page I think it is 1110 and deal with the heading “Amendment to Business Development Partner Agreement”

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:**

“Eric Wood was the named relationship director in relation to Moodley/Essa. In November 2013 he unilaterally increased their introductory revenue participation percentage on the McKinsey/Transnet mandate and other revenue streams to 50%. This increase which resulted in Regiments incurring losses on some of the mandates was executed by Wood without any reference to or consultation with the other two Regiments directors. Wood also diverted these payments due to Moodley and Essa from Chivita to Homix in early 2014. Wood was able to withhold these material facts given that he communicated solely with Essa at all times and had responsibility of control of the finance department of Regiments Capital. When he became of this change around August 2015 when media reports around Homix surfaced and the Regiments head of compliance challenged Wood on why payments were being made to this entity.”

**ADV VINCENT MALEKA SC:** Yes. I am going to end their response by dealing with a matter where Regiment confirmed to you that it did execute mandates from Transnet of its own without the involvement of McKinsey. And I do so in the context of what you said they told you on the introduction fee that they paid to both Mr Moodley and Mr Essa. It is to be found at page 109 under the heading “Regiment/Transnet Mandates”

do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Can I ask you to please deal with that section.

**MR IAN HAMISH SCOTT SINTON:**

10       “Over the same period Transnet ran several RFP processes independent of any work McKinsey was procuring. Regiment responded to various RFP’s and won two mandates. One is numbered for the design and implementation of new best practice framework for Transnet second divined benefit pension fund and the other one advisory services in respect of Transnet’s participation in the Maputa Corridor Development. Even though our revenue share partners in the form of Moodley and Essa were not involved in these procurement processes it was determined that Regiments should honour the revenue share arrangement in his mandates as well on the basis that absently the reduction to McKinsey Regiments would not have been well placed to win these contracts.”

**ADV VINCENT MALEKA SC:** I am sure you read this before?

**MR IAN HAMISH SCOTT SINTON:** I have Mr Maleka.

20       **ADV VINCENT MALEKA SC:** It does not make sense at all. Can I put the following to you to you to see whether or it made sense or not to you but for me it does not make sense. Firstly this thing has nothing to do with the introduction by the two gentlemen to McKinsey because Regiments goes of its own bat to secure this work without McKinsey on their own so say. Correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** There is not even a basis to talk about the revenue sharing arrangement here?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** But yet they do it. And they do it on the basis that they were introduced by McKinsey by these two gentlemen, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** But this job that they have got and the two mandates have nothing to do with the introduction on their own explanation.

**MR IAN HAMISH SCOTT SINTON:** Correct.

- 10 **CHAIRPERSON:** They must have been very happy with whatever it is that these two people had done overall to firstly give them such a big percentage of their fees when these people apparently were not doing anything other than that on their version they had introduced them. And to now they find they get other work without any contribution from these two but they still go and want to share their fees with them simply on the basis that they did introduce them in regard to work for which they were giving them a lot of money.

**ADV VINCENT MALEKA SC:** Chair the intention of this letter was to persuade us that the relationship they had was an innocent business like one. I can understand the attention they did not succeed.

- 20 **CHAIRPERSON:** Are they doing a very good job?

**ADV VINCENT MALEKA SC:** Mr Sinton I mean anyone who reads this paragraph of their version will come to the conclusion that they are not telling you the full truth that there is something they withholding from you. The question is what did you do to look into this version? Did you press them about an explanation on why this version does not make sense?

**MR IAN HAMISH SCOTT SINTON:** Mr Maleka we found the explanation to be our requirement is they needed to allay our concerns that their relationship – that the work that they secured with Transnet and for which they were paying these what we thought were exorbitant introductory fees or sharing the revenue we found it implausible and our remedy was to terminate the relationship so we do not want to deal with you any longer.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** We did not have a debate about the plausibility or not we just said we cannot accept this we are not – we are terminating the relationship.

10 **CHAIRPERSON:** So would it be correct to say that your attitude was that once you had reached the conclusion that this – these transaction, this relationship that they had did not satisfy you and that you would terminate the relationship you ceased to have an interest in getting to more explanations or not really?

**MR IAN HAMISH SCOTT SINTON:** Suffice to say Chair that when we analysed what the accounts what we had been told in the meeting which we had where we had oral information when we had a look at the explanations provided here we complied with our statutory obligations and we took a decision to terminate all future dealings with Regiments. We did not seek to engage further we did not think it was our responsibility to prove our suspicions correct or not we thought they were justified and on the basis of  
20 that justification we terminated the relationship.

**CHAIRPERSON:** I got the impression earlier on when you were giving your evidence with regard to what transpired at the meeting you had with them I got the impression that before the end of that meeting you may have taken the view already that unless the written explanation that they were going to send unless it came up with something different from what they were telling you you could not see your way – you're the bank

continuing to have a relationship with them. I thought you

**MR IAN HAMISH SCOTT SINTON**: Yes.

**CHAIRPERSON**: May have misunderstood you but I thought you almost said you know we realise that we just could not continue because what we are being told does not satisfy us.

**MR IAN HAMISH SCOTT SINTON**: Yes Chair it is not my sole decision as to whether we terminate or not but to the extent that I was the senior person representing the bank in that meeting the ready admission that they had agreed to pay away 30% of all revenue all earned from their work with Transnet when Transnet is an SOE obliged to  
10 procure work and a cost effective transparent manner I find alarming and I conveyed that to my colleagues at the bank. We gave them the opportunity to make written representations which is this document and then the summary of the meeting this representation was put before a committee of the bank that considered them and said we can no longer keep dealing with Regiments.

**CHAIRPERSON**: But would I be correct if I said that as far as you are concerned at the meeting, when you left that meeting if it was up to you to make the decision your attitude having heard what they had to say your attitude was unless that written explanation comes up with something different from what I have been told this relationship must come to end?

20 **MR IAN HAMISH SCOTT SINTON**: Yes Chairman if I may Mr Maleka might still intend to go there but what also was discussed in our meeting that we had I as was is the custom I asked them to if they had any comment on reports that they had in their capacity as advisor to Transnet advised Transnet to increase the purchase price for locomotives there was this famous 1064 new locomotive contract that Transnet had issued tenders for and that tenders had come in and it had been reported that the

tenderers had tender prices of roughly 29 to 30 million per locomotive and that these had been, prices had been post tender increased to roughly I think R40 million per locomotive and I asked Regiments if they had been involved and explained that initially McKinsey were appointed to advise on that contract but that McKinsey pulled out at short notice and they took over. So they were – they were advised that they were indeed advisors on that contract and yes they had confirmed to me they had advised Transnet to agree to an increase in the tender prices. They told me that the reason was that they had worked out that it would be in Transnet's interests to agree to an increased price because the tenderers either suppliers of locomotives had agreed to

10 assume foreign exchange risk and they thought that was good advice. I then referred them in the meeting to again other media reports supported by documentation to the effect that that Mr Salim Essa the same Mr Salim Essa who was on their sharing revenue stood to earn 21% of all monies paid by Transnet for the new locomotives and I said did you, what is your comment on this that your silent partner as advisor is benefitting now as advisor to the tenderers. And they said they had no knowledge of the newspaper reports let alone the involvement with Mr Essa and that. Now I found that extremely difficult to believe it was – it was very much publicised at the time it was a talking point and for them to be a long time advisory Transnet and not be aware of these very serious allegations in the media or pretend not to be aware of them I find it

20 extremely difficult to believe and that was another factor on top of the fact that they were paying it that as you say caused me to leave that {indistinct} thing I do not think we can proceed with a relationship with these people.

**CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA SC:** And just to sought some details from you in that regard consistent with your statement the media reports you wanted them to look at and



comment on about the fact or the report that Mr Essa stood to gain handsomely from this locomotive project is at page 100.

**MR IAN HAMISH SCOTT SINTON**: Yes that is correct that is one of them ja.

**ADV VINCENT MALEKA SC**: The point about it is that it is dated 1 June 2017 and your meeting is around 6 October 2017 which is almost three months later, correct?

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: So if any ignorance there existed about this it would have run for a period of three months.

**MR IAN HAMISH SCOTT SINTON**: Correct.

10 **ADV VINCENT MALEKA SC**: I find it strange that a management consulting company would be unaware of this set of media reports for a period of three months relating to one of its clients?

**MR IAN HAMISH SCOTT SINTON**: Relating to a contract which they advised on for one of its clients?

**ADV VINCENT MALEKA SC**: Yes.

**MR IAN HAMISH SCOTT SINTON**: Yes.

**ADV VINCENT MALEKA SC**: Yes.

**MR IAN HAMISH SCOTT SINTON**: Correct.

20 **ADV VINCENT MALEKA SC**: I mean they are doing the same job. The media reports on the same job and it raises serious questions about that job.

**MR IAN HAMISH SCOTT SINTON**: Correct.

**ADV VINCENT MALEKA SC**: I find it difficult for that explanation that they would not be aware but anyway I am sure our colleagues from Transnet who are dealing with Transnet will test that issue Chair. And if go back to your statement in relation to that part of the conversation you had with them about the locomotives in your statement you

say something more and something far more emphatic than your oral explanation a moment ago to the Chairperson. I would like to draw attention to paragraph 28.6 where you deal with the locomotives. Can I ask you to deal with it from the beginning of that paragraph 28.6.

**MR IAN HAMISH SCOTT SINTON:** Would you like me to paraphrase or read it?

**ADV VINCENT MALEKA SC:** Read it because you a little more than what you said previously in your oral testimony.

**MR IAN HAMISH SCOTT SINTON:**

“When asked to comment on whether the increase in the tender prices for the 1064 locomotives could have been motivated – sorry the background is they said that they had recommended the increase in order to allow for forex risk. I said could the increase have been motivated by corruption as claimed in the media and Regiments reply was to the effect that the increase was justified by the successful tenderers assumption of foreign currency risk but that the decision to purchase a 1064 new locomotives was possible tainted by corruption. They said if there was corruption it was not in our advice to increase the price it was possibly to the decision to buy so many locomotives in the first place.”

**ADV VINCENT MALEKA SC:** Can I stop you there. I am sorry to do this to you but in the ordinary course of events anyone in this country who harbours a suspicion of corruption especially when it relates to state institutions such as Transnet has a fundamental statutory obligation that you are aware of correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** They tell you in the course of a meeting that they harbour a possible suspicion around a deal in which they are advising which could possibly have corrupt elements in it in the course of that meeting, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** They had a duty to raise that issue as you do in relation to transactions. You have given the Chairperson Section 34 PRECCA reports because you harboured some suspicions of corrupt dealings in relation to them, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Did you ask them why did they – did they not report?

**MR IAN HAMISH SCOTT SINTON:** Mr Maleka I did not know if they did or did not report this.

**ADV VINCENT MALEKA SC:** Okay.

- 10 **MR IAN HAMISH SCOTT SINTON:** They were simply expressing an opinion to me when I asked do they think there was corruption in that transaction they said not in the increase of the price but possibly in the decision to buy so many locomotives.

**ADV VINCENT MALEKA SC:** Indeed.

**MR IAN HAMISH SCOTT SINTON:** I had no knowledge as to whether they had reported this to any authority or not.

**ADV VINCENT MALEKA SC:** But you would have expected them to do so if they were fulfilling their statutory duties? I am not saying that you should have insisted that may not be – that may not have been part and parcel of your job but I am saying you would have expected them to do so.

- 20 **MR IAN HAMISH SCOTT SINTON:** Yes. Again it turns on the interpretation of Section 34. Section 34 talks of knowledge of corruption. I would hate to have to stand here and say I think they had such knowledge. They certainly said if there was it was possibly in the decision to purchase so many.

**ADV VINCENT MALEKA SC:** Can I test it this way. If you were in their position what would you have done?

**MR IAN HAMISH SCOTT SINTON:** If we had been advisors to a client and come across objective facts which justified a suspicion of corruption then we would have deemed it necessary to report that under Section 34 of PRECCA

**ADV VINCENT MALEKA SC:** Alright is there anything that you would like to deal with in 28.6 before I ask you to go to 28.7?

**MR IAN HAMISH SCOTT SINTON:** It is just that Chair the – when I asked why they thought the decision to buy so many locomotives was tainted they informed me which I did not know that Transnet had an existing fleet or functioning locomotives at the time that South Africa's rail network cannot accommodate more than 300 active locomotives  
10 at a time and so for the company to go and buy another 106 when only 300 could be used at any one time they thought was a decision worth investigating. But that was simply a – in a meeting could have happened yes possibly for these reasons it was not we believe it happened and expressed as a certain opinion.

**ADV VINCENT MALEKA SC:** Chair remember one of the witnesses gave us a useful business experience about I think he used the phrase Just In Time. That you do not buy goods in order to put them in the spare yard you buy them just in time when you need them.

**CHAIRPERSON:** Ja I think I remember something I am not sure.

**ADV VINCENT MALEKA SC:** Yes.

20 **CHAIRPERSON:** Whether it was here.

**ADV VINCENT MALEKA SC:** It was here.

**CHAIRPERSON:** Oh okay.

**ADV VINCENT MALEKA SC:** It was here I think it was Mr Ephron in fact as I remember. **MR IAN HAMISH SCOTT SINTON:** Yes. Oh yes I – well I do not know if it was him but you – I think you are right to say it was here.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA SC:** Yes, yes. So on their explanation they bought more than 700 locomotives which are not going to be used just in time. But anyway something that the commission will explore Mr Sinton. I had invited you to conclude with the explanation to you from paragraph 28.7.

**MR IAN HAMISH SCOTT SINTON:** Yes. As the meeting came to an end Regiments as it were complained that they had been offered the role of supply development partner to McKinsey at Eskom for work to be undertaken by McKinsey at Eskom they  
10 would on the same terms and conditions i.e. they would get 30% of the work allocated and they would give a third to Mr Essa. That they staff of Regiments actually commenced work alongside McKinsey staff at Eskom and then in anticipation of this agreement being concluded and then Mr Wood left Regiments to join Mr Essa at Trillian and McKinsey appointed Trillian as their supply development partner rather than Regiments and Regiments did not get paid for the work they had done and they complained to me that they felt they had been badly treated by not even been paid for the work they had done in anticipation of getting that appointment.

**ADV VINCENT MALEKA SC:** Chair that is an issue we will deal with later on on the terms of the understanding we have with McKinsey. I am not going to deal with it now.

20 **CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** If you could go to page 16 of your statement Mr Sinton. You have dealt with the major parts of it I will ask you to deal with something new in that statement which begins from the last sentence and it begins in the fourth last line of that paragraph.

**MR IAN HAMISH SCOTT SINTON:** Yes in the first part I refer to the letter we have just

been dealing with and I point out how it confirmed what had been told to us in the meeting. But I also mention that another note where the aspect is that the letter includes a copy of a letter in which Mr Anoj Singh then Transnet group chief financial officer purports to give Transnet's consent to Regiments replacing Nedbank as an advisor on the locomotive acquisitions at the request of McKinsey. And it really – the relevance is they had invoked that letter as evidence of the fact that they had been brought in to this transaction after the – a mandate had already been awarded and they replace Nedbank as advisor and in fact the evidence was in due course McKinsey themselves dropped out and Regiments took over the lead role.

- 10 **ADV VINCENT MALEKA SC:** In your documents you give us doc – some documents relating to the replacement of Nedbank by Regiments I remember I came across them.

**MR IAN HAMISH SCOTT SINTON:** It is an annexure to the letter.

**ADV VINCENT MALEKA SC:** Is page – thank you. I believe it is page 136.

**MR IAN HAMISH SCOTT SINTON:** That is correct yes.

**ADV VINCENT MALEKA SC:** The letter is dated 19 November 2013 do you see that?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And it records that Nedbank was replaced because of some conflict of interest.

**MR IAN HAMISH SCOTT SINTON:** Correct.

- 20 **ADV VINCENT MALEKA SC:** And then McKinsey has agreed to replace Nedbank with Regiments because it is in the best interest of Transnet I am reading paragraph 5.

**MR IAN HAMISH SCOTT SINTON:** Yes. And the point I was making in paragraph 6 this letter says:

“This letter serves confirmed Transnet's agreement to  
McKinsey's request for Regiments Capital to provide the required

service in the place of Nedbank.”

**ADV VINCENT MALEKA SC:** Yes and there I do not see these arrangement about revenue sharing because the client agrees to the replacement.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes. There is another letter which follows that one it is dated 20 January 2014 it is from Transnet in fact it records an agreement between Transnet and Regiments. It is on page 137.

**MR IAN HAMISH SCOTT SINTON:** Sorry it is to Transnet from Regiments.

**ADV VINCENT MALEKA SC:** Yes. From Transnet to Regiments which is dated  
10 24 January 2014. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And it is signed on page 140 by Transnet. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** I do see it, yes.

**ADV VINCENT MALEKA SC:** Also by Regiments. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** Correct, yes.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** So that letter starts at 137, Mr Maleka?

**ADV VINCENT MALEKA SC:** Yes Chair.

20 **CHAIRPERSON:** *Ja*, okay. I seem to have heard 127. So I went to 127.

**ADV VINCENT MALEKA SC:** My apologies.

**CHAIRPERSON:** I could not find it. So, *ja*.

**ADV VINCENT MALEKA SC:** 137.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** Yes. Again you will see that it is a contract between

Regiments and Transnet on the locomotives project. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And it recalls the terms. I am not going to you through them, but what is quite clear is that Transnet is engaging Regiments for that project and the fee structure is set out on page 138. Do you see that, paragraph 2.1?

**MR IAN HAMISH SCOTT SINTON:** Yes, I see that.

**ADV VINCENT MALEKA SC:** It is a fixed fee and also a performance fee. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** Yes and these are the fees that are paid to no one, but Regiments by Transnet. Correct?

**MR IAN HAMISH SCOTT SINTON:** Mr Maleka I have a difficulty; that is what the typed portion of the document says.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** That the parties are Transnet and Regiments. That the fee structure is as set out, but you will see after the signature.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** Somebody has written in under the Transnet signature:

20 "[Indistinct] to items listed below."

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And there it says:

"The contract for the supply of these services is with McKinsey and Regiments capital is contracted to them. Items of Section 2, there will not be a performance fee for fundraising. Thus



2.1.2 will be removed, expenses will be capped at...”

I think.

“...10 percent and paid on approval. Payment will be made to McKinsey.”

I do not know what this means, because it is not.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** It contradicts the typed body of the document.

**ADV VINCENT MALEKA SC:** Yes. I do not know who put this here unless you are able to help us.

10 **MR IAN HAMISH SCOTT SINTON:** No.

**ADV VINCENT MALEKA SC:** Who put this script here?

**MR IAN HAMISH SCOTT SINTON:** It was given to us in this format by Regiments.

**ADV VINCENT MALEKA SC:** But you for your part did not seek any clarity on it?

**MR IAN HAMISH SCOTT SINTON:** No.

**ADV VINCENT MALEKA SC:** Okay.

**CHAIRPERSON:** Alright, on page 137 at the top right the name Regiments Capital appears to be written there and I do not know whether what appears above it is Regiments Capital’s emblem or logo. Then on the left hand side of the same page the words I think “Transnet” I may be mistaken seem to appear and I do not know whether  
20 what appears below those words is Transnet emblem or logo.

**ADV VINCENT MALEKA SC:** It appears to be Transnet logo.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And also Regiments logo.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Because if you compare that logo of Regiments I know

here it is not decipherable.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** But to the letter which they wrote to Mr Sinton that we dealt with.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** The logos are more or less the same.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** For instance if you compare page 110.

**CHAIRPERSON:** Hm.

10 **ADV VINCENT MALEKA SC:** With 137.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Just purely on the logos alone.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** You will see that it is more or less the same Chair.

**CHAIRPERSON:** Hm. Yes, thank you.

**ADV VINCENT MALEKA SC:** Alright.

20 **CHAIRPERSON:** Is that usual Mr Sinton? This appears to be when you look at page 137, it appears to be a letter addressed to Transnet and addressed to Mr Anoj Singh, but it has got logos of two different entities, but then when you go to the end or when you go, when you read paragraph 137 towards the end then you are told that here is what has been agreed and then you have terms and conditions and then at page 140 that page looks like, looks the way any last page of an agreement would look with places for the parties to sign and witnesses and then of course there is the handwritten annotation at the end. It just seems strange to me that it does not appear on the first page as an agreement as one normally finds agreements would look, but it has got

logos of both parties, but maybe that is normal. I just do not know it.

**MR IAN HAMISH SCOTT SINTON:** Chair it is not normal to, for a supplier to a customer to use the customer's logo on letters.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** It often happens that to give glass to contracts logos are applied.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** But that at the time of signing. To send a letter using.

10 **CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** It would be unusual and it seems to me it is unusual in commerce for people to write a letter proposing terms and say if you agree to the terms just countersign the letter and that will be the record of the agreement.

**CHAIRPERSON:** Hm.

**MR IAN HAMISH SCOTT SINTON:** So it elevates a letter into a contract.

**CHAIRPERSON:** Hm.

**MR IAN HAMISH SCOTT SINTON:** And I think that was the intent here.

**CHAIRPERSON:** Hm.

**MR IAN HAMISH SCOTT SINTON:** But it is a bit of both.

20 **CHAIRPERSON:** *Ja.*

**MR IAN HAMISH SCOTT SINTON:** It is partly a letter, but it provided the proper countersignature.

**CHAIRPERSON:** [Intervenes].

**MR IAN HAMISH SCOTT SINTON:** Just anyway they chose to deal with each other.

**CHAIRPERSON:** The result is that to the extent that when you look at page 1 you think

this is a letter addressed to Transnet particularly to Mr Anoj Singh. When you come to the end it seems to me you cannot tell who was writing to him. You just see names unless you say Transnet was writing to Transnet.

**ADV VINCENT MALEKA SC:** Unless Chair they would be using a joint letterhead.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** *Ja*, it maybe. I was just saying that it seems unusual to me, but I do not know if other people's experiences suggest it is usual.

**ADV VINCENT MALEKA SC:** Yes.

10 **CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** But I take the point of Mr Sinton.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA SC:** That the script at the bottom and it appears to come immediately after the signature of Mr Singh. So on the face of it you can attribute this to him. It contradicts the terms of the fee payment in Clause 2.1.2 and also the structure of the agreement because the structure of the agreement under this letter it is a clear engagement between Regiments and Transnet and here the script suggests that the contract is with McKinsey.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA SC:** And these guys are merely subcontractors or they are joint partners.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** With McKinsey.

**CHAIRPERSON:** *Ja* that is.

**ADV VINCENT MALEKA SC:** There are those contradictions which I mean Mr Sinton

is correct. I can explain them now.

**CHAIRPERSON:** Hm.

**ADV VINCENT MALEKA SC:** And hopefully in due course Regiment will be explain when they file their response as they promised to.

**CHAIRPERSON:** Yes, okay.

**ADV VINCENT MALEKA SC:** Mr Sinton you are at page 16 paragraph 29 and you had expressed your concerns in that regard and you had indicated the conclusion that Standard Bank made after all of this engagement with Regiments. The sum total of that conclusion was to terminate the relationship between Standard Bank and McKinsey and  
10 its further Directors. The point is did they have, those Directors, did they have banking accounts with Standard Bank?

**MR IAN HAMISH SCOTT SINTON:** Sorry, you said McKinsey. It is [intervenes].

**ADV VINCENT MALEKA SC:** Sorry, my apologies. I am getting tired now.

**MR IAN HAMISH SCOTT SINTON:** Yes. We did, we concluded the agreement with Regiments.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And with those Directors of Regiments who banked with Standard Bank we also terminated their accounts.

**ADV VINCENT MALEKA SC:** They had accounts with Standard Bank?

20 **MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Okay. I am going to move through a different topic and that is and that is payments to Homix. You deal with that topic from page 17 paragraph 31. Correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** You indicated to the Chairperson that Homix was an

entity that had a business relationship with you in terms of banking transaction facilities?

**MR IAN HAMISH SCOTT SINTON:** It used to, yes.

**ADV VINCENT MALEKA SC:** It used to?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Yes. Media reports suggest that Homix is a letterbox company and I am sure you must have picked up those media reports?

**MR IAN HAMISH SCOTT SINTON:** I have seen them yes.

**ADV VINCENT MALEKA SC:** Yes. From your investigation what did they reveal about

10 Homix?

**MR IAN HAMISH SCOTT SINTON:** Homix did open a bank account with Standard Bank. The appointed; they provided proof of address and all the statutory documents you would expect and they provided the identities of the signatories on the account. In this case despite Homix having been nominated as an entity to receive all payments for Mr Moodley and Mr Essa they were not signatories on the account nor were they Directors of the company. Those were Mr Yakub Ahmed Bhikhu, Mr Toffie Kazwari and Mr Mogamat Shafiek Adams.

**ADV VINCENT MALEKA SC:** Who are these individuals? I mean did you manage to FICA them and find out who they are?

20 **MR IAN HAMISH SCOTT SINTON:** Yes. We have names, ID books, addresses for all of them. There is separate in the bundle that you have handed up. We have given that all to you. I would rather not give personal ID numbers and names.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** Out publically if I can help it.

**ADV VINCENT MALEKA SC:** Yes. No, I understand, but you explain how money was

paid into Homix and how it in turn paid money to other entities in paragraph 31?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you do so with reference to a spreadsheet which is at page 164?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Correct.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Can I ask you to take us through those payments? They are obviously arranged according to months from April 2014. As I pick up the payments  
10 from Homix from 8 April 2014 beginning at page 164 up to page 169. They go to an entity called Bapu Trade CC. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes, I do.

**ADV VINCENT MALEKA SC:** Who is Bapu Trade CC?

**MR IAN HAMISH SCOTT SINTON:** Bapu Trading CC is another entity. Well as I point out my, in my statement when you look at Homix's account there were as we pointed out between Chivita and Homix over R200 million worth of payments went in. Payments from that went out to various entities, but the majority of the payments from the Homix account went to an entity called Bapu Trading. Those payments have all been itemised in this schedule. Bapu Trading also had a bank account with Standard  
20 Bank.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** Used to have a bank account with Standard Bank.

**ADV VINCENT MALEKA SC:** And do you know who the members of Bapu Trading CC were from your recollection?

**MR IAN HAMISH SCOTT SINTON:** It had a single member. A Mr Chetan Patel.

**ADV VINCENT MALEKA SC:** Do you know who he is?

**MR IAN HAMISH SCOTT SINTON:** We know. We have his ID book, his address, everything else, but where he fitted into the scheme of things I do not know. We do know that these large payments went through this account.

**ADV VINCENT MALEKA SC:** Are you able to explain why would funds that are being paid by Regiments to Homix then leave that account to go to Bapu Trading?

**MR IAN HAMISH SCOTT SINTON:** No, I have; part from observing that there were large amounts often round amounts. The reason for the transfers. All this takes place electronically. I have no way of knowing what the reason was.

10 **ADV VINCENT MALEKA SC:** What view did you hold about those transactions in Homix's account to Bapu Trading?

**MR IAN HAMISH SCOTT SINTON:** Sorry, please ask again.

**ADV VINCENT MALEKA SC:** What did you think of those payments?

**MR IAN HAMISH SCOTT SINTON:** An inference to be drawn is money laundering.

**ADV VINCENT MALEKA SC:** Money laundering?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And what did you do with that Bapu account which on your view of things suggested money laundering?

20 **MR IAN HAMISH SCOTT SINTON:** One assumes all suspicious transactions would have been reported to the Financial Intelligence Centre and then separately once we noticed separately from any of that this type of activity we would close the account.

**ADV VINCENT MALEKA SC:** You would close the account?

**MR IAN HAMISH SCOTT SINTON:** Ja.

**ADV VINCENT MALEKA SC:** Okay. Then you also referred to an entity or before I leave Homix. Can I draw your attention to copies of bank statements that Standard



Bank appears to have sent to Homix? Chair they begin from page 171. If you look at for instance page 172 you will see there is an account number at the top and the type of account that was held by Homix in Standard Bank. It is described as Money Market Call Account. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And you will see that Homix has given you an address where you post it, these bank accounts, bank statements, sorry. Do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes, I do.

**ADV VINCENT MALEKA SC:** And at every turn you indicate to your client at that point  
10 in time the various balances in that Money Market Call Account. Correct?

**MR IAN HAMISH SCOTT SINTON:** I do, yes.

**ADV VINCENT MALEKA SC:** There are many. From my documentation they end at  
page 188?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** Then you refer on page 17 paragraph 31 to another entity Cutting Edge Commerce. Are you there? If you go to paragraph 31 of your statement.

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And Cutting Edge, was it an entity that had a bank  
20 account with you?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you refer to money that got into that account and left that account. Correct?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** You do so with reference to a spreadsheet that you

prepared and it begins at page 230?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Now this entity is quite interesting. Did you manage to understand who the controlling minds behind this entity were?

**MR IAN HAMISH SCOTT SINTON:** The account was first opened back in 2004. Mr [indistinct] and a Mr Yates were then appointed as the signatories. In 2011 a T A Turow and A M Emmally were appointed as the signatories and during 2017 J Fraser were appointed as a signatory. Those were the appointed signatories. The reason that I have highlighted here at face value they have nothing to do with any

10 Gupta related entities, but nevertheless large amounts of money emanating from those entities and going back to those entities came through the Cutting Edge account.

**ADV VINCENT MALEKA SC:** Yes and you give the details of the directing minds of Cutting Edge at page 19 paragraph 39. Correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you give the account details in paragraph 38. I will go to the various bank statements that Standard Bank sent to Cutting Edge, but for the time being you record the amount or amounts that were paid from the account of Cutting Edge held at Standard Bank from page 230. Correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

20 **ADV VINCENT MALEKA SC:** And here.

**CHAIRPERSON:** I am sorry Mr Maleka.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Let us adjourn for five minutes. We will continue until we have finished with him. Is it not? I assume we will finish about half past four if not earlier.

**ADV VINCENT MALEKA SC:** Yes, I would like to finish with Mr Sinton.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Because Mr Piers Marsden is waiting in the wings Chair.

**CHAIRPERSON:** Yes. No, we will finish.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** But let us take a five minute adjournment.

**MR IAN HAMISH SCOTT SINTON:** Thank you Chair.

**CHAIRPERSON:** Just five minutes. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Yes you may proceed Mr Maleka.

**ADV VINCENT MALEKA SC:** Thank you Chair. Mr Sinton we have now identified who Cutting Edge is, and we did so with reference to paragraph 38 of your statement, in which you confirmed that it had a money market call account with Standard Bank, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you give the details there. I merely draw your attention to paragraphs 40 to 41 and 42 and ask you to confirm them, we may get back to them depending on what you say later about paragraph 43 onwards.

20 **MR HAMISH SCOTT SINTON:** I do confirm that.

**ADV VINCENT MALEKA SC:** Yes, let's get to paragraph 43, you say that with reference to IS16 there is a clear evidence that on 16 May 2016 Cutting Edge received seventy one odd million Rand from Eskom, do you confirm that?

**MR HAMISH SCOTT SINTON:** That's correct.

**ADV VINCENT MALEKA SC:** And IS16 begins at page 204, correct?

**MR HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** And those are transactions about Cutting Edge. I wonder whether you are able to tell us where you go them from?

**MR HAMISH SCOTT SINTON:** The IS204 is simply an extract from the accounting records of Standard Bank.

**ADV VINCENT MALEKA SC:** Of Standard Bank?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** So you got that payment tracked from official records kept by Standard Bank.

10 **MR HAMISH SCOTT SINTON:** Good.

**ADV VINCENT MALEKA SC:** And you says that on the same day, I am at paragraph 33 of your statement, Cutting Edge transferred monies to different entities, the first one is Majeau, I hope I'm pronouncing it correctly, and you say the next day it transferred money to Besa, I don't know how you pronounce it, Projects, and then you say it also transferred money to Fourtime Consultants, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Did any or all of these entities hold accounts with Standard Bank, as far as you have been able to establish?

20 **MR HAMISH SCOTT SINTON:** I haven't been able to establish for Besa Projects and Fourtime, the difficult we have is we usually – not usually we almost exclusively work on numbers and not names so for each name that we search for if we come up with a name we have to do a secondary investigation to track down accounts, when I was under pressure to do this statement when this statement was Majeau was a customer of ours, we hadn't yet found evidence of Besa or Fourtime Consultants having accounts with us.

**ADV VINCENT MALEKA SC:** Alright.

**MR HAMISH SCOTT SINTON:** But I mention here because again if you look at the statements they all allege to be involved with the transaction one way or another.

**ADV VINCENT MALEKA SC:** Yes. Obviously in due course you will do further investigation relating to ...(intervention)

**MR HAMISH SCOTT SINTON:** Yes we will.

**ADV VINCENT MALEKA SC:** And you would be able to furnish further information to the Commission.

**MR HAMISH SCOTT SINTON:** Yes we will.

10 **ADV VINCENT MALEKA SC:** But as at the date of your statement you record that there were further payments which were made around the 19<sup>th</sup> and the 20<sup>th</sup> of May, you deal with them in paragraph 44, correct?

**MR HAMISH SCOTT SINTON:** Yes correct.

**ADV VINCENT MALEKA SC:** One of them was payment from Cutting Edge to Sahara.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** How much was it?

**MR HAMISH SCOTT SINTON:** Ten million Rand.

**ADV VINCENT MALEKA SC:** We know who Sahara is, there cannot be any debate any more about who Sahara is.

20 **MR HAMISH SCOTT SINTON:** I doubt Mr Maleka.

**ADV VINCENT MALEKA SC:** Okay, it was clearly an entity owned by the Gupta family. Were you able to establish why was there a payment by Cutting Edge from the amounts it received from Eskom to Sahara?

**MR HAMISH SCOTT SINTON:** No, no we – I don't know the reason and I don't think we enquired at the time.

**ADV VINCENT MALEKA SC:** Alright. There is another payment of R10million to Saharan and you deal with it in the last sentence of paragraph 44.

**MR HAMISH SCOTT SINTON:** Yes the relevance here Mr Maleka is that on 16 May the seventy one odd million Rand comes in from Eskom, various payments, all in the region of R4million/R4.5million are made to entities and then on 19 May, ie three days later an amount of R10million is paid to Sahara and on 13 May, ie simply another two or three days later another R10million, a round number of R10million is paid to Sahara. Ordinarily that would be grounds for suspicion or enquiry.

**ADV VINCENT MALEKA SC:** Yes, you canvas further payments from paragraph 45  
10 onwards, what I propose to do is to take you to your spreadsheet where you deal with each of these payments by date and amount and you do so in page 230, I think that will save us time to go through each and every paragraph of your statement where you record the payments from the account of Cutting Edge Commerce. Are you happy that we should do it that way?

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Chair you will see from page 230 there are different payments made by Cutting Edge from 20 November 2015, the last column on the right hand lists persons who were the beneficiaries of those payments, there are many but I would like you to pick up each of them by name without repeating each of the  
20 transactions relating to that – to the name concerned.

**MR HAMISH SCOTT SINTON:** Yes Chair obviously I have provided the complete statements, the legal team expressed to me an interest in payments from or to Cutting Edge which could be of interest to this Commission Inquiry rather than an analysis of all payments so on my instructions our lawyers prepared this schedule, working off the statements that I provided from the bank's records, so you will see there in November

2015 there is one R1.3million from Cutting Edge to Majeau, March 2016 R3million from Cutting Edge to Sahara Computers. April 2016 another R600 000 Cutting Edge to Sahara Computers and here is the R71million which was from Eskom to Cutting Edge, then you'll see R4.3million Cutting Edge to Majeau, again R4.5million Cutting Edge to Majeau, R4million Cutting Edge to Besa Projects, R4.4million Cutting Edge to Fourtime Consultants, the next one is an inter between Cutting entities, then there's R4.45million Cutting Edge to Biz Africa. Then there's the round R10millin, this is now May 2016, Cutting Edge to Sahara, then there's another amount from Eskom to Cutting Edge of R5.58million, then there's around R4million Cutting Edge to Espy Management, in May 10 26 R3.8million Cutting Edge to Espy Management, and then 24 May 2016 another R10million Cutting Edge to Sahara Systems, approximately ten days later in June 2016 R3.25million Cutting Edge to Sahara Systems. Again in the media reports there was a company called Global Softech which was reported to have been involved in transactions with Transnet involving entities related to Guptas so we identified those, there's R600 000 coming into Global Softech, then interestingly on 19 July there's R5million from Sahara Computers back to Cutting Edge, and on the same day another R4.5million Sahara to Cutting Edge, I get back to the comments earlier where an entity makes multiple payments to the same beneficiary on the same day it's cause for concern.

20 **ADV VINCENT MALEKA SC:** Can I interrupt you? You explain in page 25 paragraph 68 who Global Softech is.

**MR HAMISH SCOTT SINTON:** Sorry can you remind me of the page number please?

**ADV VINCENT MALEKA SC:** Page 25 paragraph 68, and that is an entity that held an account with Standard Bank, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes, so at least there when payments are made from Cutting Edge to Global Softech you can pick ...(intervention)

**MR HAMISH SCOTT SINTON:** I can pick up those payments yes.

**ADV VINCENT MALEKA SC:** Those payments on your platform.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes.

**MR HAMISH SCOTT SINTON:** Then that was R600 000 then as I said there's an interesting payment of R5million from Sahara back to Cutting Edge, on the same day R3.5million from Sahara back to Cutting Edge, the next day R600 000 from Global Softech back to Cutting Edge, ie reversal of the previous R600 000 paid, then on 2 August 2016 R8million from Cutting Edge to Sahara Computers, on 12 August R235 000 from Cutting Edge to Future Tech, Future Tech again was one of the entities that was identified as being involved in contracts with the Guptas. Then it starts becoming interesting in that on 18 August Cutting Edge paid Trillion R16.4million.

**ADV VINCENT MALEKA SC:** Can I stop you there, that is 18 August 2016?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And I would like to go back to your affidavit if you don't mind because you give some useful details around the movement of cash or account balances between Cutting Edge and Trillion and that two different entities of Trillion you identify, the one is Trillion Shared Services and the other is Trillion Management Consultants. You begin to raise issues around Trillion from page 21 paragraph 49.

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** You say in paragraph 49 on 18 August Cutting Edge transferred Sixteen odd million to Trillion Management, correct?

**MR HAMISH SCOTT SINTON:** Correct.



**ADV VINCENT MALEKA SC:** That is the transaction that you were dealing with when I stopped you with reference to IS18, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Can I ask you this, we will deal with other inter-transfers between Trillion in one or other capacity with Cutting Edge, by that time, I'm talking around 18 August 2016, had you become aware of who Trillion management was?

**MR HAMISH SCOTT SINTON:** I cannot say, in context of what I would know, people within Standard Bank might have been concerned but I really didn't become interested in Trillion until the Budlender Report was released, before that I had no interest but  
10 people who monitored the accounts might well have.

**ADV VINCENT MALEKA SC:** Okay, fair enough. Then you – I will skip the transfers you talk about in paragraph 50 and go to 51 because they deal with Cutting Edge and Trillion, do you see that?

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** You see on 7 September 2016 R25million was transferred to Cutting Edge account by Trillion Shared Services, do you see that?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** This on the face of it seems to be a totally different part of Trillion.

20 **MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** It is not Trillion Management Consulting, it is Trillion Shared Services.

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Do you know what that entity is?

**MR HAMISH SCOTT SINTON:** I have no idea.

**ADV VINCENT MALEKA SC:** Okay. It transfers about R25million to the account of Cutting Edge, do you know why?

**MR HAMISH SCOTT SINTON:** No.

**ADV VINCENT MALEKA SC:** Okay.

**MR HAMISH SCOTT SINTON:** It's of relevance that it's a round number.

**ADV VINCENT MALEKA SC:** Yes. And then you say on the same day Cutting Edge transfers about R9million to Sahara.

**MR HAMISH SCOTT SINTON:** Exactly R9million.

**ADV VINCENT MALEKA SC:** A day later, which must have been on the 8<sup>th</sup> of  
10 September another amount of R25 840 000 was transferred by Trillion Management Consultants to Cutting Edge, so this is a different Trillion.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** It transfers an amount of twenty five odd million.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Remembers this is the day after Trillion Shared Services has transferred almost exactly the same - not exactly but almost the same amount, R25million.

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** What did that say to you as Standard Bank, or those  
20 who were monitoring these accounts?

**MR HAMISH SCOTT SINTON:** Such large amounts paid in paid away in such short order would have been a cause for concern.

**ADV VINCENT MALEKA SC:** A cause for concern for you?

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And I take that in consistent with your banking

obligations you would have dealt with them.

**MR HAMISH SCOTT SINTON:** Correct yes.

**ADV VINCENT MALEKA SC:** And then would like to take you to paragraph 53 on page 22, because that's where you deal with further payments as between Trillion Management Consulting or Consultants with Cutting Edge.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** 10 October 2016 Trillion Management Consultant transfer R19million to Cutting Edge, correct?

**MR HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** And what happened to that money after it was transferred?

**MR HAMISH SCOTT SINTON:** Well on the same day Cutting Edge transferred R10million to Sahara Computers.

**ADV VINCENT MALEKA SC:** And then?

**MR HAMISH SCOTT SINTON:** On the next day Trillion Shared Services transferred R49.6million to Cutting Edge, which then made another payment of R9million to Sahara Computers, then two further payments by Cutting Edge were made on 12 October to Sahara Computers of R5million and R4.5million, two on the same day. This was followed by four individual payments to Sahara Computers of R10million each from  
20 (indistinct) in October 2016.

**ADV VINCENT MALEKA SC:** I mean there has to be real legitimate transaction between Cutting Edge and Sahara to justify the lawfulness of these payments?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** But the pattern which has now emerged Mr Sinton when one considers the transfers involving those three entities, that is Cutting Edge, Trillion

Shared Services and Trillion Management Consulting, which you describe in paragraphs 51 and 53 is the following; Trillion Shared Services will make huge transfer one day, immediately thereafter Trillion Consulting will make more or less the same amount of payment to Cutting Edge account and from those payments which are made to Cutting Edge account there will be substantial payments to Sahara.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** I mean that's a clear pattern of dealing with these transactions.

**MR HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** Is that coincidental as far as you could establish?

**MR HAMISH SCOTT SINTON:** I can only tell you what is evident from the transfers as they appear in our books and records and I can make the observation that when the amounts transferred in are large round amounts and then they are transferred out again, for example elsewhere I mentioned that R10million a day over four or five days to Sahara, if you owed Sahara R60million just pay them R60, don't pay them six lots of ten, it just doesn't – when you do it that way then there's automatic grounds for suspicion.

**ADV VINCENT MALEKA SC:** Yes, the same pattern I've described to you continues in paragraph 54, correct?

20 **MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** On the 20<sup>th</sup> of October 2016 Trillion Management Consulting transfers R25million to Cutting Edge.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** A day later Trillion Shared Services transfers R15million and R25million to Cutting Edge.

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** And the next day which is 21 October 2016 six payments are made by Cutting Edge to Sahara.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** It's the same pattern

**MR HAMISH SCOTT SINTON:** Of R10million each.

**ADV VINCENT MALEKA SC:** Of R10million each.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Again grounds for suspicion on your approach.

10 **MR HAMISH SCOTT SINTON:** And then another R9million on the 31<sup>st</sup> of October.

**ADV VINCENT MALEKA SC:** Yes.

**MR HAMISH SCOTT SINTON:** Two days later.

**ADV VINCENT MALEKA SC:** And then you say in paragraph 58 that Cutting Edge received about R5.2million odd from Optimum Coal Mine around 15 December 2016, do you see that?

**MR HAMISH SCOTT SINTON:** Correct yes.

**ADV VINCENT MALEKA SC:** Do you know what this payment was for?

**MR HAMISH SCOTT SINTON:** No, no, I just highlighted it here because it came out of the blue as ...

20 **ADV VINCENT MALEKA SC:** Did you know that at that point in time there was a negotiation for the sale of Optimum Coal Mine to Tegeta.

**MR HAMISH SCOTT SINTON:** In hindsight I'm aware of it yes.

**ADV VINCENT MALEKA SC:** Okay but at the point in time you are not aware.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Alright. Mr Sinton subject to your guidance you can go

back to your spreadsheet and I would ask you to deal with an entity called CAD Howes, because you say there were payments made from the account of Cutting Edge held in Standard Bank to that entity.

**CHAIRPERSON:** What page was that spreadsheet again?

**ADV VINCENT MALEKA SC:** Chair it starts at page 230.

**CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA SC:** And then as I indicated on the right hand column Mr Sinton through his lawyers lists different beneficiaries of payments from accounts made – from the account held by Cutting Edge. Mr Sinton I mean I don't see CAD on that spreadsheet.

10

**MR HAMISH SCOTT SINTON:** On page 232.

**ADV VINCENT MALEKA SC:** 232?

**MR HAMISH SCOTT SINTON:** Alongside 5 January 2017 is a payment of R17.1million from CAD House to Cutting Edge.

**ADV VINCENT MALEKA SC:** Alright, do you know this entity called CAD House?

**MR HAMISH SCOTT SINTON:** I'm assuming it's the same CAD House that was reported to have assisted SAP in obtaining – not necessarily SAP it was an IT, an international IT firm in obtaining contracts from – with Eskom, I mean not Eskom, with Transnet, and it was widely reported it's being set up and managed by a former employee of Sahara Computers and there was much speculation around at it at the time, the only reason it's here is because it has been identified in the media as being of interest in – to this Commission.

20

**ADV VINCENT MALEKA SC:** Yes you flagged it and you processed the payments in and out of Cutting Edge relating to that entity.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** You deal with ...(intervention)

**CHAIRPERSON:** Sorry Mr Maleka, it is late in the afternoon, it's been a long day, but Mr Sinton at some stage your voice gets quite soft so if you can try and just maintain it at a certain level so I can hear you.

**MR HAMISH SCOTT SINTON:** Sorry Mr Chairman.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** You deal with that entity and payments to or from its account to Cutting Edge at page 23, paragraph 60 of your statement.

**MR HAMISH SCOTT SINTON:** Correct yes.

10 **ADV VINCENT MALEKA SC:** And you say that it transferred about R17.1million into the account of Cutting Edge.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Now you say something very interesting about that money, in relation to an entity called Futuretech, do you see that?

**MR HAMISH SCOTT SINTON:** Yes, there were nine transfers of R5million each, between 5 and 17 January from Futuretech to Cutting Edge.

**ADV VINCENT MALEKA SC:** So that in total it's about R45million.

**MR HAMISH SCOTT SINTON:** And I'm not saying the Futuretech payments are linked to Cutting Edge, I observe there's one payment of R17.1million from CAD House to  
20 Cutting Edge, CAD House was reported to have been involved in securing business for Neotel at Transnet and independently of that it's interesting that there were nine transfers of R5million each in a period of a week or from 5 to 17 January, ten days, from Futuretech to Cutting Edge.

**ADV VINCENT MALEKA SC:** Yes, but in that week it will be about R45million?

**MR HAMISH SCOTT SINTON:** Yes correct.

**ADV VINCENT MALEKA SC:** Yes, do you know why Futuretech would transfer R45million in one week to Cutting Edge?

**MR HAMISH SCOTT SINTON:** No, no idea.

**ADV VINCENT MALEKA SC:** Right, you explained what Futuretech is from page 26 paragraph 17 and you say that Futuretech held an account with Standard Bank, correct?

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And so insofar as there were transfers between Futuretech and Cutting Edge those would be your clients holding account with Standard Bank and you would be able to screen them fairly comfortably.

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Okay. Now I'm going to take you to some source information that you provided to us about these entities, the first is Global Softech Solution, you have given us source documentation relating to it from page 265.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Beginning with the statement dated 9 January 2015.

**MR HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And you indicate that that statement shows a balance, I'm not too sure if I read it correctly and I may have misunderstood the balance reference on page 265, how much was it?

**MR HAMISH SCOTT SINTON:** The interesting point about Global Softech is that between January 2015 and February 2017 there were large either deposits into the account or payments out of the account from Sahara via Laser, Optimum Mines, T & A Media, Cutting Edge and T-Systems, all of which are entities that we think are of interest to the Commission.



**ADV VINCENT MALEKA SC:** Yes.

**MR HAMISH SCOTT SINTON:** And they appear from those statements that I've attached.

**ADV VINCENT MALEKA SC:** Yes, Chair we will ask the investigators to do an analysis but the point is that Mr Sinton has presented evidence which shows how money from Eskom goes to an entity and that entity pays money to several of the Gupta owned or controlled entities, and that's the point of this evidence for now. He was able to do so because some of those entities that I will call the primary account holders held accounts with Standard Bank so they could pick up those things. I am not too sure if I  
10 wanted to do the analysis for us, of course we will do it, but what I want to understand just to clear my confusion so that when we ask the investigators to do the analysis are you able to give me some hint as for instance when I look at page 265, I mean would I be able to pick up a balance then in existence?

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** As at the date of a statement?

**MR HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Which is?

**MR HAMISH SCOTT SINTON:** The opening balance is R1.285million.

**ADV VINCENT MALEKA SC:** Okay thank you. Then the next set of statements you  
20 give us Mr Sinton relates to Futuretech. You will find those statements from page 412 up to the end of the file which is 467. You give the statements beginning from 14 September 2016, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct yes.

**ADV VINCENT MALEKA SC:** And again I take it that from the guidance I got the balance would be the amounts that is on the right hand column of it.

**MR IAN HAMISH SCOTT SINTON:** Yes that would be correct opening balance.

**ADV VINCENT MALEKA SC:** Okay. Mr Sinton I would like to draw some conclusions if I can from the evidence that you gave us. I would do so by asking you to reflect on a document that you gave us which was not clear and we had to ask you to give us an A3 size which is page 143. Chair it is Annexure C to the letter which was written by the directors of Regiments.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And if you do not mind Mr Sinton can you go to that clear copy of Annex C which is page 143. It is page 143.

10 **MR IAN HAMISH SCOTT SINTON:** Yes I have it.

**ADV VINCENT MALEKA SC:** You remember the context is that the directors of Regiments gave you this document to show you how much money came into their account from Transnet and how much went out of their account to various entities including Chivita, Homix and Kupanua, is it Kupanua?

**MR IAN HAMISH SCOTT SINTON:** Kupunua I think yes.

**ADV VINCENT MALEKA SC:** Kupunua?

**MR IAN HAMISH SCOTT SINTON:** Yes.

20 **ADV VINCENT MALEKA SC:** Kupunua I would like you to give some orientation to give us some orientation on how we approach this document. You looked at it, they gave it to you please guide us about how we should look at it and how we should deal with it?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** It has dates on the extreme left hand column, correct?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** What are those dates supposed to reflect?

**MR IAN HAMISH SCOTT SINTON:** They seem to intend to reflect the date upon which the transactions occurred i.e. the dates upon which monies were received.

**ADV VINCENT MALEKA SC:** You see I have looked at the next heading which is the source of funds which would be public sector entities who paid presumably service fees to Regiments.

**CHAIRPERSON:** I am sorry Mr Maleka I am looking at the loose page 143C am I in the wrong place?

**ADV VINCENT MALEKA SC:** No you are on the correct page Chair yes.

**CHAIRPERSON:** Okay where about in it?

10 **ADV VINCENT MALEKA SC:** You will see the extreme left hand column that different columns Chair.

**CHAIRPERSON:** Yes I saw source reference but you source of funds and I was not sure whether I am looking at the right column.

**ADV VINCENT MALEKA SC:** Yes that source reference to this source of funds.

**CHAIRPERSON:** Source reference is the right column? Okay alright.

**ADV VINCENT MALEKA SC:** But Chair you have picked up the dates now?

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA SC:** You will see that the first one is

**CHAIRPERSON:** 22 May.

**ADV VINCENT MALEKA SC:** 22 May 2013.

**CHAIRPERSON:** 2013.

**ADV VINCENT MALEKA SC:** 2013, correct?

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA SC:** And that is Group Serve and that we know from the accounts that we have dealt with the statements of Regiments will be Transnet correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** Yes. And so to guide us you will see that on that day which is the 23 May – 22 May Transnet transferred about R11million.

**MR IAN HAMISH SCOTT SINTON:** R11.7 yes.

**ADV VINCENT MALEKA SC:** R11.7.

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Okay. And then on the next day.

10 **MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Which is the 23 May 2013 Chair are you there? Immediately after the column of R11.7 million there is another heading called Date.

**CHAIRPERSON:** Oh yes. Yes. I see that yes.

**ADV VINCENT MALEKA SC:** Do you see that? And immediately after that column there is a name Chivita, correct?

**MR IAN HAMISH SCOTT SINTON:** That is correct.

**ADV VINCENT MALEKA SC:** And then you will have an invoice there I do not know it is an invoice number, do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes correct.

20 **ADV VINCENT MALEKA SC:** And the next column is an amount of R4.3 million odd, do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** My reading of it is that on the 23 May Regiments paid R4.3 odd million to Chivita.

**MR IAN HAMISH SCOTT SINTON:** As a result of receiving the R11.7 million from

Transnet.

**ADV VINCENT MALEKA SC:** From Transnet yes.

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** Correct?

**MR IAN HAMISH SCOTT SINTON:** And if you carry on they will say that payment was authorised by Mr Eric Wood.

**ADV VINCENT MALEKA SC:** We will get to that point.

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** You will see there is a heading before ...

10 **CHAIRPERSON:** I am sorry Mr Maleka you were putting to Mr Sinton your reading of this I just want to make sure I am following it. Group Serve which is Transnet pays Regiments R11.7 million on the 22 May, is that right?

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** And then the following day did you say Regiments pays Chivita?

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** R4.3 million?

**ADV VINCENT MALEKA SC:** Yes Chair.

**CHAIRPERSON:** Oh and he agreed with that?

**ADV VINCENT MALEKA SC:** And he agreed with it.

20 **CHAIRPERSON:** Okay alright.

**ADV VINCENT MALEKA SC:** The qualification is that R4.3 million was paid from the R11 million that was received from Transnet.

**CHAIRPERSON:** Yes but are we not saying it is Chivita that is – oh Chivita is being paid by Regiments?

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** And Regiments got the money from Transnet?

**ADV VINCENT MALEKA SC:** Indeed.

**CHAIRPERSON:** Okay, okay.

**ADV VINCENT MALEKA SC:** That is how the movement of funds manifest itself Chair.

**CHAIRPERSON:** Now I understand.

**ADV VINCENT MALEKA SC:** So Chair this is a version put by the directors of Regiments to Mr Sinton and they make it clear that..

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** As and when they get money from a state owned entity  
10 in this case Transnet on the 22 May they pay a portion of it.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** We will get to the percentage calculation what does it represent but can we complete the rest of the columns for 22<sup>nd</sup> and 23<sup>rd</sup> May Mr Sinton just to know how we should approach this document.

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** You...

**MR IAN HAMISH SCOTT SINTON:** It seems to say the amount of R4.32 million was paid to Chivita.

**ADV VINCENT MALEKA SC:** Yes.

20 **MR IAN HAMISH SCOTT SINTON:** The payment was requested Inderan Pillay I have no idea who that is and was authorised by Eric Wood.

**ADV VINCENT MALEKA SC:** Yes. And under comments?

**MR IAN HAMISH SCOTT SINTON:** And there is a comment that there is no invoice.

**ADV VINCENT MALEKA SC:** No invoice?

**MR IAN HAMISH SCOTT SINTON:** No invoice 1821 email I do not know.

**ADV VINCENT MALEKA SC:** Is that not the number of invoice?

**MR IAN HAMISH SCOTT SINTON:** It could be, it could be the number of invoice ja.

**ADV VINCENT MALEKA SC:** Okay. And there is a heading which you skipped “email recipient” do you see that?

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** What does that supposed to reflect?

**MR IAN HAMISH SCOTT SINTON:** I am – I really do not know but if I can revert back to the meeting we had they explained to me that as and when they receive a payment from Transnet they would within a day or two get an email from Mr Essa reminding  
10 them to make sure he gets his share.

**ADV VINCENT MALEKA SC:** Yes.

**MR IAN HAMISH SCOTT SINTON:** So I think they were trying to track down the emails from these – Mr Essa reminding them to pay his share.

**ADV VINCENT MALEKA SC:** Yes. So for that invoice presumably there will not an email from Mr Essa or ...

**MR IAN HAMISH SCOTT SINTON:** It looks like it yes.

**ADV VINCENT MALEKA SC:** Yes. Let us go to the second one. Again I just want to make sure that we understand how we should approach this. Because each of the entry column there has been filled except the comments section. What is interesting  
20 with that payment is that it comes from Denel, do you see that?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** It has nothing to do with the relationship of McKinsey and Regiments?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** At least insofar as Transnet is concerned.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** The date is?

**MR IAN HAMISH SCOTT SINTON:** 11 June 2013

**ADV VINCENT MALEKA SC:** And the source reference or source of funds as I call it is Denel, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And there is a reference number there DEN6/13 an amount is paid of R3.420 million correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

10 **ADV VINCENT MALEKA SC:** And then on the 20 June 2013 payment is made to Chivita?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** How much is it are you able to pick it up?

**MR IAN HAMISH SCOTT SINTON:** R2.29 – R2 298 240,00.

**ADV VINCENT MALEKA SC:** And then the email recipient is who?

**MR IAN HAMISH SCOTT SINTON:** Eric Wood/Niven Pillay.

**ADV VINCENT MALEKA SC:** And we know that both of these were the directors of Regiments at the time?

**MR IAN HAMISH SCOTT SINTON:** Correct.

20 **ADV VINCENT MALEKA SC:** And whose the person that requested payment?

**MR IAN HAMISH SCOTT SINTON:** Gansambu Vundla.

**ADV VINCENT MALEKA SC:** And then who authorised the payment?

**MR IAN HAMISH SCOTT SINTON:** Eric Wood.

**ADV VINCENT MALEKA SC:** Chair I have some understanding of how we should approach this document and I am not going to take Mr Sinton through each and every



detail of the recorded payments.

**CHAIRPERSON:** Ja.

**ADV VINCENT MALEKA SC:** All I wanted to do before I conclude here is to ask you whether you are able to tell us who is Kupanua?

**MR IAN HAMISH SCOTT SINTON:** Kupanua is a company privately owned by a Ms Swazi Tsabalala.

**ADV VINCENT MALEKA SC:** Who?

**MR IAN HAMISH SCOTT SINTON:** Swazi Tsabalala.

**ADV VINCENT MALEKA SC:** It is the first time I hear that name.

- 10 **MR IAN HAMISH SCOTT SINTON:** We looked into it she was formerly a director of Standard Bank and she did work for Regiments at Transnet and it was in connection with Maputa Corridor and she receive payment for that but we did not recognise the name so we asked Regiments to explain it to us and they said it was for consulting work which she had done. We independently interviewed her and she produced all the books, records, invoices, accounts, statements it was – we were satisfied it was an arm's length commercial arrangement.

**ADV VINCENT MALEKA SC:** And there is nothing that we should make of that transaction?

**MR IAN HAMISH SCOTT SINTON:** No.

- 20 **ADV VINCENT MALEKA SC:** Okay. Thank you. Now Mr Sinton we have now looked at the various transactions. We have looked at how money moved and we have heard from you the opinions you have formed can I ask you to summarise for us what happened to those entities with whom Standard Bank had accounts in the light of the movement of funds and the opinions that you formed arising from those movements.

**MR IAN HAMISH SCOTT SINTON:** If you have regard to the statutory provisions

around the prohibition on dealing on = dealing in the process of crime facilitating money laundering facilitating transaction if you look at objectively speaking what would a reasonable banker think looking at this information? I think a reasonable banker would conclude that these large amounts of money moving rapidly between companies all managed by people who are associated with one another gives rise to an influence that there was an attempt to disguise the source of the money and when you try to disguise the source of the money it must be illicit. So it warrants an investigation beyond the powers that we have as to why these funds were moved around this way and who else ultimately the beneficiary was.

10 **ADV VINCENT MALEKA SC:** Mr Sinton from open source information you as Standard Bank extend financing to Transnet, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** You as Standard Bank extend funding to Eskom, correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** And of course at some point SA?

**MR IAN HAMISH SCOTT SINTON:** Correct.

**ADV VINCENT MALEKA SC:** These are your clients also correct?

**MR IAN HAMISH SCOTT SINTON:** Correct.

20 **ADV VINCENT MALEKA SC:** And you have picked up all of this information relating to your clients in a different context and with the detail that we have covered. Had you had occasion to raise these issues with your clients? When I say your clients I mean at least Transnet, Eskom and SAA.

**MR IAN HAMISH SCOTT SINTON:** I am unaware of I personally am unaware of interactions with those clients in the context of saying we have this information which

we wish to share with you but we certainly have had regular engagements with the senior executives and directors of all those entities where we said we are very concerned about the fact that your – you as corporate clients have been subjected to possible abuse through these types of activities and we will happily cooperate with you and all investigations you may – wish to undertake we would like to see from your side as borrowers we would like you to share with us what you are doing what you are achieving in that regard and they do regularly meet with us to share the progress they making in trying to unravel these various transactions and recoup money that has been improperly applied etcetera. But I do not – I am not aware of us having said we tender

10 up these documents to you that would be difficult for us.

**ADV VINCENT MALEKA SC:** As we speak and this is the final question from me what is the level of comfort from the feedback you get from your corporate clients such as Transnet and Eskom on the matters that I have raised with you?

**MR IAN HAMISH SCOTT SINTON:** Chair again I am loathed to breach confidence but...

**ADV VINCENT MALEKA SC:** Okay if you do not want to...

**MR IAN HAMISH SCOTT SINTON:** We have – we get a lot of comfort from the commitment shown to us from the new management of both Eskom and Transnet that they are intent on trying to unravel what happen historically and make sure it does not  
20 happen again. It is perhaps worthwhile mentioning that our experience internationally with this issue of corporate malfeasance is it is not the corporates that commit the crimes it is the management of the corporates that allow it or cause it to commit the crimes. So when these things happen we would expect the corporate to acknowledge the wrongdoing to investigate thoroughly. To be open honest about its findings. To excise the cancer I get rid of anybody who caused the problem, put in place remedial

programmes designed to prevent this from happening again and in those – in that context we are happy to continue to support corporates. The difference here is in the case of the Gupta entities they vehemently denied any wrongdoing whatsoever when it was plainly obvious it was ongoing so they were not entities we could continue to do business with. In the case of corporates like Eskom and Transnet they readily acknowledge to us there has been wrongdoing, they commit to showing us what they doing to investigate it to put in place remedial processes and all of that for the time being at least is to our comfort.

**ADV VINCENT MALEKA SC:** Yes. Can I with you follow on that? Can I with your  
10 permission follow on that?

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** There have been reports that you hold a lever on these state institutions insofar as you pick up what you call cancer or maleficence which are called faith of governance. And the lever you hold is the ability to either stop funding or call for whatever guarantee covenants that would have been extended by the state to cover the debts which those entities have with you, correct?

**MR IAN HAMISH SCOTT SINTON:** I am not sure what you mean by lever?

**ADV VINCENT MALEKA SC:** Well if you are not satisfied that those corporate client conduct their business in a manner that promotes risks free reputational concerns you  
20 have the ability to say that you no longer extend funding to them.

**MR IAN HAMISH SCOTT SINTON:** Yes we have that ability.

**ADV VINCENT MALEKA SC:** And you also have the ability to say that you will call for the guarantees that you may have extended or the debts that may be due as secured by government guarantees.

**MR IAN HAMISH SCOTT SINTON:** Yes the loan covenants that we typically have in

place with all clients not just state entities have undertakings to comply with the laws of the land generally and money laundering and bribe and corruption laws in particular and if those – if there is non-compliance we have the ability to declare a default which has significant consequences. Yes we have that ability.

**ADV VINCENT MALEKA SC:** It is a strong ability. Well let me stop there.

**MR IAN HAMISH SCOTT SINTON:** Yes.

**ADV VINCENT MALEKA SC:** I see that you are reluctant to...

**MR IAN HAMISH SCOTT SINTON:** No it is there but it – if you are suggesting we abuse it I do not think we do that.

10 **ADV VINCENT MALEKA SC:** No I am not suggesting that you abuse it. I am suggesting that you use it in a manner that promotes clean governance in these corporate entities?

**MR IAN HAMISH SCOTT SINTON:** Absolutely.

**ADV VINCENT MALEKA SC:** Yes. Chair that will be the end of a long day I hope.

**CHAIRPERSON:** Well thank you let me just ask Mr Sinton one or two questions. I would assume Mr Sinton that where you see suspicious transactions involving a private company you could have a situation where you can or you do take the view that the suspicious nature of that transaction or those transactions involving that entity may well mean that the activities of for example corruption are not only being committed by  
20 entities – by people involved in that entity but also by people involved in for example a parastatal from which that entity gets funds and I would assume that your obligations in terms of protecting your reputation and your obligations in terms of the law would suggest that you take action against that parastatal as well. Is my understanding correct?

**MR IAN HAMISH SCOTT SINTON:** Not quite. We if the hypothesis is that a private

sector entity is engaged in a corrupt relationship with employers of a parastatal then we would certainly if we come across evidence we would terminate the dealings with the entity – the private entity and obviously would alert the client, the parastatal of what we know so that they can steps to protect themselves. I am not aware of us ever taking steps or threatening to take steps as against any state owned entity...

**CHAIRPERSON:** Well that is what I ...

**MR IAN HAMISH SCOTT SINTON:** Because its employees have in our opinion misbehaved.

**CHAIRPERSON:** That is what I am interested in understanding. If for example entity A  
10 has an account or accounts with Standard Bank and it appears that transactions that involve it – or involves it accounts in its accounts relate to funds that it gets for example from Transnet and that when they tell you that private entity its directors whoever when they tell you what these transactions are about if you form the view that these transactions involve corrupt activities and that there may well be the corrupt activities involve also people employees or senior people within Transnet has an account with you for example. In terms of the principles of the legislation that obliges you to take action would you not be required to also take action against Transnet?

**MR IAN HAMISH SCOTT SINTON:** Only if Transnet is unwilling or unable to satisfy us that having become aware of the issue it would prevent in future us being exposed to  
20 these transactions. We are not in the business of punishing them for historical transactions. We have said having found out or having established that some wrongdoing has occurred we would say to Transnet as a corporate customer we have come across this conduct we – if it is not resolved to our satisfaction we would then have to review the relationship and it – we have never had to go beyond that.

**CHAIRPERSON:** But if you got to know that the people at Transnet who were involved

in these or whom you suspect to be involved in this corrupt activities are people who are quite senior at Transnet now I am just putting this as a – to test how you as banks deal with these matters. Let us say it is a group CEO of Transnet for argument sake and maybe people who are on the board of Transnet would you still just deal with them on the basis that this is what we have found with regard to entity A you people must just make sure that your employees do not do this or certain people do not do these things or would you call them that those senior people to a meeting or write to them and say explain to us just like you do with a private entity or are there different rules?

**MR IAN HAMISH SCOTT SINTON:** Chair I again I am loathed to speak about any  
10 particular client Transnet included

**CHAIRPERSON:** Ja no, no I am using Transnet as an example ja.

**MR IAN HAMISH SCOTT SINTON:** What I can say is that there are a number of occasions that I am personally aware of where we have felt that if we were to raise our concerns at a senior level we would raising our concerns with the very people that may be implicated. So when that has occurred we approach the shareholder.

**CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And we go to the shareholder and say we have concerns about what is going on and one of the entities that you supervise and this is the nature and this is the evidence.

20 **CHAIRPERSON:** Yes.

**MR IAN HAMISH SCOTT SINTON:** And we leave it to the shareholder to manage and resolve and we have never been disappointed.

**CHAIRPERSON:** Yes. But what part of what I am concerned – what I am interesting in is that you do not raise the issues in the – on the same basis as you raise them with a private entity? With a private entity you raise them on the basis that if you are not

satisfied with their explanation you will terminate the relationship.

**MR IAN HAMISH SCOTT SINTON:** Correct.

**CHAIRPERSON:** But with for example you said you do not want to mention names and I am not saying mention any names but I am just putting a hypothetical proposition in the case of a parastatal you would not raise it on the same basis that they must explain and if you are not satisfied with their explanation you would terminate your relationship with them?

**MR IAN HAMISH SCOTT SINTON:** I think it is fair to say that without in any way seemingly put ourselves at risk we regard state owned enterprises and the state as  
10 being owned by us the people and for us as a major bank to take the drastic step of terminating a bank relationship with a state would have ramifications way beyond just the relationship and so not a step we would ever lightly take and as far as I know we have never considered taking it. We prefer when you dealing with the state if we do not get satisfaction or resolution with the entity that we deal with we escalate up to the level of effectively the executive and they have always been willing to intercede and put an end to what whatever we think is inappropriate behaviour.

**CHAIRPERSON:** Well it may be that it is a topic that might have to be revisited in due course.

**MR IAN HAMISH SCOTT SINTON:** Yes.

20 **CHAIRPERSON:** But maybe for today we leave it at that. Mr Maleka.

**ADV VINCENT MALEKA SC:** Yes Chair subject to your directions on the Section 34 reports.

**MR IAN HAMISH SCOTT SINTON:** Yes.;

**ADV VINCENT MALEKA SC:** That would be the evidence of Mr Sinton.

**CHAIRPERSON:** Yes.



**ADV VINCENT MALEKA SC:** And I suppose we can ask you to release him until that point in time.

**CHAIRPERSON:** Yes. Ja No thank you. Thank you Mr Sinton. We will release you and there is still the matter that the legal team will deal with with regard to the confidential information and I am sure they will be in touch with you in due course and to the extent that it may become necessary to ask you to come back then you would be asked to come back. But for now you are excused.

**MR IAN HAMISH SCOTT SINTON:** Thank you Chair.

**CHAIRPERSON:** Thank you.

10 **ADV VINCENT MALEKA SC:** Chair the intractable problem relates to the evidence of Mr Marsden and the evidence of Doctor Ramontja that we would like to lead in order to complete.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** This phase of the Eskom leg of the presentation.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Mr Marsden is here and I am sure that he will be willing to come tomorrow we did raise that issue with him.

**CHAIRPERSON:** Yes.

20 **ADV VINCENT MALEKA SC:** We understand from our colleagues that you have another issue that you have to deal with tomorrow.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** Relating to the applications.

**CHAIRPERSON:** Ja at nine o'clock I will deal with an application for leave to cross-examine an application by Mr Moyane to for leave to cross-examine Minister Gordhan. I will hear argument. I think that should not take us beyond an hour.

**ADV VINCENT MALEKA SC:** Oh we grateful for that Chair.

**CHAIRPERSON:** And their might be one or two small issues that might be raised that time I would need to deal with that relate to one application another of one kind or another that I might be told about but which should not take more than a few minutes.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** So then thereafter we can then start with your next witness.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** I am – is the position that in terms of witnesses we – you have two witnesses for tomorrow?

10 **ADV VINCENT MALEKA SC:** Yes Chair.

**CHAIRPERSON:** Okay, okay.

**ADV VINCENT MALEKA SC:** We would like to complete them tomorrow because we understand that from Thursday and Friday.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** You are engaged in other matters.

**CHAIRPERSON:** Yes no no that is fine. Tomorrow in terms of what to finish the minimum we have agreed to still stands namely half past four.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** But should it be necessary from my side I could go up to five o'clock.

20 **ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** So we will try and finish with them tomorrow.

**ADV VINCENT MALEKA SC:** Indeed Chair. And Chair lastly just to confirm the file of Mr Marsden has been given to your registrar.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** With appropriate...

**CHAIRPERSON**: Explanations or...

**ADV VINCENT MALEKA SC**: Explanations and arrangements according to your requirements.

**CHAIRPERSON**: Okay.

**ADV VINCENT MALEKA SC**: So that you do not have to shuffle around to locate it.

**CHAIRPERSON**: Okay.

**ADV VINCENT MALEKA SC**: This time around we are lucky that the administration complied with your directions.

**CHAIRPERSON**: Yes okay, okay.

10 **ADV VINCENT MALEKA SC**: And then the file of or the statement of Mr Ramontja is in a file previously given to you under Exhibit U2 File 3.

**CHAIRPERSON**: Okay just make sure that my registrar knows exactly.

**ADV VINCENT MALEKA SC**: Yes we will ask her to bring it along tomorrow.

**CHAIRPERSON**: Ja.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Okay. No that is fine. Would that be all?

**ADV VINCENT MALEKA SC**: That will be all Chair.

**CHAIRPERSON**: That will be all.

**ADV VINCENT MALEKA SC**: And again thank you for sitting until late.

20 **CHAIRPERSON**: Okay no thank you. We will now adjourn until tomorrow and tomorrow we will start with the other application at nine and once we have finished with one and maybe one or two small matters we will then proceed to the hearing of the next witness.

**ADV VINCENT MALEKA SC**: Thanks.

**CHAIRPERSON**: We adjourn.

**INQUIRY ADJOURNS TO 13 MARCH 2019**