

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

SOUTH AFRICAN REVENUE SERVICE

BEFORE COMMISSIONER

THE HONOURABLE MR JUSTICE NUGENT (RETIRED)

ASSISTED BY

PROF M KATZ
MR V KAHLA
MS M MASILO

HELD ON

DAY 7

22 AUGUST 2018

PAGES 914 - 1163

HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street,
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1 [PROCEEDINGS ON 22 AUGUST 2018]
 2 [09:15] COMMISSIONER: Sorry for wasting your
 3 time for 15 minutes but I think we can kick off.
 4 MS STEINBERG: Judge, assistants,
 5 Advocate Siuo is actually kicking off the bowling this
 6 morning, excuse me opening the bowling, but I would like to
 7 make a few introductory remarks before he does so. This
 8 morning's session is dedicated to the enforcement units in
 9 SARS and their legal counterparts within SARS. And it is
 10 the most sensitive and confidential area that we look at
 11 and I would like to set a few ground rules and say a few
 12 things about it. We're going to be hearing from people who
 13 deal with organised crime and tax fraudsters and
 14 delinquents. By necessity about 90% of their evidence has
 15 to be heard in camera but we committed to transparency and
 16 there's a very important 10% window that can be opened up
 17 into this world.
 18 What we are looking at this morning is how these
 19 units used to function before 2015, how they were
 20 restructured and how that impacted on their ability to deal
 21 with tax fraud and organised crime. The ground rules are
 22 that we don't mention any taxpayer's name and nor do we
 23 ever mention anybody in SARS, an official in SARS, who any
 24 witness might suspect has colluded with a taxpayer. We
 25 only speak at the highest level. If we mention a

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1 particular case it will be taxpayer X and it will be in
 2 general enough terms so that no one could possibly identify
 3 who that person is. And I ask your assistants and you to
 4 respect those rules and I ask the witnesses to play by
 5 those rules too.
 6 The witnesses today, I must also say have
 7 concerns about showing their faces. They do have legal
 8 representation. I want to say that there are three
 9 witnesses this morning, but under those three witnesses I
 10 have 12 affidavits from different people. And before they
 11 show their faces today I want to say that everything we're
 12 going to hear from them is corroborated by, in some cases
 13 five people, in some cases more. And I have tried to
 14 ensure before leading this evidence that at this stage as
 15 much as we know, we're reasonably comfortable that it's
 16 just not an individual's whim or opinion or grudge.
 17 Obviously there's still room to test this evidence and that
 18 might have to happen in camera. But that's the lay of the
 19 land, the lay of the cricket pitch this morning.
 20 COMMISSIONER: Well there are two things
 21 that arise from what you say there and that is number 1,
 22 may I ask everyone here, in particular the press, if a name
 23 slips out, it can happen, you do not disclose that name, so
 24 regard that as a direction and you're guilty of an offence
 25 if you do so. The second thing I want to ask as far as

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1 cameras are concerned, do you want their images not to be
 2 photographed?
 3 MS STEINBERG: We haven't discussed that
 4 but it might be a good strategy. Perhaps their advocate
 5 can express a view.
 6 COMMISSIONER: Well let me just ask the
 7 cameramen as well whether they're going to object if I were
 8 to say that they are not to be photographed or filmed.
 9 Cameramen, are you going to make a fuss? Sorry?
 10 PRESS: We do need their image.
 11 COMMISSIONER: You need their images?
 12 PRESS: (inaudible).
 13 COMMISSIONER: Why not, why can't you
 14 focus on us?
 15 MS STEINBERG: Advocate Coetzee, do you
 16 want to ask your –
 17 COMMISSIONER: What is counsel saying?
 18 Counsel is representing –
 19 MR COETZEE: As the Commissioner pleases.
 20 My name is Etienne Coetzee. I'm an advocate at the
 21 Pretoria Bar. I'm briefed with Kagelo Ramayela, also an
 22 advocate at the Pretoria Bar by VZLR Attorneys, Mr Theo
 23 Steyn. We're appearing on behalf of Dion Nannoolal and
 24 Peter Engelbrecht. My instructions are that the witnesses
 25 will abide by any direction given by the commission but

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1 they'd prefer not, that the images are not broadcast if
 2 possible. That's what their preference would be but it's
 3 up to the commission, but they would prefer that the images
 4 are not broadcast.
 5 SPEAKER: (inaudible).
 6 COMMISSIONER: Okay, I won't make any
 7 ruling on that but if you don't mind even, but you don't
 8 disclose their names though, okay?
 9 SPEAKER: Yes.
 10 COMMISSIONER: Are you happy with that?
 11 Anyone unhappy with that ruling? Well it's a ruling, ja,
 12 sorry.
 13 SPEAKER: Judge I just want to seek
 14 clarity. Are we not permitted to identify the witnesses
 15 that are testifying? Is that it?
 16 COMMISSIONER: That's, ja.
 17 SPEAKER: People mentioned in the
 18 affidavit, the witness is referring to?
 19 COMMISSIONER: Yes. Well, there are two
 20 things. As far as the witness is concerned you won't
 21 identify the witness and if a name slips out that Ms
 22 Steinberg will say that name came out inadvertently, and if
 23 that is the case then you won't identify that person.
 24 SPEAKER: I see.
 25 COMMISSIONER: Ja, as far as names are

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1 concerned.

2 SPEAKER: (inaudible).

3 COMMISSIONER: No well I think that's a

4 good point. It's already been disclosed. Okay, the ruling

5 doesn't apply to the witness but it applies if Ms Steinberg

6 says I don't want that name published, if it emerges in

7 evidence then you'll excise that name and it will not be

8 broadcast as well and it won't be published. Is that a

9 fair deal?

10 MS STEINBERG: Advocate Lunga Siuo is

11 going to lead Mr Engelbrecht.

12 COMMISSIONER: Thank you. Yes Mr Siuo.

13 And may I just say to counsel as well in the course of it

14 if you've got any problem with it you'll just raise it with

15 us immediately. Don't leave it until the end, raise it

16 immediately. Is that okay?

17 MR SIUO: That's fine Judge, thank you so

18 much. But could you please swear the witness in?

19 COMMISSIONER: Oh yes. It's Mr

20 Engelbrecht. Can you just give us your names for the

21 record.

22 MR ENGELBRECHT: My name is Pieter

23 Engelbrecht.

24 COMMISSIONER: And will you affirm that

25 the evidence you give will be the truth, the whole truth

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1 and nothing but the truth? If so will you just say I do.

2 MR ENGELBRECHT: I do.

3 COMMISSIONER: Do you want to move that a

4 bit closer to you that you don't have to bend over.

5 MR ENGELBRECHT: Yes. Sure.

6 COMMISSIONER: Thank you.

7 MR ENGELBRECHT: Thank you.

8 EVIDENCE BY MR ENGELBRECHT

9 MR SIUO: Mr Engelbrecht, let's begin by

10 getting your background here at SARS, your employment

11 background at SARS.

12 MR ENGELBRECHT: Yes, thank you. Is that

13 fine? I joined SARS in 1998 as a legal advisor within the

14 Klerksdorp jurisdiction. In 2000 I was appointed as the

15 regional manager for our law administration division for

16 North West Free State. From 2003 to 2007 I was the branch

17 manager for criminal investigations for Gauteng North.

18 From 2008 to 2010 I was the head of special projects unit

19 alternatively known as a significant case management unit.

20 From 2010 to 2012 I was appointed as the national

21 coordinator for national investigations for SARS and since

22 2012 up to 2016 I was the head of centralised projects, a

23 division within enforcement and since the implementation of

24 the operating model I'm a senior specialist within our

25 legal counsel division.

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1 MR SIUO: Is it correct that you filed a

2 confidential submission to the commission?

3 MR ENGELBRECHT: That is correct. I

4 filed a confidential submission plus obviously certain

5 bundles of evidence.

6 MR SIUO: Yes. Now just for context and

7 to orientate you, I do not intend to run through the entire

8 submission word by word.

9 MR ENGELBRECHT: Yes.

10 MR SIUO: But what is important is for us

11 to highlight some of the critical issues relating to

12 governance and administration contained in your submission.

13 MR ENGELBRECHT: Yes.

14 MR SIUO: Alright. Now please run us

15 through the structure of the old enforcement unit, that is

16 the enforcement unit before the implementation of the

17 operating model.

18 MR ENGELBRECHT: I will do that. Just

19 give me a second, I just want to give you the reference in

20 the submission then you can follow me.

21 MR SIUO: Thank you.

22 MR ENGELBRECHT: If you go to page 13

23 there's a heading just below paragraph 21.5, it sets out

24 the enforcement unit as well as a sub-unit which is project

25 evidence management support which was at that stage between

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1 2013 to 2016 headed by SG Mr Johan Van Loggerenberg. Below

2 that you would have had four five sub-units being

3 centralised projects, national projects, evidence support,

4 our tactical investigation unit dealing with customs

5 investigations and then national projects. That was in

6 short the structure that we housed. In terms of execution

7 of investigations the two main tax, let's call it tax

8 investigation units were national projects and centralised

9 projects. Centralised projects was a very small unit

10 within an enforcement area that reported up to enforcement.

11 MR SIUO: And what methodology did the

12 unit use in investigation?

13 MR ENGELBRECHT: That was one of the key

14 issues in terms of the evolution and the building of

15 centralised projects is a methodology and that's based on

16 sort of lessons learned and a certain research that we

17 conducted was that you had to have three main sort of

18 capabilities within your investigation arm, the one being

19 your forensic capacity or investigation capacity/audit,

20 secondly is a legal capacity and a debt capacity and the

21 main execution process was it should be an integrated

22 process meaning that you dealt with a taxpayer or taxpayer

23 group in totality. From inception of your investigation up

24 to when the investigation is finalised. So the

25 investigations were all projects led by a project manager

1 and each project would have had different types of
2 capabilities allocated depending on the needs of that
3 specific case, but most of the cases were complex, local in
4 South Africa investigations and usually or sometimes
5 international led to it as well in terms of execution.

6 MR SIUO: And without going into detail
7 about this specific cases, what are the type of cases that
8 were investigated in your unit?

9 MR ENGELBRECHT: Okay let me just give
10 you a reference to a submission, just give me a second. If
11 you go to page 35 of my submission. Firstly let me say
12 that obviously the cases were allocated or identified
13 depending on our compliance programme at that stage and a
14 need in terms of which focus areas you need to tackle. So
15 on page 36 you will for example, I included an example of
16 what was identified by SARS as sort of the focus areas that
17 we needed to focus on in terms of execution of certain
18 cases.

19 Second point I just want to make is that
20 obviously we didn't select any case that we would
21 investigate. There was independent or case segregation in
22 terms of allocation so we will get an allocation depending
23 on the risk rules and we will be requested to action that
24 investigation. In terms of examples without mentioning
25 taxpayer names, if you go to page 37, the type of

1 investigations we dealt with were high net worth
2 individuals, specifically taxpayers that use offshore
3 entities or special purpose vehicles, SPVs to hide income
4 streams or identity, illicit financial flows investigations
5 as a topic, specifically in that era where there's
6 manipulation of customs, utilised export capital from South
7 Africa, non-declaration of taxes, smuggling of contraband
8 and that sort of thing, if I can use that theme.

9 The third one would be Ponzi schemes, for example
10 as a theme in terms of investigation. Fourth would be
11 elements of organised crime or key players that played in
12 that field, specifically with relation to the tax
13 consequences of the actions and usually the players that
14 operated in this field do not have bank accounts, as an
15 example. They do not have any assets on their name. They
16 use third parties to hold their assets. So if you do a
17 cursory scan of their status you will never see the true
18 income nature of it. So if I can say themes, that's the
19 type of investigations we conducted in terms of the unit.

20 MR SIUO: And how was the success of your
21 team measured?

22 MR ENGELBRECHT: Let me take you to my
23 submission. Just give me a second. If you go to page 38.
24 So the one important factor was, is that we, and I'll take
25 the commission if required, through it, but we had normal

1 standard operating procedures. We had daily, in terms of
2 tracking of our execution of our mandate and obviously in
3 terms of governance we had daily, weekly, monthly reports
4 that we had to submit. So daily report would be if
5 anything that significantly will occur within our
6 investigation, we would execute what we call a SITREP which
7 goes to the whole of Exco to advise Exco to say there's a
8 risk in this investigation or we would execute X Y Z. Just
9 in terms of the governance which also relates to how do you
10 measure success.

11 So success we were measured basically in the
12 normal principles meaning that we had set targets in terms
13 of number of investigations completed, projects completed,
14 debt cases completed and revenue collection executed. The
15 key, one of the key things was that our main aim was to
16 effect impact within, if I can call it illicit economy area
17 in terms of the type of investigations that we did and deal
18 with those taxpayers in terms of the relevant legislation.
19 But we had set targets which we needed to comply with which
20 we were tracked on. In terms of a specific case, each case
21 would have a specific milestones that you needed to
22 achieve, looking at costing, etcetera, and all that was
23 taken into account in terms of how we executed an
24 investigation and how we were then measured at the end of
25 the year or quarterly in terms of our work.

1 MR SIUO: Yes. And in your opinion was
2 the unit successful?

3 MR ENGELBRECHT: I believe the unit was
4 successful and the reason I say this I think a lot of –
5 [09:35] First let me say that above the amount, rand
6 money that we collected. A lot of the work that we did and
7 the lessons we learnt were utilised for example in, for
8 example if you look at certain sections of the Tax
9 Administration Act it was directly for flowing from lessons
10 that we learnt in certain of the cases just as in terms of
11 the organisation wide impact it had. Secondly is we had a,
12 I would say an effect in terms of the area that we operated
13 in in terms of the tax payers that we dealt with which
14 specifically ensured that SARS had an international element
15 or attach and specially in some of our cases where we could
16 show that in terms of enforcement action that even though
17 that you move your assets offshore or your IT income
18 streams offshore that we have the ability and the capacity
19 to deal with it, obviously that only occurred later in
20 2012/2013 in terms of tax treaties that we entered and
21 which gave us the ability to execute internationally but
22 we, to summarise I would say that we had impact in terms of
23 the cases that were executed, in terms of Rand value that
24 we collected and thirdly we also impacted in terms of
25 organisational learnings that then flowed towards, in terms

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1 of the standardised operating procedures in terms of
 2 legislation, etcetera as well.
 3 MR SIUO: Yes, and domestically did you
 4 have a relationship with the national prosecuting authority
 5 in respect of some of the matters that you dealt with?
 6 MR ENGELBRECHT: Yes. We had, obviously
 7 my unit or not my unit but centralised projects arm and our
 8 mandate was not to executive a criminal investigation. So
 9 that would be referred to your criminal investigation
 10 department. But in certain of the cases we did have a
 11 relationship and a good relationship with the NPA, with the
 12 national prosecuting authority in terms of collaboration,
 13 execution of cases specifically in cases where you needed
 14 to cooperate internationally or locally within South Africa
 15 in terms of forfeitures or execution in terms of collection
 16 of taxes.
 17 MR SIUO: Yes. Now I want us to move
 18 onto the -
 19 PROF KATZ: Sorry could I just ask three
 20 questions. I missed, who selected the cases that you would
 21 investigate?
 22 MR ENGELBRECHT: We, we had a unit, well
 23 firstly case selection in terms of case selection, in terms
 24 of our risk rules. Then we, our cases were selected in
 25 terms of a unit that was named preliminary enquiries and

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1 investigations. We then look at cases and -
 2 PROF KATZ: Sorry who, was that Exco, who
 3 was the personnel who said which cases you should follow?
 4 MR ENGELBRECHT: There was, it didn't
 5 vary but there was a unit that would look at the
 6 allegations, whether it meets certain thresholds, whether
 7 there's a case to answer in terms of investigation and we
 8 will then get a referral from that unit to say here's an
 9 allegation, there's a test in terms of non-compliance and
 10 can you, well not can you but you need to investigate that
 11 case. If there's, if we are, if we find through our
 12 investigation that everything is in place we will then
 13 close the investigation. Obviously if there's issues
 14 regarding tax non-compliance we will then execute it
 15 further.
 16 PROF KATZ: Did anyone have the authority
 17 to stop you while you were executing?
 18 MR ENGELBRECHT: No.
 19 PROF KATZ: So no one could have stopped
 20 you?
 21 MR ENGELBRECHT: Nobody could stop us and
 22 nobody ever instructed me to stop any investigation.
 23 PROF KATZ: And did you have authority to
 24 settle cases?
 25 MR ENGELBRECHT: No, I do not.

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1 MR SIUO: Coming back to the operational
 2 model review period. Were you ever engaged during that
 3 period?
 4 MR ENGELBRECHT: I was not, I was not
 5 directly engaged by Bain or senior management in the
 6 process. I reviewed my records again after my submission,
 7 I did find one questionnaire that we got, received to
 8 complete for our senior management but if I look at the
 9 sequence of events it was a very hurried sort of request to
 10 urgently provide certain data which we provided but in
 11 terms of engagement or discussion with me personally or
 12 members of my unit there was no engagement.
 13 MR SIUO: And what became of your unit
 14 during the implementation process?
 15 MR ENGELBRECHT: The implementation
 16 process commenced at about October 2015 when I received my
 17 letter that my position has been dissolved. I think I
 18 received it at about 11 o'clock in the evening. Firstly,
 19 that's the first step. The second step is that my senior
 20 management was not aware of the decision. Thirdly is that
 21 that process then continued where the team members within
 22 my area wanted to ensure that the cases and the projects
 23 that we were still handling and within our inventory and we
 24 had quite a significant amount of cases which were high
 25 profile and received constant media attention that they are

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1 cared for and dealt with.
 2 So as part of my submission I submitted I think
 3 three or four examples of handover reports and
 4 identification of risk that we showed senior management in
 5 the process of the implementation of the operating model.
 6 The operating model was then implemented I would say
 7 between April and June. My, the people that reported to
 8 me, firstly my managers that held the different areas were
 9 allocated different business areas within SARS so for
 10 example my, the investigation manager, audit manager,
 11 forensic audit manager was allocated to our investigative
 12 debt area. The legal manager and debt manager were
 13 allocated to our debt area and the people were then
 14 allocated in terms of you know if you're an auditor you go
 15 to audit, if you're an collector then you go to the
 16 collections department. But obviously in terms of cases
 17 because we usually had one central person that managed an
 18 investigation or project there was no sort of person
 19 appointed then to hold that project or case. So cases were
 20 then sort of broken up into different areas and allocated
 21 different people.
 22 MR SIUO: And what has become of the
 23 investigations since then?
 24 MR ENGELBRECHT: I would say that firstly
 25 since 2016 I have not been involved in any of the

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1 investigations or let me call it, say 90% of the
 2 investigations. So the information that I have and what
 3 I've seen is that it seemed to me that it became
 4 fragmented, meaning that, that we had a continuous view
 5 that you need an overall person in control, you need a
 6 multidisciplinary team and you need an organised and
 7 measured execution plan in terms of your projects. So the
 8 sense I have and you know when I interact with my fellow
 9 colleagues is that it became very fragmented in terms of
 10 the fact that, you know no decisions are made or decisions
 11 are delayed or executions are not done timely, if I could
 12 use those words. But for direct evidence as per my
 13 submission I, you know I did not have any further direct
 14 control or involvement in the cases and you know it, what I
 15 say to you is from interactions with my fellow colleagues.
 16 MR SIUO: And what's your current
 17 position at SARS?
 18 MR ENGELBRECHT: I'm a senior specialist
 19 within our legal counsel division.
 20 COMMISSIONER: What do you actually do?
 21 MR ENGELBRECHT: I do litigation work for
 22 SARS.
 23 MR SIUO: Now I want us to talk about
 24 SARS's current enforcement capability. Would you like to
 25 run us through that?

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1 MR ENGELBRECHT: Let me say that I think
 2 the current enforcement environment that you need to divide
 3 between your steady state operations as a starting point
 4 and what we execute it being non-steady state or sort of
 5 focused investigations into elicit economy. So non-steady
 6 state operations with enforcement obviously deals with
 7 those parts of audit or investigations that deal with the
 8 normal type of taxpayers. If you look currently with
 9 enforcement I would say that there is no key capability in
 10 terms of if I do a comparison with what we had in terms of
 11 dealing with elicit economy or the type of focused areas
 12 that we executed and when I say this I base this on the
 13 following is that, that you cannot execute these type of
 14 investigations if you do not have multidisciplinary teams
 15 in terms of, executing these type of cases on a project
 16 basis and that you have key accountability and the ability
 17 to execute an investigation from end to end in terms of
 18 your value chain which we are lacking at this stage.
 19 MR SIUO: Yes. I also want to refer you
 20 in this regard to two affidavits, alright. The first one,
 21 the witness has, the deponent to this affidavit has
 22 consented to the affidavit being used and also to her name
 23 being revealed in the public hearings. Alright. But I've
 24 been advised rather not to mention that.
 25 MR ENGELBRECHT: Okay.

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1 MR SIUO: But I'll refer you to the
 2 specific paragraph and the views that have been expressed
 3 about the current operating model and the loss of the end
 4 to end function. "So having the various investigative
 5 support functions housed centrally and operating across
 6 functionally enhanced the operational efficiency and
 7 effectiveness of investigations within national projects,
 8 centralised projects and the tactical intervention unit.
 9 Under the decentralised model of silo functions at an
 10 operational level the benefits of the cross pollination and
 11 an integrated approach to investigation appear to have been
 12 constrained if not lost". Do you agree with this
 13 statement?
 14 MR ENGELBRECHT: Yes, I agree with that
 15 statement.
 16 MR SIUO: I want to refer you to another
 17 statement in the same affidavit and it says in its form the
 18 function, "in its form and function the new operating model
 19 supported by the new narrative of responsible enforcement
 20 appeared to have dismantled the enforcement capability or
 21 the timelines of the enforcement actions Of SARS that
 22 existed within the specialised units. Specifically
 23 national projects, the centralised projects and the
 24 tactical intervention unit. Further the specialist focus
 25 on taxpayers, industries and economies representing certain

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1 kinds of non-compliant behaviour appear to have
 2 dissipated". Do you agree with this statement?
 3 MR ENGELBRECHT: I agree.
 4 MR SIUO: I want to then also refer you
 5 to the second anonymous affidavit. "The new operating
 6 model disbanded national projects. All team members were
 7 fragmented and moved to investigative audit, criminal and
 8 customs investigations", is that correct?
 9 MR ENGELBRECHT: That is correct.
 10 MR SIUO: Okay. Then the next statement
 11 in the same affidavit says "I am aware that the national
 12 projects team are no longer applying the projects
 13 methodology for investigation as they did, as they did.
 14 They are now working according to investigative audit
 15 methodology referred to as the get next system of case
 16 allocation. The end to end investigation into connected
 17 non-compliant taxpayers is no longer applied", do you agree
 18 with this statement?
 19 MR ENGELBRECHT: Ja, I agree with that
 20 statement. I think it's relevant to say that it's
 21 impossible to audit a, or investigate one individual if he
 22 has a connection with 30 or 40 multiple entities in terms
 23 of income streams, asset bases and so forth. So if you
 24 execute an audit just looking at one entity, one tax type,
 25 one risk you will never have the complete picture and that

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1 was what we did. Is if we did an investigation audit into
 2 an allegation of a group we will recreate the complete
 3 financial position of those taxpayers and group of
 4 taxpayers because that's the only way that you will in the
 5 end be able to determine the tax ability or not of an
 6 individual taxpayer or group of taxpayers. So all
 7 investigation and that I think that applied to national
 8 projects as well would have been a forensic detailed
 9 investigation, a recreation of a financial position to
 10 allow SARS to have the complete, a complete picture of a
 11 tax payer.
 12 MR SIUO: And to your know have there
 13 been discussions within SARS about reverting back to the
 14 old enforcement methodology?
 15 MR ENGELBRECHT: Yes, yes, there has been
 16 discussions and certain workshops held of which I've been
 17 part, yes.
 18 COMMISSIONER: When, sorry did those
 19 discussions start?
 20 MR ENGELBRECHT: Judge, it commenced in
 21 May of this year.
 22 MR SIUO: And what has been the outcome
 23 of the discussions?
 24 MR ENGELBRECHT: We have submitted
 25 certain proposals to our Exco, for the establishment of an

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1 elicit economy unit or division to deal with certain
 2 aspects of the elicit economy.
 3 MR SIUO: Yes and has that been well
 4 received? Has it been considered, what's your
 5 understanding at the moment?
 6 MR ENGELBRECHT: My understanding is that
 7 it's been well received and there is support for this type
 8 of initiative.
 9 MR SIUO: Yes and are there any
 10 recommendations that you would like to make relating to
 11 enforcement?
 12 MR ENGELBRECHT: I would say it's
 13 contained in my submission. I was asked to make certain
 14 recommendations. So if I could just highlight it for you,
 15 just give me a second.
 16 MR SIUO: Yes.
 17 MR ENGELBRECHT: Ja, if you go to page 21
 18 of my submission under the heading G. Firstly it deals
 19 with the submission that we have submitted, Judge in May of
 20 this year in terms of commencing with a, an introduction of
 21 a unit to deal with this -
 22 MR SIUO: Sorry to whom was this
 23 submission made?
 24 MR ENGELBRECHT: The final submission has
 25 been made to Exco.

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1 MR SIUO: To Exco?
 2 MR ENGELBRECHT: Yes.
 3 COMMISSIONER: That was in May this year?
 4 MR ENGELBRECHT: This is before that,
 5 this is sort of starting to create a discussion and enable
 6 a few people to get together to workshop this and to get to
 7 a position where we can submit a detailed submission which
 8 has been submitted to the Exco.
 9 MR SIUO: When was that?
 10 MR ENGELBRECHT: I think that was
 11 submitted about a week or two ago and considered, if I
 12 understand correctly already.
 13 MR KAHLA: A week or two ago from now?
 14 MR ENGELBRECHT: Now, yes.
 15 PROF KATZ: And that's the culmination of
 16 various interactions?
 17 MR ENGELBRECHT: Ja.
 18 PROF KATZ: Can I just ask is the
 19 difference between the old operating model and the new one
 20 the removal of the interconnectedness and the holistic
 21 approach, was that the fundamental difference?
 22 MR ENGELBRECHT: That was one of the key
 23 differences that focus that you have and your methodology
 24 that you applied was removed in totality.
 25 PROF KATZ: And in your recommend, sorry.

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1 MR SIUO: No, no.
 2 PROF KATZ: Are you suggesting that the
 3 way forward is to go back to the old model or something
 4 else?
 5 MR ENGELBRECHT: Ja, we, the
 6 recommendation was that you needed to have a similar type
 7 of unit or methodology that you apply and if I can say the
 8 capabilities then, how it's finally executed is obviously
 9 needs to be determined but I think the methodology, the
 10 research and analysis capacity, your intelligence driven
 11 type of investigations and your end to end process is a key
 12 driver for success.
 13 PROF KATZ: But is it essentially the old
 14 model?
 15 MR ENGELBRECHT: It's similar to the old
 16 model, yes.
 17 COMMISSIONER: May I just ask you, if I'm
 18 covering questions with you, coming to you'll tell me but
 19 now this, these units were disbanded in, you say about
 20 2015/2016?
 21 MR ENGELBRECHT: Yes, Judge.
 22 COMMISSIONER: And it is now 2018, what
 23 has been happening in the meantime in the elicit economy?
 24 MR ENGELBRECHT: It's difficult to answer
 25 that question. I would say that there has not, from my

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1 position, obviously I have not been involved in that sphere
 2 but I would say that from a tax perspective there's been
 3 limited approaches to execute cases in this way that we've
 4 dealt with in terms of elicit economy and you can track
 5 that in terms of proper enforcement actions that SARS
 6 executed from a tax perspective.
 7 [09:55] I have to say you know, did you execute tax
 8 enquiries, did you do search warrants, did you execute
 9 international requests for assistance to foreign revenue
 10 authorities to execute information or obtain or seize
 11 assets internationally? Those are the questions, if you
 12 look at it, it will give you a possible answer in terms of,
 13 you know –
 14 COMMISSIONER: I'd also like to know are
 15 cases or groups still being selected for investigation?
 16 MR ENGELBRECHT: I don't think so. I
 17 would say that case selection happens, I think what was
 18 referred to in the affidavit in terms of the get next
 19 principle, if I understand it correctly is the next case,
 20 if I understand, I'm not an expert in this field, but sort
 21 of the next case that is allocated in order to complete a
 22 specific risk or identify the risk. But in terms of a
 23 project principle it was made very clear to my team members
 24 after dissolution of centralised projects, to audit
 25 managers that there will be no further projects executed by

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1 SARS, that we will not work in the way that we operated,
 2 that the way that we operated was incorrect etcetera,
 3 etcetera. That was made very clear to my audit teams that
 4 historically reported to me and I think it was one of the
 5 key reasons some of my members left the organisation.
 6 PROF KATZ: Just following from the
 7 Judge's question, Judge asked you whether new cases, were
 8 cases that you were working on when the new model was
 9 adopted discontinued?
 10 MR ENGELBRECHT: They were not
 11 discontinued, but it became fragmented, meaning delays, co-
 12 ordination. Two of my senior managers responsible for two
 13 of my key areas resigned from SARS and that created
 14 obviously a vacuum and there was different senior managers
 15 appointed who had not operated within an enforcement space
 16 to oversee these types of investigations.
 17 PROF KATZ: So what is the status of
 18 cases that you were working on when the model changed?
 19 MR ENGELBRECHT: The cases have not been
 20 closed down or stopped, it is continuing, but there has
 21 been issues around the execution of it and the time it
 22 takes to execute. Because one of our key themes that we
 23 executed was that we executed in a time and space and very
 24 quickly in terms of our milestones. So you know, we
 25 operated in a very efficient way, if I can use those words,

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1 in terms of clear mandates, execution, obtaining
 2 instructions from SARS senior management because all the
 3 projects within our space, my area of space were classified
 4 as what you call significant cases which we usually had to
 5 report to SARS senior executives continuously either to
 6 obtain instructions, to verify the work that we did. On
 7 the significant cases there will be review committees that
 8 will review our work on an executive level, review our
 9 methodologies, review our proposals and then approve what
 10 we want to do. And type of engagement is required because
 11 it allows a continuous improvement in the case, strategic
 12 direction and the timely decision making within the
 13 organisation.
 14 MR KAHLA: Could you, Mr Engelbrecht,
 15 just please help me just get a flavour of these delays? I
 16 mean the delays occasioned by the fragmentation. How
 17 lengthy were the delays and could you give us a sense
 18 around what informed or caused those delays, delays in
 19 respect of somebody having to make a call and taking longer
 20 to make a call that was needed to be made? Could you help
 21 me just understand that?
 22 MR ENGELBRECHT: It's difficult to give
 23 you a timeline, I would suspect there's other officials
 24 that reported to me, but continuously then worked on these
 25 cases that can give evidence to the committee. The

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1 information I'm giving you is the sense, sort of
 2 engagements with people. But in terms of what caused the
 3 delay I would say is executing decisions or obtaining a
 4 decision or strategic direction on a case. And then
 5 getting approval to proceed with a specific action, I think
 6 that would – the sense I got post the dissolution of my
 7 area, or centralised projects, was that that sort of
 8 created a frustration within people to say well they needed
 9 instructions, they needed a strategic direction in a case
 10 or approval. Because you know, for example, you do not
 11 just execute a foreign restraint order without clear
 12 direction, approval or consideration from SARS senior
 13 management and co-operation from foreign revenue
 14 authorities. Those type of things. So you need senior
 15 leadership to give approval and direction because it
 16 impacts usually on SARS in terms of the way that we
 17 execute, the way that we are seen. And that we always
 18 ensure that we execute in the correct way, legally
 19 permissible in terms of our cases.
 20 MR SIUO: Can I also add, just
 21 specifically relating to the issue of delays and so on and
 22 execution that there is a witness who's going to be giving
 23 evidence right after Mr Engelbrecht on this specific issue
 24 here. If you follow up the question related to that.
 25 MR KAHLA: Yes that's fine.

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1 MR SIUO: And also to add that the cases,
 2 the former enforcement cases were handed over to the
 3 investigative audit unit and that is where they are
 4 currently housed. We received a submission in this regard
 5 yesterday that also attempts to detail what has transpired
 6 relating to those. Thank you.
 7 PROF KATZ: Sorry, the ones that were –
 8 MR SIUO: Handed over.
 9 PROF KATZ: - in existence when the new
 10 operating model came in.
 11 MR SIUO: Yes that's correct, that's
 12 correct.
 13 MR ENGELBRECHT: Just one –
 14 MR SIUO: Oh did you have something –
 15 MR ENGELBRECHT: Just one, I think the
 16 one question was whether all the cases were executed. I
 17 know of one or two that were not executed and that was
 18 based on, if I can then say lack of information or
 19 approvals that was obtained. And that's from engagement
 20 with some of the people that that reported to me. But I
 21 presume that will be dealt with in the other evidence.
 22 MR KAHLA: Lack of internal approvals?
 23 MR ENGELBRECHT: Yes.
 24 PROF KATZ: Can I just ask, Mr
 25 Engelbrecht, talking the future now that we want to remedy

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1 or – in your new model are their checks and balance in
 2 governance that no one would have authority to stop what
 3 you're doing, to influence what you're doing, is that built
 4 into your recommendations?
 5 MR ENGELBRECHT: Professor, yes it is,
 6 firstly in terms of segregation of duties, I mean in case
 7 selection versus case execution, settlements regarding
 8 cases, the execution of a case, the overall management of a
 9 case that is built into the model, similar to what we had.
 10 COMMISSIONER: Ms Steinburg do we have or
 11 Mr Siuo, do we have the proposal that has been put up to
 12 Exco and that he talked about?
 13 MR SIUO: Yes it's contained in his
 14 submission, there are two lever arch files that were
 15 submitted that contain a memorandum to this effect. And
 16 various other, if I may add, there are various other
 17 memorandums that are contained in the submission.
 18 COMMISSIONER: But the latest one that
 19 was put up to Exco a few weeks ago.
 20 MR SIUO: No not the few weeks ago one.
 21 MR ENGELBRECHT: No that's not part of
 22 the submission, the submission was submitted before that.
 23 COMMISSIONER: Is there any reason why we
 24 shouldn't see that?
 25 MR ENGELBRECHT: I'm not – I –

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1 COMMISSIONER: Anyway you have a copy if
 2 we need it and we can ask you for that.
 3 MR SIUO: I just want to know, so in your
 4 opinion do you think that the implementation of the new
 5 operating model lead to inefficiencies within an
 6 enforcement in SARS.
 7 MR ENGELBRECHT: Yes I agree with that
 8 statement, I think it created a deficiency in our
 9 capability to execute and operate within the illicit
 10 economy area, yes.
 11 PROF KATZ: The illicit economy I think
 12 the main ones are tobacco, liquor and textiles, is that
 13 right?
 14 MR ENGELBRECHT: I think that's part of
 15 it, but there's further focus areas in terms of the type of
 16 investigations. But those are the main themes that you
 17 could say.
 18 PROF KATZ: But that's an important
 19 point, I've just made a note, as I understood you illicit
 20 economy wasn't limited to that, you also had smuggling,
 21 Ponzi, organised, lots of other things that - illicit
 22 economy is more generic of really the ones one normally
 23 talks about.
 24 MR ENGELBRECHT: Professor, yes. If I
 25 can refer you to the specific, maybe a specific page in my

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1 submission because it's important that your focus areas are
 2 determined by your compliance program. And where you see
 3 there's risks and where you believe there's an increased
 4 non-compliance or an issue that needs to be addressed, so
 5 it's very important that your compliance program deals with
 6 those type of identified risk. And that informs your
 7 program that you then look at. So we had very key focus
 8 areas per year or every two years that we said – this is
 9 the type of areas that you will operate within. So again
 10 very structured meaning that we couldn't go nit-pick who we
 11 wanted to investigate or we want to look at this, or we
 12 want to look at that.
 13 PROF KATZ: But I understood your unit to
 14 include high net worth individuals and diverting income
 15 flows and all of that.
 16 MR ENGELBRECHT: Ja because either the
 17 underlying factors that influenced those cases were a tax
 18 issue or it was smuggling or it was manipulation of
 19 importation goods, utilising that to export capital from
 20 South Africa because that's one of the key, if you look at
 21 illicit financial flow scheme that's one of the key drivers
 22 of it. It's not only (inaudible) etcetera, but I mean
 23 there's a big, big – you know if you look at some of the
 24 research conducted, it's a big area in terms of the
 25 differentiation between your customs declarations versus

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1 your tax and obviously if you look at your Reserve Bank and
 2 your capital outputs. And that's one of the key areas
 3 which we identified in some of our cases where a lot of
 4 capital flows from South Africa. But you're right, it's
 5 not only tobacco etcetera, there's a lot of other areas
 6 that impacts.
 7 COMMISSIONER: Can I just ask you though
 8 because it's referred to specifically in our terms of
 9 reference, were any of these investigations that were under
 10 way when the unit was disbanded, were any of them related
 11 to the tobacco trade?
 12 MR ENGELBRECHT: In my investigations
 13 there were one or two that was linked to the tobacco trade,
 14 not necessarily that we investigate tobacco per se, but we
 15 would investigate the tax consequences from their
 16 operations, if I can use that –
 17 COMMISSIONER: Yes and do you know what
 18 has happened to those case on tobacco particularly?
 19 MR ENGELBRECHT: The tobacco cases no. I
 20 can't say, Judge.
 21 MR SIUO: One of our witnesses this
 22 afternoon is also going to give evidence to the effect that
 23 there's been a reduction in revenue collection in customs
 24 and excise. Do you think that – and so this dates from the
 25 financial periods 2015 2016, 2016 2017, 2017 2018 and in

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1 all those years there's been a reduction in collection. Do
 2 you think that this reduction may also have been caused by
 3 the inefficiencies that were created by the new operating
 4 model on enforcement?
 5 MR ENGELBRECHT: I would say so yes and I
 6 think you need to answer that question based on the
 7 following analysis is to say if you look at the compliance
 8 culture and the downward spiral in terms of compliance from
 9 taxpayers one of the key factors and drivers we had in
 10 terms of looking at compliance was the enforcement capacity
 11 to create an impact, to drive a message to say that you
 12 need to comply. You know etcetera, so I would say that the
 13 approach could have had an impact on that yes.
 14 MR SIUO: And therefore this would also
 15 have had an impact on SARS's ability to collect revenue.
 16 MR ENGELBRECHT: I would say so yes from
 17 my experience and from where I operated in and if you look
 18 at what we reported yearly in terms of our unit because our
 19 unit was responsible for overall debt book of enforcement.
 20 So it was one of my functions as well is that we executed
 21 all enforcement debt within these specialised units within
 22 our area.
 23 MR SIUO: That's the conclusion of my
 24 questions, Judge.
 25 PROF KATZ: Can I just ask, the debt

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1 book, we've seen in evidence that this debt book has been
 2 growing exponentially.
 3 MR ENGELBRECHT: Yes.
 4 PROF KATZ: Is the collection of that –
 5 was that part of your functions under the old operating
 6 model?
 7 MR ENGELBRECHT: Yes, Professor.
 8 PROF KATZ: And where is it located under
 9 the new operating model?
 10 MR ENGELBRECHT: Under the new operating
 11 model it was moved to the debt, enforcement debt, to a new
 12 senior manager within enforcement debt.
 13 COMMISSIONER: Self-contained.
 14 MR ENGELBRECHT: I think it's – I don't
 15 think, I'm not sure. I think he will testify after me, I
 16 think you need to ask him how it's dealt with now. I do
 17 not know.
 18 MS STEINBERG: I have just two questions
 19 for you. I'm just picking up on themes that run through
 20 all the affidavits and I'd like to see if you share these
 21 views. As I understand the model you had before the new
 22 operating model in enforcement you actually looked at
 23 international benchmarks as to the best governance
 24 structure, the best checks and balances and implemented
 25 those. Am I correct?

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1 MR ENGELBRECHT: Yes you are correct.
 2 MS STEINBERG: And that's what was partly
 3 taken apart in the new operating model.
 4 MR ENGELBRECHT: That's correct.
 5 MS STEINBERG: So I presume in your
 6 recommendations you were actually going back to these
 7 international standards of checks and balances.
 8 MR ENGELBRECHT: That's correct, we've
 9 also included as part of our new recommendation and it's in
 10 my bundles, is a study by the OECD, I think it's 2017
 11 regarding – I think the heading is the ten principles or
 12 ten key elements of enforcement capacity of which South
 13 Africa was part of the review which I think simply
 14 highlights the type of capacity and capability you should
 15 have and the type of enforcement powers a revenue authority
 16 should have. It's in my bundle, I think it's referenced as
 17 well. So the historic research I think obviously was
 18 historic, but I think it's important to look at new trends
 19 and new research and analysis. And I've included that and
 20 we've also used that as a basis in terms of proposals
 21 currently to SARS senior management.
 22 PROF KATZ: Sorry can I just ask, your
 23 latest one that you said to the Judge you have, does that
 24 keep up to date with all international –
 25 MR ENGELBRECHT: Yes, we've referenced

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1 for example this research, it's quite recent and it's a
 2 survey of multiple revenue authorities of which South
 3 Africa was one. So it talks to what type of capability you
 4 should have, what type of enforcement capability you should
 5 have and the powers you should have. So I think it gives a
 6 good basis for analysis and probably discussion and
 7 thinking about, what is required.
 8 MS STEINBERG: Because I would imagine
 9 you have to balance three imperatives, you have to have
 10 strong capability, but you have to enforce it in the law,
 11 but thirdly you have to have internal checks and balances
 12 so that nobody can interfere.
 13 MR ENGELBRECHT: You're 100% correct and
 14 I think that was one of the strongest elements within our
 15 operations is that firstly, if I can use those elements,
 16 not one person can select a case. Nobody can select a
 17 case. Secondly not one person or individual or a group of
 18 individuals can influence a case or just stop a case. And
 19 thirdly no group or individuals can settle or in a view,
 20 used in inverted commas, make a case go away. So in my
 21 area specifically we were strictly governed especially in
 22 terms of quality. Then secondly whether we operate within
 23 the law and thirdly the way that we executed.
 24 And as I testified earlier, on the significant
 25 cases on an executive level group of executives would

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1 review on initial stages for example letter of findings
 2 that we want to issue against a group of taxpayers. And
 3 they will critically review it and that's one of the things
 4 we build in into our operations was that you invite
 5 critical evaluation of your work to ensure that it meets
 6 the standards of what's required.
 7 COMMISSIONER: Those governance
 8 principles that you're talking about that applied to your
 9 unit, once it was broken up do those governance principles
 10 still apply in the sense that people can't, as you say,
 11 make cases go away or get them settled, select?
 12 MR ENGELBRECHT: Yes I presume the
 13 governance principles remained within SARS, I mean I
 14 presume, I know that we apply the same governance
 15 principles, sorry I used the words may go away, maybe
 16 incorrectly. But I mean – but the framework in terms of
 17 legislation and the way that SARS operates is still there.
 18 It's obviously open to abuse, but I believe the framework
 19 was still there and I think the legislative framework that
 20 governs that was still there.
 21 [10:15] COMMISSIONER: Ja, I am not interested so
 22 much in the legislative framework. I'm talking about the
 23 internal checks and balances. Now, if you don't know you
 24 must tell me. I don't want you to speculate on that.
 25 MR ENGELBRECHT: No, I don't want to

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1 speculate on it, Judge.
 2 MS STEINBERG: My second question goes to
 3 this in another way. I understand this to be the crux of
 4 the matter, and I'd like to get your view on whether it is,
 5 that what you used to have when you talk about an end to
 6 end unit is you used to have a multidisciplinary unit.
 7 You'd have investigators. You'd have auditors. You'd have
 8 legal help. You'd have what you need in one unit. What
 9 that meant is that you could act quickly when you needed a
 10 court order or some action to be taken because you had a
 11 project team with a project manager focused on a taxpayer.
 12 It also meant that if a taxpayer, there were 33
 13 cases relating to that taxpayer, you had them all so that
 14 you could coordinate and go after very sophisticated
 15 schemes. What happened post the operating model is two
 16 things. To refer back to yesterday's testimony we speak
 17 about the factory within SARS that deals with the run of
 18 the mill cases and you deal with the segments that deal
 19 with the specialised cases.
 20 Your project's team were the equivalent of the
 21 segments. So when we talk about the cases going back,
 22 going into investigative audits your cases were taken,
 23 given to investigative audit. Investigative audit is the
 24 factory. They deal with people like us. When we submit
 25 our returns the risk engine says problem here, problem

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1 there but they're run of the mill problems. Now your
 2 highly specialised cases which I understand are 3% probably
 3 of taxpayers where you're talking about organised crime,
 4 fraud, illicit economy, those 3% were put into the factory
 5 and treated in the same way as ordinary audits.
 6 MR ENGELBRECHT: Yes.
 7 MS STEINBERG: And just to finish that
 8 not only were they put in the factory but as I understand
 9 for the individual investigators and lawyers working on it
 10 they were no longer given that bird's eye view. All those
 11 33 instances, they had one here and one there. So there
 12 was no longer a holistic view of a particular taxpayer who
 13 was up to no good. Is that correct?
 14 MR ENGELBRECHT: That's a very good sort
 15 of summary of it. Yes, and I think, you know, if you have
 16 a project where you've got ten auditors allocated to that
 17 investigation and post your implementation of an operating
 18 model you have two you know, it creates deficiencies.
 19 MS STEINBERG: Well, one of the witnesses
 20 who's not appearing said that two things happened, that
 21 there was a juniorisation of positions within enforcement
 22 is the word he used and then an under allocation of
 23 resources. Would you agree with that?
 24 MR ENGELBRECHT: 100%. Yes, I agree.
 25 PROF KATZ: The -

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1 MS STEINBERG: Please.

2 PROF KATZ: Sorry, Judge. In your

3 heyday, your unit, would you have any feel of what the

4 yield was of your unit, the tax collected, the contribution

5 to the total tax take?

6 MR ENGELBRECHT: Our revenue, I think we

7 started tracking in terms of debt collection for the last

8 two years. It wasn't substantial in terms of revenue

9 collection. I think it's about five, 600 million a year.

10 In terms of - and when I say substantial I mean in terms of

11 SARS' overall contribution in terms of tax collection. It

12 varied but I think it's 500, 600, 700 million depending on

13 which year.

14 PROF KATZ: But I'm not talking about the

15 debt book. I'm talking about the illicit unit -

16 MR ENGELBRECHT: Oh sorry, yes.

17 PROF KATZ: In the wider sense of

18 illicit.

19 MR ENGELBRECHT: It's very difficult for

20 me to quantify. I would say you need to look at the effect

21 of what we did in terms of driving compliance.

22 PROF KATZ: Sure.

23 MR ENGELBRECHT: And I think that - and

24 that's the thing that needs to be understood is that that

25 drove compliance. So that made people be aware that if

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1 you're a drug smuggler or you're a high net worth

2 individual if you do not comply we can touch you. If you

3 hide your assets offshore we can touch you. And that drove

4 compliance and people said well, we need to comply and that

5 drove your compliance levels, your revenue collections or

6 your revenue -

7 PROF KATZ: No, I agree with you. It's

8 not a correct test to say how much you actually collected.

9 It's that it drove compliance. We just get a feel. And on

10 the debt book the amounts you would collect you said?

11 MR ENGELBRECHT: Yes, as I said I think

12 we operated at about 10, 11, 12, 13% of that yearly debt

13 book per year that we collected.

14 MS STEINBERG: Professor Katz, in fact

15 I've been told a couple of times that one of the

16 justifications for removing resources from these units and

17 juniorising the positions is that they weren't contributing

18 that much to revenue. And the answer from people who

19 worked in these units is that their key performance

20 indicators were not actually how much money they put in the

21 bank. They dealt with cases that had high reputational

22 risk for SARS and in dealing with organised crime were

23 importantly sending a message to the illicit economy but to

24 all taxpayers that if you get up to this you will get

25 caught and that that's what's been compromised and again it

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1 seems to be what you're saying has been compromised in the

2 last couple of years.

3 PROF KATZ: That's what I sought to get

4 on -

5 COMMISSIONER: Is that correct?

6 MR ENGELBRECHT: That's correct.

7 PROF KATZ: Thank you.

8 MS MASILO: Mr Engelbrecht, you told us

9 that the members who reported to you were told that they

10 mustn't do the project, you know, type of work anymore

11 because it's wrong. Did anyone ever explain to you what

12 was wrong and I mean in making your submissions now or your

13 submissions to Exco did you seek to understand what was

14 wrong with the methodology so that going forward you know

15 that your submission that you've made would be considered?

16 MR ENGELBRECHT: No, nobody told me what

17 was wrong with it. The sense I got was it was post the if

18 I can call it the NRG narrative that flowed and there was a

19 perception it seemed to me that we operated outside, if I

20 can say outside the law and outside governance and, you

21 know, people just did what they want. I think that's the

22 sense. I think that's my sense and my impression is that -

23 MR KAHLA: But how did that sense come

24 about that you were operating outside the law?

25 MR ENGELBRECHT: Well, that is what, you

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1 know, is communicated in terms of discussions and

2 impressions that's created with you that, you know, it's

3 these types of units that execute it without strong

4 governance or strong oversight from management.

5 MR KAHLA: So there's no experience in

6 relation to a matter which was under this project type

7 focus that invited for example censure from a court because

8 of conduct that was inconsistent with the law.

9 MR ENGELBRECHT: I'm not aware of - I

10 mean, and as I said I've referenced and named the cases

11 that falls within our area and they, or fell, was handled

12 by my area and they all were either scrutinised up to the

13 Constitutional Court, Supreme Court of Appeal, Tax Courts

14 and are all very well publicised. And it's very difficult

15 to not act correctly or not be censured by courts.

16 Obviously we, you know, we are, we're not saying that we

17 were perfect. People will make mistakes but we executed

18 our cases within a legal framework but we are human. All

19 people are human and we executed cases to the best of our

20 abilities. I think if you look at the case law and some of

21 the judgments that we've, I've referenced you, you will see

22 that we had an effect and we had a positive effect and I

23 think it was confirmed.

24 COMMISSIONER: And you mentioned that you

25 feel that it was after the NRG, what was it called, the

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1 national research group -
 2 MR ENGELBRECHT: Yes.
 3 COMMISSIONER: All that controversy
 4 around that that there was a- people felt that you, these
 5 units shouldn't exist. Did anyone come and talk to you
 6 about that, discuss the law, discuss your operations
 7 etcetera before it was disbanded as it were?
 8 MR ENGELBRECHT: No, Judge, not the
 9 people that took the decision if I can -
 10 COMMISSIONER: Sorry, not who?
 11 MR ENGELBRECHT: Not the people that took
 12 the decisions. You know, within our normal operations I
 13 think my direct manager were satisfied with our operations.
 14 Up to when he left our acting CO was satisfied, our CO of
 15 legal before he left was satisfied by the work that we
 16 executed.
 17 COMMISSIONER: But when you say the
 18 people who made the decisions you mean the people who made
 19 the decision to stop the operations?
 20 MR ENGELBRECHT: Yes, yes, Judge.
 21 COMMISSIONER: There was no interchange
 22 between you and no engagement between you on that.
 23 MR ENGELBRECHT: No, Judge.
 24 COMMISSIONER: Thank you very much. We
 25 appreciate very much you coming here. We know that it can

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1 be difficult for you and we really do appreciate it.
 2 MR COETZEE: The bundles A and B, they
 3 got examples of all the reports and the governance
 4 procedures going up and also the international models to
 5 which he referred. Would it serve any purpose for the
 6 witness just to identify the documents or are you satisfied
 7 with just accepting the bundle?
 8 COMMISSIONER: What do you say, Mr Sioo?
 9 MR SIOU: No, I've done that exercise and
 10 all of these have been identified here.
 11 COMMISSIONER: Thank you. Thank you very
 12 much.
 13 MS STEINBERG: Our next witness is Mr
 14 Nannoolal.
 15 COMMISSIONER: I wonder if your client's
 16 last witness could just remain here. There are things that
 17 I'd like to just talk to Ms Steinberg about but if he could
 18 remain in the vicinity.
 19 MR COETZEE: We'll arrange it, Judge.
 20 COMMISSIONER: Right. Are we ready?
 21 Good morning. Thank you very much for coming to assist us.
 22 Can you just state your names for the record?
 23 MR NANNOOLAL: Dion Nannoolal.
 24 COMMISSIONER: And do you affirm that the
 25 evidence you give will be the truth, the whole truth and

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1 nothing but the truth? If so will you say I do?
 2 DEON NANNOOLAL: I do.
 3 COMMISSIONER: Thank you.
 4 EVIDENCE BY MR NANNOOLAL
 5 MS STEINBERG: Judge, Mr Nannoolal's
 6 evidence relates a lot to the legal counsel division in
 7 SARS. We don't have live people appearing but we have two
 8 affidavits. So with your indulgence I'm going to read some
 9 of their evidence into the record when it becomes relevant
 10 to what he's saying.
 11 COMMISSIONER: Are these identifiable
 12 affidavits or not?
 13 MS STEINBERG: They are identifiable,
 14 yes.
 15 COMMISSIONER: I mean, are they
 16 affidavits we can read and hold in full in due course or
 17 not?
 18 MS STEINBERG: They're not affidavits I
 19 would put in the public domain.
 20 COMMISSIONER: Yes. Well, let me just
 21 make it clear. I mean, even things that are given in
 22 confidence we're entitled to have access to that but I
 23 think we discussed yesterday that we would discuss with you
 24 how we should go about that before we do so. That's really
 25 the rule of the game at the moment.

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1 MS STEINBERG: Yes.
 2 COMMISSIONER: And we'll do the same with
 3 this evidence and if there is undisclosed evidence in the
 4 affidavits we'll decide how we will deal with them.
 5 MS STEINBERG: Yes. Mr Nannoolal, what
 6 is your current position in SARS?
 7 MR NANNOOLAL: I am a senior manager
 8 responsible for high value audit debt collection
 9 nationally.
 10 MS STEINBERG: And what does high value
 11 mean?
 12 MR NANNOOLAL: High value is assessments
 13 raised from investigative audit including the collection of
 14 matters that are extremely high profile, highly sensitive
 15 and that have reputational risk for the organisation.
 16 MS STEINBERG: So were you here while Mr
 17 Engelbrecht was testifying?
 18 MR NANNOOLAL: Yes, I was.
 19 MS STEINBERG: So to go back to that
 20 investigative audit would identify cases that were high
 21 value or of reputational risk and pass them on to your
 22 unit. Is that right?
 23 MR NANNOOLAL: Yes. I worked very
 24 closely with investigative audit so the assessments that
 25 they raise is - if it's of high value or it's highly

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1 sensitive then it's collected by my division.
 2 MS STEINBERG: Would you talk about the
 3 types of industries and taxpayers that you would
 4 investigate?
 5 COMMISSIONER: Is this at the present or
 6 is this in the past you're talking about?
 7 MR NANNOOLAL: It is in the present. The
 8 projects - so let me just give you a bit of background of
 9 the unit. About prior to two years ago I managed high
 10 value debt. It is a new unit that was created. I reported
 11 to an individual called, an executive from Makompa who
 12 reported to Jonas Makwakwa. So prior to two years ago we
 13 dealt with some of the high value assessments that were
 14 raised from investigative audit including projects linked
 15 to the cash and carry industry and other highly sensitive
 16 projects.
 17 About two years ago when the ops model came into
 18 play many of the projects from the old TCI, that's tax and
 19 customs enforcement investigations which was Mr Peter
 20 Engelbrecht's division, had merged with my division. Many
 21 of the staff that he referred to is now reporting to me and
 22 all those projects effectively were handed over to me. If
 23 it was within the audit it continued under investigative
 24 audit. The auditors in those divisions is now reporting
 25 under investigative audit.

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1 So I think that just to let you know that we deal
 2 with all the higher, high profile projects that's currently
 3 existing in SARS. All of them are within my division
 4 including cases and taxpayers that have been reflected in
 5 the media for the last two years. I work very closely with
 6 certain High Court litigation specialists and I can assure
 7 you most of these projects are kept under lock and key.
 8 And the fact is enforcement of these projects has in my
 9 mind a direct impact on SARS' compliance with the illicit
 10 economy, cash industry and it eventually leads to revenue
 11 collection.
 12 PROF KATZ: Sorry, I'm just a bit lost on
 13 - Mr Engelbrecht's unit has been taken over by you now.
 14 MR NANNOOLAL: Well, part of it. The
 15 projects, Mr Engelbrecht had a projects unit, collection
 16 unit and a bit of legal support and those divisions are
 17 reporting to me. There were auditors that have now moved
 18 to investigative audit.
 19 PROF KATZ: What else, forgive my asking,
 20 what else do you do over and above what was brought in from
 21 Mr Engelbrecht?
 22 MR NANNOOLAL: So I have five sub-units.
 23 I have two units that deals with normal collections on high
 24 value debt, national. I have a third unit that deals with
 25 international recoveries. On this unit we collect for

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1 numerous countries around the world where taxpayers are
 2 located in South Africa. The fourth unit is a projects
 3 unit that deals primarily with projects and the fifth unit
 4 deals with litigation and collection on cases that are
 5 extremely sensitive where if we lose matters and has a
 6 reputational risk for SARS DS Unit collects on those.
 7 [10:35] And deals with litigation in that regard. So
 8 there is five units that we're busy with.
 9 COMMISSIONER: Sensitive from what point
 10 of view?
 11 MR NANNOOLAL: Sensitive being matters in
 12 the media currently. To give you an example if we had to
 13 look at a taxpayer that, if you look at the criminal
 14 underworld taxpayers of the nature that is high risk, the
 15 other taxpayers where we are trying to collect that may
 16 indirectly or directly had an influence in a previous
 17 Commissioner resigning. So if we're dealing with the
 18 gangsters in South Africa, the one matter is dealing with a
 19 taxpayer that is considered the fourth most dangerous drug
 20 dealer in the world. So it is, those are the sensitive
 21 ones. We keep those under lock and key and to be honest
 22 with you these matters are only dealt with between
 23 individuals in my team, specific High Court litigation
 24 individuals and currently our chief officer is involved in
 25 some of them, yes.

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1 COMMISSIONER: You know just on this, can
 2 you just tell me a bit about what an investigative audit
 3 is, and I'll tell you why, Ms Steinberg and I, none of my
 4 colleagues have had an opportunity of looking at the tax
 5 affairs of a number of people. And we were struck by one
 6 or two of them. It seemed a bit odd to us, just from what
 7 one knows is in the press etcetera, that these tax affairs
 8 have looked as they did. Now they were said to have been
 9 subject to audit. Now is that an investigative audit? Are
 10 there different kinds of audit because I'd like to talk to
 11 you later about any investigative audit that was conducted
 12 in those cases? But is there audit and investigative audit
 13 are the same thing? When I see on the records audited,
 14 does that mean an investigative audit or is there, is it
 15 called something else if it's one of your investigative
 16 audits as opposed to the things they do to me every now and
 17 again?
 18 MR NANNOOLAL: Ja, I think let me explain
 19 the full process to you so you can get a better
 20 understanding how it works, because I think it is a crucial
 21 part of the testimony, including when you deal with some of
 22 the individual and sensitive taxpayers that I've mentioned.
 23 So essentially there are, I work across three divisions. I
 24 work across BAIT, I work across enforcement and I work
 25 across legal counsel. Within BAIT you have a unit called K

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1 selection. Now K selection ordinarily identifies and risk
 2 profiles taxpayers. If they identify a taxpayer, let's
 3 just say taxpayer X and they find that there's a risk with
 4 this taxpayer, then they will profile and say there's a
 5 risk attached to this individual or taxpayer X. If it is a
 6 standard audit, so I think you mentioned earlier it could
 7 be somebody that submitted return and didn't pay on the
 8 return and we find over three years the same story, then
 9 it's a standard audit that needs to be conducted based on
 10 the risk related to that matter, when they identify this it
 11 goes to a unit called compliance audit. Compliance audit –
 12 can I mention who the executive is? Is that fine?
 13 MS STEINBERG: Yes.
 14 MR NANNOOLAL: Okay, the compliance audit
 15 is the executive is Fareed Khan.
 16 MS STEINBERG: And may I stop you. He
 17 was the witness who was going to testify yesterday to give
 18 us this background but we ran out of time. So we will hear
 19 from him on Friday. Tomorrow, tomorrow yes.
 20 COMMISSIONER: Should I not then pursue
 21 this?
 22 MS STEINBERG: I think he can finish,
 23 should finish.
 24 COMMISSIONER: What I would actually want
 25 to know is this –

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1 MS STEINBERG: I think he should finish.
 2 COMMISSIONER: Is there someone within
 3 SARS who opens the newspaper every morning, reads through
 4 it, sees the most outrageous allegations of billions of
 5 rand going wherever and says I'd better look at this
 6 taxpayer?
 7 MR NANNOOLAL: So let me explain the
 8 process because I'll get to your question. I think your
 9 question is crucial to my testimony. So if it is a
 10 standard audit then it goes to compliance audit. Once it
 11 becomes more complex and in an audit they call it either a
 12 limited scope or a full scope audit. During the full scope
 13 audit – limited scope audit is the run of the mill audit
 14 and is dealt with by compliance audit. Where a more detail
 15 audit needs to be done it then goes to investigative audit.
 16 COMMISSIONER: Is that your section?
 17 MR NANNOOLAL: No that's not my section,
 18 that is managed by a group executive and she manages the
 19 whole of investigative audit unit nationally. So there is
 20 specific rules on what compliance audit deals with and what
 21 investigative audit deals with.
 22 COMMISSIONER: Is yours compliance audit
 23 then, do I understand?
 24 MR NANNOOLAL: No, no, mine is
 25 investigate the more complex matters and once they raise

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1 the audit, and if it is high value then it comes to my unit
 2 and my unit is within the debt management space, not within
 3 the audit space. However two years ago or since 2013 I
 4 worked in investigative audit. When then ops model came
 5 into place I moved out of investigative audit into the debt
 6 division.
 7 COMMISSIONER: Sorry can I just stop you
 8 there?
 9 MR NANNOOLAL: Yes.
 10 COMMISSIONER: So these cases that came
 11 from Mr Engelbrecht, did they come to you in investigative
 12 audit or did they come to you in debt collection?
 13 MR NANNOOLAL: In debt collection, yes.
 14 So essentially I collect on many of these projects and then
 15 if I need legal support, then I, then I've got a legal
 16 support unit in my unit that deals with reputational risk
 17 cases but if I need external attorneys or external support
 18 then I would request the assistance of legal counsel.
 19 COMMISSIONER: So I'm sorry to carry on,
 20 on this but SARS is a very complex place for me. So do I
 21 understand that your unit at the moment is essentially a
 22 debt collector on sensitive and high profile cases, is
 23 that, would that be a fair summary?
 24 MR NANNOOLAL: Including high value audit
 25 assessments.

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1 COMMISSIONER: Yes.
 2 MR NANNOOLAL: So everything over a
 3 million rand so the value or total value of the assessments
 4 that aren't in my control is in the region of R45 billion.
 5 What is important in terms of what your question is, I
 6 don't think your issue is related to any of the audits, I
 7 think your issue is related to case selection because you
 8 are focusing on, if somebody reads the newspapers, why
 9 aren't we auditing these individuals? Because we can see a
 10 risk. And I think your issue is very valid. However one
 11 thing to note is that this case selection, unit falls
 12 within the BAIT area.
 13 COMMISSIONER: Ja. Well, sorry, carry
 14 on?
 15 MR NANNOOLAL: And then it is very
 16 critical because remember for me to deal with these
 17 matters, if it is a project related issue - and I'll give
 18 you examples at a later stage – that case selection deals
 19 with matters on a one by one basis, which is a very
 20 critical problem we've got.
 21 So if I had to look at a project that we, I can
 22 talk about, let's just say it's project B – I don't know if
 23 I'm jumping the gun but I'll give you an example. Project
 24 B. Project B that we're busy with is dealing with the game
 25 industry. It is also dealing with the illicit economy and

1 is also dealing with rhino poaching. Okay, project B is a
 2 well-known project in currently in the country because a
 3 few of the individuals are currently, have been prosecuted
 4 and as far as I know Interpol is involved. But essentially
 5 if you look at project B you're looking at about 20 or 30
 6 cases or taxpayers. Now the way the process works right
 7 now – and this is one of the key concerns or problems with
 8 the current ops model, or with the Bain report – is that we
 9 have adopted a very business as usual approach, which is a
 10 massive problem we've got. Now the business as usual
 11 approach means, would work in an ideal environment. This
 12 is not an ideal environment. So there is limited focus on
 13 specialised areas. So when I look at project B, ordinarily
 14 if you're looking at about 20 or 30 taxpayers, ordinarily
 15 you should be dealing with this in a project sphere.
 16 However, currently case selection looks at the matters one
 17 by one. So when they identify it as a risk, they open the
 18 papers and they say there's taxpayer X, they will audit
 19 taxpayer S. And then that will go through the run of the
 20 mill process until it comes to us possibly a year and a
 21 half to two years later. We identify and say there's
 22 taxpayer X. Another matter comes through six months later
 23 and then we link up these two matters and we say but wait a
 24 minute, there's a problem here. This is linked to rhino
 25 poaching. So we should be dealing with the whole project.

1 But now there's still 18 more cases that should have been
 2 looked at and the problem is now for me to go back and
 3 look, bring those 18 matters, which is another year and a
 4 half later, it's not worth it because if I had to bring a
 5 preservation order I'm not going to bring it, it doesn't
 6 make sense to bring it on two taxpayers. I've got to
 7 actually bring it on the whole group, and this is one of
 8 the risks that we've got right now. The old TCI unit
 9 fortunately had a unit called PIE. It's preliminary
 10 investigations enquiries and they will pool matters
 11 together and that his one of the biggest benefits that
 12 existed then.
 13 MS STEINBERG: Can I stop you. Let's
 14 make a clean clear differentiation between pre-operating,
 15 new operating model and post. You're now talking about how
 16 it worked in the past where case selection happened in
 17 enforcement and not in BAIT. Is that right?
 18 MR NANNOOLAL: Yes. There was a case
 19 selection division but with the old model the PIE unit will
 20 pull the cases together, and I think Pieter Engelbrecht had
 21 spoken about it. They will pool it and they deal with it
 22 in one go. Right now for me to work across three
 23 divisions, four sub-units is a massive problem. And I can
 24 assure you in the last two years, and you'll see based on
 25 my testimony, I've had to trample on many people's toes,

1 many, many people's toes to get work done. And the problem
 2 is we are very focused on a business as usual approach, we
 3 are very focused on a KPI driven approach and this KPI
 4 driven approach is based on business as usual and as long
 5 as that exists we have a serious problem in dealing with,
 6 hypothetically as the Judge mentioned, the elicit economy.
 7 MS STEINBERG: Now when you say business
 8 as usual is that the same as when I talk about the factory?
 9 MR NANNOOLAL: Yes. Exactly.
 10 MS STEINBERG: So we're talking about the
 11 new operating model and I want to clarify something and
 12 check it with you, that there's a certain irony here
 13 because in the Bain diagnostic one of the key problems that
 14 was identified was a duplication. So you had a national
 15 project team, you had a centralised project team, you have
 16 a TCI. And because they were end to end units they had
 17 their own auditors, they had their own account managers,
 18 they had their own legal people allocated to them and
 19 that's how you worked as a project and that's how you
 20 worked efficiently and coherently. Now that was understood
 21 to be duplication and the solution was no, no, you put all
 22 lawyers together, you put all auditors together, you put
 23 all account managers together and by the way you put them
 24 all in BAIT. Now while that notionally did away with
 25 duplication what it did was fragment your teams so that you

1 now don't get that basket of cases and you don't have one
 2 team looking at that basket of cases but now you have to
 3 work across four divisions in order to get information and
 4 get approvals, is that right?
 5 MR NANNOOLAL: Yes that's correct. It's
 6 created a level of silos and one of the issues that I've
 7 raised with the ops model individuals at that time, yes the
 8 ops model created this level of silos but at the same time
 9 even if you create silos, you need to have the right
 10 leadership. And I know my testimony is going to talk about
 11 the leadership issues but you need to have the right
 12 leadership, leadership that is strategically capable of
 13 running the organisation, and leadership that is
 14 supportive. And when we deal with matters of this nature
 15 and the projects that we are busy with, if these two things
 16 don't work, then it has a huge impact on compliance in
 17 South Africa.
 18 MS STEINBERG: Before, and we want to
 19 hear extensively on that but before you do, I want to read
 20 something in. This is an affidavit of someone who actually
 21 works in your unit and I think it graphically shows the
 22 problem with these silos. And before we get to leadership,
 23 there are two problems here that you're saying. The one is
 24 the actual structure of the organisation, the other is the
 25 people who manage that structure. But just focusing on the

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1 structure for one moment. She says "due to debt management
 2 not having its own legal budget and due to the legal
 3 division being in a different silo approvals for all legal
 4 actions must follow the proper escalation channels and
 5 these are they. From Mr Nannoolal to the executive debt
 6 management, then to the group executive debt management and
 7 finally to the CO enforcement. It then goes to the
 8 executive legal delivery, group executive, legal delivery
 9 and finally to the CO legal." She mentions a particular
 10 matter, matter X which was urgent which took eight months
 11 to get approval for instituting a sequestration action.
 12 She says, "This put the debt management in a row boat while
 13 the taxpayer was in a speed boat." Now that's legal,
 14 right?
 15 She then says, "But we also have to deal with
 16 auditors." What is the process we go through in auditors?
 17 She says, "Auditors are allocated to matters in a separate
 18 division." So now you've done your legal but you need
 19 auditing help. "Based on the internal protocol for
 20 escalations approval for actions by auditors has in my
 21 understanding to be escalated to the group executive debt
 22 management who in turn will discuss with the group
 23 executive audit. Instructions are then given from the
 24 executive audit to the senior manager audit. This has an
 25 impact on turnaround time, similar to legal but not quite

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1 as extensive." Is that right?
 2 MR NANNOOLAL: Yes that's correct. I
 3 think when I go through my testimony you'll get more
 4 factual circumstances of the extent of the problem, but
 5 that hits the nail on the head. Just to give you a high
 6 level view. In the past we could have brought a
 7 preservation order on a group of companies with maybe four
 8 or five signatures or six. Now we need anything between
 9 eight and 12 signatures. So I can assure you we've lost,
 10 and I'll show you a submission, we have lost possibly
 11 hundreds of millions of rands over the last few years
 12 because of these inefficiencies.
 13 MS STEINBERG: Shall we go back to the
 14 structure of your testimony so you can go through it? I
 15 think we've looked at your team's responsibilities. You
 16 want to talk about working with High Court litigation
 17 specialists and would you be careful to differentiate the
 18 before the new operating model and the after?
 19 MR NANNOOLAL: Okay. One of the biggest
 20 issues we've had, I've had, and my team, is I work very
 21 closely with High Court litigation specialists and these
 22 are certain individuals who are some of the most
 23 experienced lawyers in SARS. And the truth is, and I need
 24 to phrase it that we keep these matters under, really under
 25 lock and key. But over the last two years we've had

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1 massive problems with the legal counsel division. I can
 2 say that over the last 18 months we've had a massive
 3 problem of delayed payments to attorneys and counsels.
 4 I have listed around five attorneys and counsels
 5 or external legal service providers who have effectively
 6 requested to down tools on many of our projects, and I'll
 7 give you examples. I'm not going to refer to the actual
 8 attachments but I can, but it is listed here. One curator
 9 had requested to withdraw his hold on the preservation
 10 order on a project dealing with the cash and carry
 11 industry. That project was valued at around R1.8 billion.
 12 The curator after giving a notice of two to three months on
 13 a specific day had said effectively today I'm putting, I'm
 14 withdrawing my hold on the preservation order and the
 15 preservation of the assets. Another matter an attorney had
 16 requested to withdraw a matter in court the following week
 17 because he has not been paid. Some of these attorneys have
 18 not been paid for up to two or three years.
 19 PROF KATZ: Sorry, forgive my
 20 interrupting. What has this got to do with the operating
 21 model?
 22 MR NANNOOLAL: Because these are some of
 23 the inefficiencies that have been created from the
 24 operating model.
 25 [10:55] PROF KATZ: What inefficiency, how does

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1 it come about this?
 2 MR NANNOOLAL: Well these issues are
 3 relating to leadership issues that have come after the
 4 operating model, the leaders that have been appointed where
 5 there has been poor implementation of general management
 6 and operations and it has a huge impact on us managing
 7 projects because then I had to move away from the projects
 8 and deal with all these inefficiencies that existed.
 9 PROF KATZ: Why is this inherent in the
 10 operating model?
 11 MR NANNOOLAL: The non-payment, it should
 12 not be. But it has been.
 13 MR KAHLA: I'm almost just following up
 14 on Professor Katz's questioning. Is this an operating
 15 model issue, it is an issue of having people who are not
 16 fit for purpose doing the work?
 17 MR NANNOOLAL: Yes.
 18 COMMISSIONER: It's the second, it's not
 19 an operating model problem it's just the execution.
 20 MR NANNOOLAL: It is the execution. But
 21 bear in mind that this has a massive influence -
 22 COMMISSIONER: I understand.
 23 MR NANNOOLAL: On the projects and
 24 executions.
 25 COMMISSIONER: I understand that poor

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1 management has a big effect on any organisation. But I
 2 think we want to stay with the operating model for a moment
 3 rather than the execution and the management of that
 4 operating model, if we may.
 5 MR NANNOOLAL: Okay.
 6 PROF KATZ: But this isn't inherent in
 7 the model, it's the method by which it's been, is that
 8 right? It's not inherent in the model per se?
 9 MR NANNOOLAL: Well bear in mind that if
 10 we were to look at, I'm just trying to figure out legal
 11 counsel existed on its own. You see in the past we would
 12 get, if there was approval requested on attorney, you would
 13 request, you would get four to six signatures like I
 14 mentioned and then when you received the invoices you had
 15 unit, individuals in your unit that could process these
 16 invoices and deal with them quickly. Now this is separate
 17 to the, to what existed before where these invoices are now
 18 dealt with by separate unit legal counsel. So already
 19 you've got a problem because it used to be centralised
 20 where you dealt with the project, you receive the invoices
 21 and you could take accountability and deal with it. Now
 22 you're dealing with invoices that are coming into a
 23 separate division, you are not aware of it, they're not
 24 getting paid and then you get a letter from the attorney
 25 saying sorry we are not dealing with this project anymore,

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1 we are withdrawing our hold on the preservation order. So
 2 you've just got to deal with it.
 3 COMMISSIONER: You're saying it's a model
 4 issue not an implementation issue?
 5 MS STEINBERG: He's saying both as I -
 6 MR NANNOOLAL: I think it's both. But
 7 it's very -
 8 MR KAHLA: Some of my struggle with this
 9 is you can always create inefficiencies, even in a simple
 10 model. You could choose to have ten people review
 11 something when you could have had three. What I'm trying
 12 to get to is that is that inherent in the model that you've
 13 got to do that or people have elected to have syndicated
 14 decision making accountability which is delaying decision
 15 making and therefore resulting in the challenges that
 16 you've indicated?
 17 MR NANNOOLAL: Ja, I think it's the
 18 latter that you're talking about. So it's not really
 19 inherent in the model, it's an effect of the model because
 20 the accountability has now moved to legal counsel and as
 21 long as that accountability is there and we have no
 22 influence then it becomes a problem.
 23 COMMISSIONER: It's again a consequence
 24 of this fragmentation?
 25 MR NANNOOLAL: Yes.

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1 COMMISSIONER: You're talking about. So
 2 I think we should stick to the principle as you've told us
 3 that fragmentation can have many effects. The problem with
 4 getting audit, sending things off to audit, problems to
 5 getting to court, because you've got to go through legal
 6 problems and getting payment because you've got to go
 7 through someone else and so forth, but it's all a
 8 fragmentation problem.
 9 MR NANNOOLAL: Yes, it is all a
 10 fragmentation problem.
 11 MS STEINBERG: So again you had an end to
 12 end unit that could make its decisions, had a budget and
 13 had the same priorities and now in the name of doing away
 14 with duplication you no longer have that and you have a
 15 budget and authority sitting elsewhere, is that correct?
 16 MR NANNOOLAL: Yes, so -
 17 COMMISSIONER: But I think, sorry, carry
 18 on.
 19 MR NANNOOLAL: Ja, so we had some
 20 influence and we had some level of authority where we can
 21 make sure that things were getting done because of the
 22 fragmented approach like you mentioned, it's -
 23 COMMISSIONER: But I think another thing
 24 that is, and tell me if I'm wrong, is as Ms Steinberg says
 25 everything's gone into the factory mode as it were. In

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1 other words these are, as you say business as usual.
 2 MR NANNOOLAL: Yes.
 3 COMMISSIONER: Including payment and so
 4 forth but these things were not necessarily business as
 5 business before they were regarded as special and must
 6 attend to them but now they just go into all the units in
 7 which you've been fragmented and they just dealt with those
 8 as the factory deals with ordinary things, is that fair or
 9 not?
 10 MR NANNOOLAL: It's fair, yes.
 11 MS STEINBERG: Okay. I think on the
 12 basis of what the Judge and his assistants have said, you
 13 have made written submissions about the problem you face in
 14 the payment of external attorneys and counsel. You've also
 15 highlighted problems in the appointment of attorneys and
 16 counsel and that does, it has something to do with the
 17 structure because who has the authority to appoint but I'm
 18 not sure if that's something you want to hear about today.
 19 COMMISSIONER: I don't, I don't think so,
 20 Ms Steinberg. Is this about the end because I've got a few
 21 questions -
 22 MS STEINBERG: No, it's not about the
 23 end. I think what we should look at then, which does
 24 relate to structure is your relationship with the legal
 25 division.

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1 MR NANNOOLAL: Yes. I think, so let me
 2 talk about the High Court litigation unit and as I
 3 mentioned the High Court litigation unit is specialised and
 4 has some of the most experienced attorneys and they provide
 5 special assistance to us. But many months ago the High
 6 Court litigation unit was disbanded. Now if you consider
 7 the scenario where these individuals work extremely close
 8 with us on projects, so close that at some point, on some
 9 of the individual projects not even any of the executives
 10 are aware of it and there's that level of trust because of
 11 the type of work that we do and we're talking about really
 12 serious stuff where we're talking money laundering, elicit
 13 economy and really the criminal underworlds. This
 14 disbandment, well when they were disbanded this was never
 15 communicated to any of us and in some way we were never
 16 told of their intention to do so, they were disbanded and
 17 report into regional structures. Now if our matters are
 18 dealt with, with lock and key now you have these
 19 individuals going to regional structures the possibility of
 20 access to critical information on each tax payer can leak
 21 to third parties, can leak to the media, can leak to
 22 various entities. It is a concern why they were actually
 23 disbanded and no communication was sought and as far as I
 24 know, I tried to escalate it, it went to the Commissioner,
 25 or the acting Commissioner currently and as far as I know

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1 none, no one was aware, I don't know whether it went to
 2 Exco either for approval. But it remains a critical
 3 concern that such a specialised unit who provides support
 4 on sensitive enforcement cases can now just get disbanded
 5 on its own. So that was one of the -
 6 COMMISSIONER: When did that occur?
 7 MR NANNOOLAL: It happened around, about
 8 four, five months ago and I know there's discussions. I've
 9 also spoken to the acting Commissioner and this remains a
 10 critical concern for SARS at this point in time as to why
 11 and how this was done without anybody's knowledge.
 12 MS STEINBERG: Let me stop you there. We
 13 do have an affidavit from the person who was in charge of
 14 the High Court litigation unit. She says something
 15 slightly different. She says it wasn't actually the unit
 16 that was dissolved as much as her job, they no longer had a
 17 head. Those people still exist in the organisation but in
 18 an uncoordinated way. She says there was never a formal
 19 communication as you said or a decision. She said they
 20 found out that she no longer managed these people because
 21 they just saw that, from various systems that they now
 22 reported to somebody else. Nobody knows how the decision
 23 was made to dissolve her job and it certainly was never
 24 communicated to the people involved, she says.
 25 PROF KATZ: And the lady's whose job

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1 dissolved, what is she currently doing?
 2 MS STEINBERG: She's a specialist.
 3 MR KAHLA: Just some clarity before you
 4 proceed on this questioning, Ms Steinberg, on the
 5 understanding that the head of the unit is no longer there
 6 but does that still operate as a unit or is, in the case of
 7 these lawyers having been slotted elsewhere and perhaps to
 8 continue with matters that they had before but no longer as
 9 a unit. Are they still a unit but without a head or they
 10 no longer operate as a unit?
 11 MS STEINBERG: They no longer operate -
 12 MR NANNOOLAL: That's a good word
 13 slotted. But they're no longer a unit. They report to
 14 regional structure so they report to a manager, throughout
 15 the country and access to them requires me to go via
 16 executives and legal counsel. That is a massive problem
 17 for me and I've listed a few matters on this that says I'm
 18 getting matters, I'm getting legal consultants who are not
 19 experienced to deal with the complex type of projects that
 20 we do and the problem is it has, it is direct impact on the
 21 ops model. Not only because of fragmentation but because
 22 in the past we could control who was appointed. If I had
 23 to do a memo requesting a preservation order, it went to
 24 the individual that you are talking about. She could
 25 allocate a High Court litigation specialist immediately and

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1 we ran with the case immediately. Now we, we have no
 2 control whatsoever as to how it's done.
 3 It is a, and I can tell you now, many of them
 4 are, some of them are just doing menial work and these are
 5 experienced, experienced attorneys and I must tell you to
 6 deal with the projects that we deal with you need to have
 7 an appetite for it. You need to be skilled, you need to be
 8 able to take risks because that's what it is. So to give
 9 it to a, just a normal consultant who has never been
 10 exposed to any of this and I have listed a judgment that
 11 came out in May and I can mention it because it's public,
 12 it's the Red Ants judgment. The Red Ants judgment has had
 13 a huge implication on SARS as an organisation. The Red
 14 Ants judgment, can I mention the value, but it's in the
 15 hundreds of millions. It was a poor submission to the
 16 courts. Worse is that I had to authorise a tax clearance
 17 certificate to a non-compliant tax payer.
 18 PROF KATZ: What does that mean, sorry?
 19 How do you authorise a compliance to a non-compliance
 20 person?
 21 MR NANNOOLAL: It was an instruction from
 22 the judge because of the submission made by legal counsel
 23 in that matter. We were never involved. We've got a
 24 specialised unit that deals with highly complex cases, the
 25 matter just went, it was presented, the judge authorised

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1 that we needed to issue a tax clearance certificate on a
 2 non-compliant tax payer and the risk is that I've had
 3 attorneys that now marketed that judgment saying wait a
 4 minute, if you are a non-compliant tax payer come to me and
 5 I will get you a tax clearance certificate. I've had -
 6 PROF KATZ: I'm sorry and the court was
 7 aware there was a non-compliant?
 8 MR NANNOOLAL: Yes, but it was the
 9 submission that we made to court that is the problem and we
 10 -
 11 PROF KATZ: Are you saying that this is
 12 poor counsel, inexperienced counsel or whatever?
 13 MR NANNOOLAL: Yes, our legal -
 14 COMMISSIONER: The people who presented
 15 the case badly?
 16 MR NANNOOLAL: Our legal counsel division
 17 as well as the counsel that was appointed.
 18 COMMISSIONER: No I understand. This is
 19 now, it's not a structural problem, it's because you've got
 20 down to the region and they appoint the person who collects
 21 debts for them and so forth to come and do what is actually
 22 a very difficult job, is that fair?
 23 MR NANNOOLAL: Well yes, but remember
 24 because of the way things operate in terms of the new model
 25 -

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1 COMMISSIONER: Yes, no -
 2 MR NANNOOLAL: We've got no control over
 3 how it's been submitted.
 4 COMMISSIONER: No I understand that.
 5 It's again the fragmented, fragmentation problem and you
 6 lose control of all of these things.
 7 MR NANNOOLAL: Yes.
 8 COMMISSIONER: And if you don't them
 9 together no one knows what's happening and so forth. But I
 10 want to, you see again am I right, Ms Steinberg this is not
 11 a consequence of the operating model. The High Court unit
 12 still exists in the organogram but it's just no one's
 13 there, is that the point?
 14 MS STEINBERG: Ja. The affidavit I have
 15 says that in the old days we existed as a unit, one of the,
 16 one of our functions was to support enforcement. They had
 17 other functions which -
 18 COMMISSIONER: Just -
 19 MS STEINBERG: I'm getting there. I'm
 20 answering your question. I need to read some of this
 21 evidence in because we don't have a legal person coming.
 22 COMMISSIONER: Is the deponent not coming
 23 to tell us?
 24 MS STEINBERG: No she's not. She's away
 25 or she might have come and it's just important part of the

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1 jigsaw puzzle.
 2 COMMISSIONER: Yes.
 3 MS STEINBERG: She said we had a unit
 4 that supported enforcement and supported the large business
 5 centre because these are where most of the complex tax
 6 cases happen and she said in particular with the advent of
 7 the new Tax Administration Act there were novel challenges
 8 and their job was to get clarity and precedent as well as
 9 to support people like this. She says the operating model
 10 while not dissolving the unit, dissolved my job as senior
 11 manager in October 2015 right.
 12 COMMISSIONER: Did she just get the
 13 letter saying your job's gone and you must -
 14 MS STEINBERG: She never got a letter.
 15 COMMISSIONER: Well she was just told
 16 that tomorrow you're a specialist?
 17 MS STEINBERG: She, can I -
 18 COMMISSIONER: Sorry, Ms Steinberg.
 19 MS STEINBERG: She said this left the
 20 unit without a manager and it also dissolved the group
 21 executive position occupied by Mr Bernard Mofokeng, you'll
 22 remember he testified at the last hearing.
 23 COMMISSIONER: Yes.
 24 MS STEINBERG: And he told us his job
 25 vanished, he left and then her job vanished and he spoke

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1 about the incident with Ms Kelly Anne Elsie being, that was
 2 our witness, right. So this was the person involved there
 3 right. So to continue the story Judge, "at no time did the
 4 operating model team engage with any member of our unit nor
 5 with Mr Mofokeng, nor with Mr Kosie Louw who was the CO
 6 responsible for legal. With the dissolution of my job my
 7 unit was in disarray and we were all unsure of our
 8 positions as well as our future functioning." A year later
 9 July 2016 she was told by management to continue with her
 10 previous role until they could introduce a new structure.
 11 "It was only in January 2017 that we noticed that our
 12 reporting lines on the SAP system had changed and then we
 13 realised management had introduced a new structure. They
 14 created three interim managers from the four senior
 15 specialists, I wasn't one of them and the situation
 16 continued till May 2018 where they've begun to change it."
 17 So there isn't a straight forward answer as to what
 18 happened. It was messy. I think Bain will tell us, it
 19 seems to me they might have been involved right in the
 20 beginning but long after they had gone things continued to
 21 happen. So we must clarify with Bain what exactly they
 22 recommended and what they didn't. It's not clear.
 23 COMMISSIONER: Yes. Now may I ask you a
 24 question, Ms Steinberg or shall I wait until you're
 25 finished?

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1 MS STEINBERG: Would you? She then says
 2 we became "a shadow of our former selves" and no one in
 3 executive or group legal engages us on substance of our
 4 work. They impose more and more administrative burdens on
 5 us. She says that, "I was then required to report a
 6 regional senior manager who doesn't have a legal
 7 qualification. The change in our reporting lines is an
 8 attempt to regionalise our functions," as this witness was
 9 saying, "and break up the unit. The previous unit is now
 10 reporting to different management who have different
 11 functions and it's clear that an attempt has been made to
 12 break up the unit." Does that answer your question?
 13 COMMISSIONER: Well it answers other
 14 things but not my question. Can I now ask it?
 15 MS STEINBERG: Please.
 16 COMMISSIONER: When you talk about
 17 dissolved, that my position was dissolved, you mean it no
 18 longer existed on the organogram? The position was there
 19 but they said you're not going to occupy it anymore?
 20 MS STEINBERG: I can't answer that.
 21 COMMISSIONER: That's fine.
 22 MR NANNOOLAL: I think it's difficult but
 23 all I know is that the staff were just –
 24 COMMISSIONER: Scattered all over the
 25 place.

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1 MR NANNOOLAL: Decentralised, so whether
 2 there is a shell or not I am not sure either.
 3 [11:15] MR KAHLA: Just a quick follow up, I
 4 mean, you dealt with the issues of fees not paid when
 5 they're supposed to be paid including the instance of the
 6 one curator who decided that he would remove the hold on
 7 the preservation of some amount, about a billion rand,
 8 after delays that were inordinate. What happened of that?
 9 Was there ever any escalation of that problem, an attempt
 10 to have a new mechanism for this decision making in light
 11 of those challenges?
 12 MR NANNOOLAL: I think that was one of
 13 the issues that I needed to mention. I have attached
 14 minutes of meetings. For 18 months I - unfortunately I
 15 don't have hair because I would've been pulling my hair out
 16 throughout the process but essentially I've had
 17 escalations. I've escalated - our chief officer,
 18 enforcement has been escalating this matter. We had
 19 meetings with executives, group executives, senior
 20 management and the head of legal and we made it very clear
 21 - for 18 months this happened.
 22 We made it very clear that if you do not pay and
 23 it gets into the newspapers that you have not paid
 24 attorneys and counsels for up to two or three years it is
 25 going to be disastrous for the reputation of SARS. Very

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1 little was done even after those escalations, after those
 2 meetings and as I said I've attached the minutes of
 3 meetings. It was only when the newspaper article came out
 4 on the 29th of April this year did we see some movement.
 5 There were numerous excuses in the past where the blame was
 6 placed on finance, resource issue, but there's no - it's
 7 inexcusable that for 18 months we are sitting with the same
 8 problem over and over again.
 9 PROF KATZ: Can I, sorry, just - what is
 10 your reporting structure, the whole organisation or from
 11 you where do you report to, where do they - how does the
 12 whole hierarchy work?
 13 MR NANNOOLAL: Currently I report to the
 14 group executive of debt management but indirectly also to
 15 the chief officer, enforcement because of the sensitivity
 16 around matters.
 17 PROF KATZ: And then where does it go
 18 from there?
 19 MR NANNOOLAL: The chief officer reports
 20 to the Commissioner, the acting Commissioner.
 21 PROF KATZ: No Exco interposed.
 22 MR NANNOOLAL: No?
 23 PROF KATZ: Is Exco -
 24 COMMISSIONER: The chief officer is Exco.
 25 MR NANNOOLAL: Chief officer is Exco.

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1 PROF KATZ: Qua Exco?
 2 MR NANNOOLAL: Yes, so I report to the
 3 group executive of debt management who reports to the chief
 4 officer, enforcement and the acting Commissioner.
 5 PROF KATZ: So chief officers make up
 6 Exco as I understand it.
 7 MR NANNOOLAL: Yes.
 8 PROF KATZ: So Exco is aware of these
 9 concerns.
 10 MR NANNOOLAL: Exco, well, the chief
 11 officer is Exco. She was aware. She tried to resolve it.
 12 It didn't work because we still had the problems. The
 13 truth of the matter is Exco should've been aware because
 14 the article came out in the newspaper.
 15 PROF KATZ: No, forget about that.
 16 Generally your whole operational structure.
 17 MR NANNOOLAL: Yes.
 18 PROF KATZ: Any concerns you have would
 19 go, be escalated to Exco.
 20 MR NANNOOLAL: Yes, yes, Exco would've
 21 been aware then.
 22 COMMISSIONER: Well, let me just clarify
 23 that. When you say escalated to Exco did you address it to
 24 Exco as Exco or simply to your chief officer who is a
 25 member of Exco?

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1 MR NANNOOLAL: Yes, the latter. I
 2 escalated to the chief officer of enforcement.
 3 COMMISSIONER: Did it ever get to the
 4 Commissioner as far as you know? Did it escalate that far?
 5 MR NANNOOLAL: At that time when it was
 6 escalated, because I met with - I escalated to the chief
 7 officer, enforcement and a meeting was held in, if I recall
 8 November 2017 and then in February 2018. And around that
 9 time, February 2018, March is when the change in the
 10 commissioners occurred. But this issue has been happening
 11 for, since I think 2016 of non-payments and -
 12 MR KAHLA: So even after then, I think
 13 you said 29th of April which seems to have jolted people
 14 into action, we've now gone back, you've now gone back to
 15 this delays in payments of service providers.
 16 MR NANNOOLAL: There has been some
 17 improvement as far as I know which is great but it should
 18 not take an article in the newspapers for something like
 19 this to happen.
 20 PROF KATZ: Sorry, I don't want to
 21 belabour this. Leave aside this newspaper and that non-
 22 payment. From an organisational structure point of view
 23 the concerns in your unit go to your chief operating
 24 officer.
 25 MR NANNOOLAL: Yes.

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1 PROF KATZ: Do you know whether all of
 2 these concerns and the fragmentation worries is a matter
 3 that Exco is addressing or not addressing?
 4 MR NANNOOLAL: All these issues were
 5 escalated to the chief officer who has escalated it with
 6 the acting Commissioner. I've also met with the acting
 7 Commissioner and raised these issues with him. As far as I
 8 know he's also raised it with the chief officer of legal.
 9 So those issues have been raised, yes.
 10 COMMISSIONER: Ms Steinberg, should we
 11 maybe have a short break do you think?
 12 MS STEINBERG: I think we're almost
 13 finished. Am I right? Are we almost finished or should we
 14 take a break, Mr -
 15 MR NANNOOLAL: I think maybe take a break
 16 if it's okay.
 17 MS STEINBERG: Okay.
 18 COMMISSIONER: 15 minutes. What's the
 19 time?
 20 MS STEINBERG: 15 minutes. It's 20 past.
 21 COMMISSIONER: 20 past what hour?
 22 MS STEINBERG: 20 past 11.
 23 [INQUIRY ADJOURNS INQUIRY RESUMES]
 24 [11:43] MS STEINBERG: You wanted to speak
 25 specifically about the delays in the administrative

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1 process. Would you tell us briefly about that?
 2 MR NANNOOLAL: Yes, I just need to alert
 3 because I think it's important to understand that, as a
 4 judge that there's a fragmented approach but I need us to
 5 understand the implication on SARS, on the economy and on
 6 non-compliant taxpayers. It's very critical that some or a
 7 few of the examples that I've mentioned needs to come to
 8 light. I've listed around four of them.
 9 One project, Project W, which is valued in the
 10 region of R450 million, it took around a year, almost a
 11 year to get approval to do a sequestration on the holding
 12 company. In that year SARS lost in the region of about R50
 13 million that could've been recovered had we received the
 14 approval on time. One of the issues is because we work
 15 across certain divisions memos on moving on a sequestration
 16 or preservation gets lost and that is loss of R50 million
 17 to the fiscus, one example.
 18 The other example is linked to a well-known
 19 celebrity in South Africa. We needed to move to
 20 sequester the celebrity, received very odd responses from
 21 legal counsel which prevented us from moving with the
 22 sequestration. If that sequestration was granted last year
 23 it would've had a huge impact on the celebrity industry
 24 because what we identified is many celebrities have the
 25 same modus operandi of how to be non-compliant. So that

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1 alone if we did undertake those actions would've brought in
 2 more revenue to the fiscus.
 3 MS STEINBERG: So what stopped you? What
 4 was the hindrance?
 5 COMMISSIONER: Where is the blockage?
 6 Sorry, if I may say, where precisely is the blockage?
 7 MR NANNOOLAL: The blockage exists right
 8 now with our legal counsel division.
 9 COMMISSIONER: Who's head of the - sorry,
 10 okay. Legal counsel division.
 11 MR NANNOOLAL: And it effectively means
 12 that - and if I went to some of the issues that I mentioned
 13 here it's the delayed process to get eight to 12
 14 signatures. It is the fact that there is no direct
 15 communication between us as enforcement and us as the
 16 client with the heads of legal, with the executives and
 17 heads of legal counsel. So when we need experienced
 18 counsels and experienced attorneys to deal with our matters
 19 this fragmented approach has impacted us severely and in
 20 essence we are - it affects and it detracts our
 21 enforcement capabilities which affects and directly affects
 22 compliance within SARS.
 23 I've mentioned here Project B that as I said
 24 links to the game industry. We needed to do a tax inquiry
 25 on the game industry. That approval is outstanding for,

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1 since last year. There's another matter that's dealing,
 2 taxpayer J, deals with the illicit economy and I think
 3 you've mentioned the illicit economy earlier but we are
 4 still waiting since early April for approval on this
 5 taxpayer where we needed to move on sequestration of the
 6 taxpayer. Now -
 7 PROF KATZ: Let me make one observation,
 8 sorry.
 9 MR NANNOOLAL: Ja.
 10 PROF KATZ: Even with fragmentation, I
 11 understand the problems of fragmentation, but this
 12 should've occur on any version.
 13 MR NANNOOLAL: I accept that and -
 14 PROF KATZ: All this time period to get
 15 an approval, months.
 16 MR NANNOOLAL: So you see that's the
 17 problem. For the last 18 months this is the hiccups,
 18 massive hiccups we've had. We're hitting our heads on a
 19 regular basis. So it's - and when I mentioned originally
 20 it's not only about the fragmentation. It's also
 21 leadership issues that, where we have massive problems.
 22 Now, if you want to talk about SARS losing revenue in the
 23 last two to three years these are examples where we
 24 could've exceeded some of our targets.
 25 MR KAHLA: I suppose we've not been able

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1 to get an understanding of - we know of this leadership
 2 problem that has been identified because it is a leadership
 3 problem if you take so long to determine things. What I'm
 4 still not getting is you've been raising this for a number
 5 of times. Nobody has come up to say we need to change the
 6 way we do things within the leadership. I'm talking about
 7 now whether the chief officer, legal or the chief officer,
 8 enforcement - has nobody been able to come up with a
 9 solution to this? For example cutting down those
 10 signatures that were 12 maybe to three or five?
 11 MR NANNOOLAL: I can assure you and on
 12 the next matter that I'm going to talk about our chief
 13 officer, enforcement has tried her best. She has, since
 14 she was appointed last year she's tried every avenue and
 15 one of the original, one of the matters I mentioned
 16 originally is that this should ordinarily be a Commissioner
 17 problem.
 18 COMMISSIONER: Or at least an Exco
 19 problem.
 20 MR NANNOOLAL: And I can -
 21 COMMISSIONER: It's an Exco problem.
 22 PROF KATZ: Ja.
 23 MR NANNOOLAL: I can tell you since I've
 24 started dealing with this project the Commissioner has
 25 never asked on these matters. The Commissioner has never

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1 called a meeting formally with me to discuss some of this
 2 stuff. So immediately you look at the support from
 3 leadership and if you don't have that you have a serious
 4 problem. And if it's reflected in the media as I said over
 5 the last two years it's already in your face. You should
 6 be dealing with this on a regular basis.
 7 MS MASILO: Mr Nannoolal, have you had a
 8 meeting with your counterpart, the senior manager for
 9 legal, to discuss these issues and explain the importance
 10 of the cases that you are dealing with and the risks
 11 involved? And also you together with your chief officer,
 12 have you sat down with the chief officer for legal and
 13 explained, you know, the - I mean, and just unpacked the
 14 types of cases, the strategy and the actions that you
 15 intend to take on each of these cases? It may not have, it
 16 may not be actions that you intend to take immediately but,
 17 you know, whatever you have planned to do so that they
 18 understand that when those legal cost application comes
 19 where do they come from, what is the strategy and the
 20 turnaround times within which this needs to be approved.
 21 MR NANNOOLAL: There's been numerous
 22 escalations. I've attached two minutes of meetings with
 23 the executives and legal counsel and I can assure you even
 24 after all those meetings and escalations we're still
 25 sitting with the same problem. These minutes I attached

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1 are in terms of my submission.
 2 MS MASILO: So they fully understand the
 3 nature of the work and the urgency.
 4 MR NANNOOLAL: Yes, they do.
 5 MS MASILO: Okay.
 6 MS STEINBERG: Just before he goes just
 7 for the record we have a letter from a firm of attorneys
 8 who deals with a lot of SARS' work and it's actually
 9 written to the acting Commissioner and it says, "I have
 10 been requested by, to assist in providing certain
 11 information relating to current tax litigation to the
 12 Nugent commission." And she lists what was asked for. "We
 13 as attorneys of SARS and the relevant SARS officials may be
 14 the only source of information that the commission is
 15 seeking in order to meet the purpose of the commission's
 16 appointment. I raise this with you because the information
 17 requested would include information revealing certain
 18 litigation strategies of SARS in respect of pending
 19 matters.
 20 Disclosure of strategic approaches could be
 21 prejudicial to SARS. On the other hand if this relates to
 22 for example delays in proceeding with matters as a result
 23 of decisions either taken or not this information may well
 24 be relevant to the commission given its terms of reference.
 25 This would for example be reflected in emails to SARS

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1 officials as this is the only way which we communicate and
 2 obtain instructions. A concern that I have is that given
 3 the way we work, sorry, given the way the work has been
 4 divided within SARS during the last two years there is
 5 probably not one SARS official that will have access to all
 6 the relevant information on each particular matter.”
 7 COMMISSIONER: Ja, I understand. Thank
 8 you. Can I just ask you two questions? I raised them
 9 earlier. What concerns me from what I've seen is this.
 10 You can find a taxpayer put in tax returns. The risk
 11 engine will never throw it up because they're all
 12 consistent year to year. They're not big numbers,
 13 etcetera. Now, I want to know if anyone actually looks at
 14 that taxpayer and says, well, the risk engine didn't throw
 15 it up simply because the risk engine doesn't pick up these
 16 things. But I read the newspapers and I say that is
 17 completely inconsistent with what I read in the newspapers.
 18 Is there such a person who does that or not?
 19 MR NANNOOLAL: There should be somebody
 20 but -
 21 COMMISSIONER: Well, is there?
 22 MR NANNOOLAL: To give you a better -
 23 well, that's what the risk engine is about but I can assure
 24 you -
 25 COMMISSIONER: The risk engine picks up

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1 deviations.
 2 MR NANNOOLAL: Yes.
 3 COMMISSIONER: So here a taxpayer puts in
 4 his returns like everyone else. They're not big amounts,
 5 taxable income. It's fairly consistent every year. The
 6 risk engine doesn't pick up that guy.
 7 MR NANNOOLAL: Well, Judge, I can flip
 8 this whole story around and tell you that there is still a
 9 matter that's coming through, a project that is so apparent
 10 so it's the opposite of what you're saying where it just
 11 passes through, that is so apparent that should've been
 12 dealt with many, two, three years ago. It's only coming
 13 through now. It's probably going to be one of our most
 14 high profile matters that is more serious than all of this.
 15 But risk engine should've dealt with this three years ago.
 16 It never did. And it's not listed on a project but it's
 17 going to be one of the most serious matters for SARS.
 18 COMMISSIONER: Ja, but I'm not - you
 19 know, the risk engine I don't know exactly what it does
 20 and, but I want to know if there is human intervention in
 21 this automated system in which someone looks at something,
 22 reads the newspaper and says I better look at this. It
 23 doesn't sound to me as if there is having looked at all
 24 that I've seen.
 25 MR NANNOOLAL: Well, there is the

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1 individuals. It's a - as far as I know I can't comment but
 2 -
 3 COMMISSIONER: Not your division.
 4 MR NANNOOLAL: It's not. It's case
 5 selection.
 6 COMMISSIONER: And the other thing I've
 7 seen, I asked for information on one tax paying company and
 8 I think this is what you're talking about. They came back
 9 to me with a piece of paper two metres by two metres they
 10 needed because of all the lines that go between all these
 11 companies and bank accounts and everything. It's almost, I
 12 mean, I - that's because you can't, there's no one who can
 13 look at that.
 14 MR NANNOOLAL: I'm glad you're talking
 15 about that. That's more like a cart or a web analysis of
 16 the whole project.
 17 COMMISSIONER: Yes.
 18 MR NANNOOLAL: Now, if you picture that
 19 situation where we receive these matters one by one on each
 20 of these things -
 21 COMMISSIONER: Exactly.
 22 MR NANNOOLAL: And over a period of time
 23 you receive it. It's a massive problem.
 24 COMMISSIONER: Well, exactly. If you had
 25 taken one of these companies out by itself it looks okay

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1 but when you see this web you realise you've got to look at
 2 the whole group of companies.
 3 MR NANNOOLAL: Yes, I agree.
 4 COMMISSIONER: That's what you - I think
 5 is that what you're talking about?
 6 MR NANNOOLAL: That's exactly what I'm
 7 talking about. That's why I go to the issue of payment of
 8 legal fees because now it's outside our control. But it
 9 then becomes our problem to actually deal with it.
 10 PROF KATZ: Sorry, just to take the
 11 judge's point there that's a difficulty you're currently
 12 experiencing, these complex webs. In the previous model
 13 and that how did you cope with that?
 14 MR NANNOOLAL: In the previous model it
 15 was dealt with, the whole project, I think Peter
 16 Engelbrecht had mentioned everything was project related to
 17 the whole group would've been dealt with in one go. All
 18 the services were in one team and it could move very
 19 quickly. Now I've got to wait around three years to get
 20 something done.
 21 PROF KATZ: So the inability to cope with
 22 a complex spider structure is inherently part of the
 23 current model.
 24 MR NANNOOLAL: Yes.
 25 PROF KATZ: Okay, thank you very much.

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1 MR NANNOOLAL: I've listed certain key
 2 projects on this. I'm not going to go into detail but what
 3 I can talk about is the principles that's impeded our
 4 collections and revenue recovery which would've, which
 5 could've been collected in prior years.
 6 COMMISSIONER: Well, it's in your
 7 submissions and we'll be looking at that. Thank you very
 8 much. I think that we'll look at it, the more detailed
 9 things. You've given us a very good overview and a picture
 10 of where the problems lie as to the detail. Ms Steinberg,
 11 is that not a more practical way to deal with it
 12 MS STEINBERG: It is, Judge.
 13 COMMISSIONER: Thank you very much for
 14 coming. It's been very, very informative and we appreciate
 15 it very much.
 16 MR NANNOOLAL: Thank you.
 17 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 18 MS STEINBERG: Judge, before we call the
 19 next witness there was a request from one of your
 20 assistants to recall Mr Hendrickse, sorry, Mr Engelbrecht.
 21 Mr Hendrickse is the next witness. Mr Engelbrecht.
 22 There's a line of questions that we haven't put to him.
 23 COMMISSIONER: Ms Steinberg, do you know
 24 what it is that you - should you deal with it or should my
 25 colleague deal with it?

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1 MS STEINBERG: Either way. Judge, are
 2 you going to swear the witness in again?
 3 COMMISSIONER: Thank you very much for
 4 coming back. Obviously you're still under oath if that's –
 5 FURTHER EVIDENCE BY MR ENGELBRECHT
 6 MR ENGELBRECHT: Thank you.
 7 MS STEINBERG: I tried actually to spare
 8 you this line of questioning because it's personal and I
 9 know that it's emotional. It's really about the way in
 10 which you have been investigated over the years. The
 11 Commissioners feels that it's relevant to the story and
 12 perhaps you can tell us.
 13 MR ENGELBRECHT: Thank you. Ja, it's not
 14 something that I want to testify about but anyway. Ja,
 15 I've, firstly I do reference it in my submission so when I
 16 talk about the words or I use the words targeting or
 17 harassment there is some substantiation in my submission in
 18 terms of evidence. It's at page - I think it is 293 of
 19 bundle B. I don't think it's appropriate in open forum
 20 because it relates, to mention names but it relates to
 21 taxpayers, etcetera. But in terms of chronology I'm, I've
 22 been internally investigated on three occasions, according
 23 to my view spurious issues driven by I would say the same
 24 narrative or people.
 25 And what occurs is that a complaint will be

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1 lodged. You'll submit your version or evidence and you
 2 won't hear anything afterwards. So it's sort of, it's kept
 3 alive as it goes. The fourth one was a request to review
 4 my compliance with SARS' governance principles and it was a
 5 request by one of the chief officers within SARS that's
 6 left and it's quite a high profile case so that's for the -
 7 on the third internal investigation the investigators were
 8 requested it seemed from the evidence to fabricate and
 9 amend the reports where I am initially found that I'm not
 10 guilty of anything to issue a report to say that I am
 11 guilty of anything and there's independent verification for
 12 that. I'm not sure if that answers your question
 13 sufficiently.
 14 MS STEINBERG: Advocate Masilo, do you
 15 want to follow up?
 16 MS MASILO: Just in your view what was
 17 the intention of all these investigations? What was the
 18 purpose?
 19 MR ENGELBRECHT: Well, it was made known
 20 to me that I was not welcome at SARS and that the aim was
 21 to get rid of me from the organisation.
 22 MR KAHLA: Any disciplinary, have any
 23 disciplinary hearings followed these investigations?
 24 MR ENGELBRECHT: None. The process is
 25 you'll submit your version with evidence and then they will

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1 determine whether to do the disciplinary hearing. Nothing
 2 transpired. I understand three of them are closed.
 3 There's one that's not closed yet. But so, but you don't
 4 get an official outcome from it. So it sort of hangs over
 5 your head constantly.
 6 MR KAHLA: Now, Mr Engelbrecht, the one
 7 that's not closed is it the one in which you suggest or
 8 allege that there had been attempts to cause some
 9 fabrication in relation to the information or evidence
 10 directed at you?
 11 MR ENGELBRECHT: Yes. Well, I don't
 12 allege it. It's been found independently on review of the
 13 evidence which I've submitted to the commission. It's part
 14 of my bundle.
 15 MR KAHLA: So that's, that there's been a
 16 finding that there was a fabrication and that you've
 17 escalated to the -
 18 PROF KATZ: What was the alleged
 19 complaint against you?
 20 MR ENGELBRECHT: The complaints varied
 21 from false statements to the courts, perjury, extortion of
 22 money from taxpayers to, that's the themes almost.
 23 Literally, it varies.
 24 [12:03] PROF KATZ: Complaints by outsiders or
 25 within the organisation?

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1 MR ENGELBRECHT: Outsiders.
 2 MS STEINBERG: In other words taxpayers
 3 that Mr Engelbrecht had been investigating would lay
 4 complaints and then people within SARS would pick up on
 5 those complaints and investigate.
 6 COMMISSIONER: None of them have come to
 7 anything though.
 8 MR ENGELBRECHT: No.
 9 MS STEINBERG: There are two other
 10 witnesses who have deposed to affidavits who've had a very
 11 similar experience, also involved in the enforcement space.
 12 MR ENGELBRECHT: Ja, there's similar
 13 trend to other employees within SARS.
 14 MS STEINBERG: In some cases we have the
 15 transcripts or the rulings from the chair of the
 16 disciplinary proceedings where in the cases that I have no
 17 one has been found guilty so far but in some cases SARS has
 18 been wrapped over the knuckles for pursuing cases in a way
 19 that the Presiding Officer finds unethical and we have all
 20 of that on the record. Just to add one thing from further
 21 affidavit is there is somebody who worked within your unit
 22 who said the impact of these investigations against you
 23 meant that the cases you were pursuing then slipped. They
 24 slipped because the person in charge of those cases could
 25 no longer keep control of those cases and they were then

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1 not pursued with the necessary vigour. Would you agree
 2 with that?
 3 MR ENGELBRECHT: Yes.
 4 PROF KATZ: Sorry cases on which Mr
 5 Engelbrecht was working?
 6 MS STEINBERG: So he was working on
 7 cases, taxpayers would complain about his conduct in that
 8 case, he had to then come off those cases but he wasn't
 9 replaced or effectively replaced, so those cases then
 10 either lay dormant or were ineffectively managed.
 11 PROF KATZ: So this was a strategy of
 12 those taxpayers to eliminate Mr Engelbrecht from their
 13 case.
 14 COMMISSIONER: Well that's the suggestion
 15 anyway.
 16 MS STEINBERG: That's one inference one
 17 could draw.
 18 MR ENGELBRECHT: Yes I do not want to
 19 draw inferences in terms of what the intent was.
 20 PROF KATZ: Yes.
 21 COMMISSIONER: No I understand that.
 22 Thank you very much for telling us that. Sorry you had to?
 23 MR ENGELBRECHT: Thank you very much
 24 Judge.
 25 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

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1 MS STEINBERG: Thank you. Our next
 2 witness, it's our last witness for the morning is Mr Keith
 3 Hendrickse.
 4 COMMISSIONER: Good morning.
 5 MS HENDRICKSE: Morning Judge.
 6 COMMISSIONER: Thank you for coming to
 7 see us and we appreciate that. Will you affirm that the
 8 evidence you give will be the truth, the whole truth and
 9 nothing but the truth. If so, will you just say I do.
 10 KEITH HENDRICKSE: I do.
 11 EVIDENCE BY MR HENDRICKSE
 12 MS STEINBERG: Mr Hendrickse, you have
 13 provided an affidavit. It's off the basis of this
 14 affidavit that I've asked you to give testimony, and you're
 15 aware of the rules we established this morning?
 16 MS HENDRICKSE: Yes.
 17 MS STEINBERG: You open your affidavit by
 18 saying, "I feel it necessary to provide the commission with
 19 information as regards the complete decimation of the
 20 enforcement capability at SARS following the introduction
 21 of the new operating model."
 22 MS HENDRICKSE: Yes.
 23 MS STEINBERG: And perhaps you can start
 24 by telling us prior to the implementation of the new
 25 operating model when you were a senior manager and you

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1 managed the Western Cape office of national projects, what
 2 you did and structurally how it worked.
 3 MS HENDRICKSE: I was requested in 2009
 4 to start a national projects office in Cape Town by Mr Ivan
 5 Pillay which I then did. Prior to that I was the
 6 enforcement centre manager which in effect was a regional
 7 enforcement manager and all the enforcement capacities such
 8 as audit, criminal investigations, debt management,
 9 etcetera fell under me and then I started national projects
 10 in the Western Cape. Very much like Pieter Engelbrecht has
 11 testified to we had governance processes in place, there
 12 was no self-selection of projects, it came through case
 13 selection which at that time was known as preliminary
 14 investigations and enquiries. We had, I reported to a
 15 national manager here in head office who in turn reported
 16 to Mr Johan Van Loggerenberg.
 17 All projects that were allocated to an office
 18 were properly considered, did it fall within our mandate
 19 and if it did it was allocated and registered as a project.
 20 There would be weekly reports, monthly reports, value
 21 reports and certain of the projects would have a separate
 22 report which we called the Minister's report and it had,
 23 was significant enough the Minister was kept informed of
 24 what was happening on a monthly basis. The methodology was
 25 again the same as what Pieter Engelbrecht testified to. We

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1 had various capacities and capabilities within the team in
 2 terms of there were people with criminal investigation
 3 experience, there was financial investigations experience,
 4 we made use of external legal assistance. In the Cape Town
 5 office we did not have our own legal assistance in Cape
 6 Town. Each project – just to explain what a project is – a
 7 project consists of cases. Within a project there are
 8 various cases. Each case is a taxpayer. The methodology
 9 was to look at everybody that was linked to a certain
 10 business activity. Just to again clarify. The Cape Town
 11 office that I managed was specifically tasked with
 12 investigating individuals who were involved in organised
 13 crime. So we investigated abalone poaching, rhino horn
 14 poaching, elephant tusk poaching, drug lords, gang bosses,
 15 etcetera. Those are the people that we looked at in terms
 16 of having committed tax offences. That's what we did.
 17 MS STEINBERG: So, thank you. Moving
 18 onto the introduction of the new operating model, you talk
 19 about the, what you call a town hall meeting in Pretoria,
 20 would you just talk about that?
 21 MS HENDRICKSE: That was the first that
 22 certainly I and my colleagues that were managing other
 23 national project offices knew about. There were always the
 24 rumours, as always rife in SARS but there was nothing
 25 official. And we attended this town hall meeting in the

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1 hotel – I don't even remember which one it was. And there
 2 were certain people that spoke and they projected the new
 3 operating model on a screen and we looked and we saw but
 4 there's no national project. We asked the question in the
 5 open forum and the answer we got was that's because they
 6 don't exist in the new operating model. That is how we
 7 were informed that national projects had been disbanded.
 8 There was no consultation. I even asked my national
 9 manager at the time was she consulted and she said no. She
 10 wanted to know if any of us were consulted, the answer was
 11 again no. It had just been decided by, we don't know who
 12 to this day, that national projects would no longer exist.
 13 The difficulty we had at the time was what do you
 14 do with a project that's already on the go? And initially
 15 we were told it's fine you can finish those projects. And
 16 we were quite excited until we told them but some of these
 17 could take two years to finish. And then they said no,
 18 they didn't know that, which again goes to show that there
 19 was no consultation. Had there been they would have known
 20 that this is what a project is. This is how a project is
 21 different to an audit, whether it would be a compliance
 22 audit or an investigative audit, it's not the same thing.
 23 And we were then told that you'll have to hand the projects
 24 to audit. So I arranged with the regional audit manager to
 25 take some of my staff, because they would have been farmed

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1 out anyway and allow them to finish the cases within audit.
 2 So at least there would be some kind of completion. One of
 3 the projects required a tax inquiry to get to the bottom of
 4 who owned what in this syndicate, if I can call it that.
 5 That was an abalone poaching syndicate. And they told me
 6 in audit that we don't know how to do that, we've never
 7 done that before. I said I'll help you, I now have nothing
 8 to do and they said no, we don't work like that. So what
 9 they did was they finalised those cases at face value which
 10 was nowhere near what it should have been if you looked at
 11 the wealth of those taxpayers. And that was that. It was
 12 done.
 13 MS STEINBERG: So as with specialised
 14 projects the national projects were put into the factory.
 15 MS HENDRICKSE: Yes.
 16 MS STEINBERG: And they became business
 17 as usual.
 18 MS HENDRICKSE: Yes.
 19 PROF KATZ: Sorry Carol may I just, when
 20 you say they finalised it, who is they?
 21 MS HENDRICKSE: Audit division finalised
 22 it in terms of their, remember there's, within each
 23 business unit there are KPIs, there are turnaround times,
 24 etcetera, etcetera. So they finalised it within that
 25 framework.

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1 PROF KATZ: And you say at much less?
 2 MS HENDRICKSE: Nowhere near what it
 3 should have been from what our profiling had shown. And I
 4 had already decided that that particular project would
 5 require a tax inquiry to unravel the finances and the asset
 6 holding between, I think there were five, five individuals
 7 and their related companies that were involved in that
 8 syndicate and the only way to unravel it would be to hold a
 9 tax inquiry, and there just wasn't the stomach for it.
 10 COMMISSIONER: And there was no
 11 governance mechanism to approve that settlement?
 12 MS HENDRICKSE: I wouldn't say it was a
 13 settlement. By that time we had received a response after
 14 having to fight it in the High Court, they first thought
 15 that they don't need to respond to our question for a
 16 lifestyle questionnaire. We had to defend that case. We
 17 won the case. They submitted a lifestyle questionnaires
 18 and that's what was used to finalise the audits.
 19 COMMISSIONER: When you say they
 20 submitted a –
 21 MS HENDRICKSE: They being the taxpayers.
 22 COMMISSIONER: The taxpayers were asked
 23 to do what?
 24 MS HENDRICKSE: Submit a lifestyle
 25 questionnaire, so –

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1 COMMISSIONER: Did you give them a piece
 2 of paper and say fill in the blocks, as it were?
 3 MS HENDRICKSE: Exactly. What do you owe
 4 and what do you spend your money on? How much does it cost
 5 you to live, etcetera.
 6 PROF KATZ: Having done that, what
 7 happened?
 8 MS HENDRICKSE: Having done what, sorry –
 9 PROF KATZ: Submitted the lifestyle
 10 questionnaire.
 11 MS HENDRICKSE: Well we took those
 12 lifestyle questionnaires at that time, the national
 13 projects and already compared to what we knew, it was clear
 14 they were not truthful and there were still attempts to
 15 hide assets and income. And at that time we were closed.
 16 PROF KATZ: And what happened to the
 17 people involved?
 18 MS HENDRICKSE: The taxpayers, they had
 19 assessments issued by audit division based on what they had
 20 declared on the lifestyle questionnaire.
 21 PROF KATZ: And you say that was
 22 inadequate?
 23 MS HENDRICKSE: That was inadequate by a
 24 long chalk.
 25 MS MASILO: So what do you do with that

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1 information? I mean all the information that you had
 2 collected on the taxpayer and you knew exactly what was
 3 going on as compared to the normal complaints audit which
 4 was (inaudible).
 5 MS HENDRICKSE: It was passed onto the
 6 auditor that did the investigation. From what I understood
 7 from the auditor, because I spoke to him, he used to be my
 8 member of staff, he was told finalise it on the lifestyle
 9 questionnaire, finished.
 10 MS STEINBERG: As I understand, Mr
 11 Hendrickse, and I think Mr Khan would have explained this
 12 to us, those auditors are there to do high volume low value
 13 audits. They don't have the capacity to investigate and
 14 it's not part of their KPIs, right? In order to keep their
 15 jobs they must do bulk. They're measured on bulk
 16 performance. And what happened is these specialised cases
 17 and people who were not measured on bulk, but on managing
 18 successfully difficult, sensitive, high value cases, those
 19 cases were put into the audit factory and therefore they
 20 were settled quickly but inadequately.
 21 MS HENDRICKSE: Having also just – there
 22 is some, within the investigative audit, you will find some
 23 attempt to establish an income, for example calling for
 24 bank statements. They will then call for bank statements,
 25 they will add up the deposits and say it's more than what

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1 you declared, I'm going to tax you. But by its very nature
 2 an audit is a verification exercise whereas national
 3 projects because of the taxpayers you're dealing with, very
 4 seldom do you get a set of financial statements that are
 5 true, if you even get a set of financial statements. So
 6 you end up having to reconstruct or construct for the first
 7 time a financial position after gathering information
 8 through a tax inquiry, through asking questions, through
 9 gathering evidence not only from banks but from witnesses
 10 you might call to the inquiry so that you can find a true
 11 position as regards the income of those taxpayers. Audit
 12 don't have the capacity to do that, it's not what they're
 13 there for.
 14 PROF KATZ: So Mr Hendrickse, are you
 15 saying that Western Cape project office is no longer on the
 16 SARS organogram?
 17 MS HENDRICKSE: It's not there, Sir.
 18 It's gone. And it was a very abrupt closing of the unit.
 19 You know when your national manager is no longer employed
 20 in that position, who do you report to? Who do you send
 21 those reports to? Suddenly there's a void, there's
 22 nothing. And it's only through being responsible and
 23 saying I can't just leave these cases unfinished, the
 24 taxpayers have been confronted, they know they're being
 25 investigated, somebody has to do something. And I spoke to

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1 the regional audit manager who agreed to finalise it but on
 2 that basis.
 3 MR KAHLA: Which was a basis you consider
 4 superficial?
 5 MS HENDRICKSE: Correct.
 6 COMMISSIONER: So what happened to you in
 7 particular when you found that there's no longer, it's no
 8 longer on the organogram?
 9 MS HENDRICKSE: Judge, I was a senior
 10 manager and for about four to five months I didn't do
 11 anything and I mean nothing.
 12 COMMISSIONER: So what were you called?
 13 MS HENDRICKSE: I was called nothing at
 14 that time. No I mean that. I did not have a job title.
 15 COMMISSIONER: But you came to the office
 16 every day?
 17 MS HENDRICKSE: I came to work every day,
 18 yes. And eventually on my own request, can somebody please
 19 come and see me and give me something to do, I was
 20 allocated as a senior specialist to criminal case selection
 21 and that's where I work today.
 22 MS STEINBERG: Looking at this from the
 23 other end, the affidavit from the former head of the High
 24 Court litigation unit said they rely on other units within
 25 SARS to do many of their cases. So they would get cases

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1 generated by enforcement or the large business centre. And
 2 she says that for the last couple of years there have been
 3 no cases generated and that's the result of this capacity
 4 not being moved but being shut down. I think one sees that
 5 at the other end. So she says they have very little to do.
 6 COMMISSIONER: Is that what's happening?
 7 MS HENDRICKSE: Absolutely. And just to
 8 take it a step further. I know there was a time where SARS
 9 was being asked questions. What has happened to this
 10 capability? And the answers that were given were it's
 11 still here in SARS. Well the people were in SARS but the
 12 capability was no longer there. The people were not doing
 13 that work. Some of the people like myself who stayed
 14 behind, others left. We were still in SARS but not doing
 15 that work. So the capacity was there but the capability
 16 had gone. So that was an incorrect response and it was
 17 misleading.
 18 PROF KATZ: Sorry I missed something.
 19 When did this occur, this disposal of this unit?
 20 MS HENDRICKSE: With the introduction of
 21 the new operating model, and I'm not sure exactly when the
 22 date was. But when that thing went up on the white board,
 23 that was the end of us, it wasn't there.
 24 PROF KATZ: Did you give evidence to
 25 anyone about the work you did?

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1 MS HENDRICKSE: No.
 2 PROF KATZ: If you worked on the
 3 operating model?
 4 MS HENDRICKSE: No.
 5 COMMISSIONER: Who put it, you talk about
 6 it was put on the white board, who was now putting it on
 7 the white board?
 8 MS HENDRICKSE: At the time, if I
 9 remember correctly Mr Moyane was there, Mr Makwakwa was
 10 there and there were two people that worked with them in
 11 rolling out the new operating model.
 12 COMMISSIONER: But was Bain demonstrating
 13 at all?
 14 MS HENDRICKSE: No.
 15 COMMISSIONER: No? So you're being told
 16 by senior management right that's where we are, that's the
 17 new model.
 18 MS HENDRICKSE: That's correct.
 19 COMMISSIONER: And did you say but where
 20 am I on there?
 21 MS HENDRICKSE: That's what we asked.
 22 Where's national projects?
 23 COMMISSIONER: No I'm saying not that
 24 would be asked, was it asked?
 25 MS HENDRICKSE: I asked.

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1 COMMISSIONER: In that meeting?
 2 MS HENDRICKSE: In that meeting.
 3 COMMISSIONER: And what were you told?
 4 MS HENDRICKSE: The answer was that no
 5 longer exists on the new operating model.
 6 PROF KATZ: That you no longer exist?
 7 MS HENDRICKSE: National projects no
 8 longer existed and that my job was no longer there.
 9 PROF KATZ: Okay.
 10 MS STEINBERG: And you too speak about a
 11 culture of trust turning into a culture of fear.
 12 MS HENDRICKSE: Mm-hm.
 13 MS STEINBERG: And that had a lot to do
 14 with what we've just heard about from Mr Engelbrecht where
 15 your colleagues were being continually investigated, is
 16 that right?
 17 MS HENDRICKSE: Yes, I'd heard about
 18 certain of my colleagues being investigated. To my
 19 knowledge I never was.
 20 [12:23] But you very soon learned that if you stepped out
 21 of line and questioned too much there would be an
 22 investigation. And another thing that created for me, when
 23 I spoke to people, what caused the cultural fear to a large
 24 extent was our employee relations division who were
 25 responsible for bringing charges, holding the disciplinary

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1 inquiries. Their sanctions are not consistent, so
 2 sanctions are arrived at depending on who you are, what
 3 they want to do with you, whether they want you to stay in
 4 the organisation or whether they want you out of the
 5 organisation. And I have pointed those inconsistencies out
 6 to senior management, in fact even to the acting
 7 Commissioner, there's not been a response at this stage.
 8 And I've actually given examples which I don't want to give
 9 here, but it's something that I have raised properly and
 10 officially. So that is where, to a large extent, the
 11 cultural fear comes from. It's very much keep quiet, do
 12 the job that you're lucky enough to have and we'll leave
 13 you alone.
 14 COMMISSIONER: Did you raise that
 15 problem, I mean the Acting Commissioner's not been here for
 16 very long?
 17 MR HENDRICKSE: Yes.
 18 COMMISSIONER: But did you raise the
 19 problems earlier with the existing Commissioner?
 20 MR HENDRICKSE: No, Judge.
 21 COMMISSIONER: Why not?
 22 MR HENDRICKSE: It's only over time that
 23 you see these things and you start talking to people and
 24 you hear that they're saying the same thing or they've
 25 experienced the same thing or their colleagues have

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1 experienced the same thing that you realise but this is
 2 organisational wide. And I don't know whether other people
 3 were not prepared to raise it or to highlight it, but I did
 4 and we'll see.

5 MS STEINBERG: I don't have further
 6 questions for you, is there anything else you would like to
 7 say that's appropriate for a public forum?

8 MR HENDRICKSE: I'd like to raise the
 9 issue of one of our projects where we had got to a stage
 10 where assessments had been issued. The particular taxpayer
 11 in this project or one of them that had been in the press a
 12 few times and he owed approximately 400 million. And we
 13 were busy in litigation, he challenged everything which is
 14 his right to do, we defended all his challenges, we won
 15 every single challenge. There was a unit that was started
 16 within SARS, they somehow became known as Internal
 17 Investigations. I was called, no I bumped into an auditor
 18 in the Cape Town office one day in the lift foyer –

19 COMMISSIONER: Was this a SARS auditor?
 20 MR HENDRICKSE: Yes. He said he's come
 21 to fetch the audit files of taxpayer X. And I asked on
 22 whose instruction is this, we had already disbanded by then
 23 and he said he's not sure, but as far as he knows he's been
 24 told it's on the instructions of the Commissioner. So I
 25 said look you can't walk out of here with an audit file for

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1 this taxpayer. The evidence is in lever arch files in a
 2 room, fills a room and if you tell me what it is you're
 3 looking for I may be able to help you. But the case is in
 4 litigation, all those documents are now evidence in the
 5 High Court, so I can't just give you. Then I was called by
 6 at the time the person that was leading this unit here in
 7 Pretoria and I was told to provide them with an affidavit
 8 etcetera, etcetera. We found out afterwards that the
 9 auditor in Cape Town had been instructed to write to the
 10 taxpayer and tell him that they were doing an audit review.
 11 Now I might just say upfront there is no such thing in our
 12 tax legislation called an audit review. But what the
 13 taxpayer did in the High Court was he produced this email,
 14 it was an email, not even on a letterhead and it said you
 15 can't carry on, we're doing an audit review. That
 16 prevented SARS from collecting any money for two years. To
 17 date that taxpayer has not paid one cent, they have not
 18 submitted tax returns subsequent to our investigation
 19 period neither for VAT nor for income tax. And that was,
 20 to my mind, a deliberate attempt to derail that process.
 21 We were stopped in our tracks, we could not carry on and
 22 the outcome of the audit review has never been made known,
 23 if in fact there was an outcome. It's just gone away.

24 MR KAHLA: Was there an audit review?
 25 MR HENDRICKSE: Sorry.

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1 MR KAHLA: Was there an audit review as
 2 indicated by that officer?
 3 MR HENDRICKSE: I don't know because none
 4 of the evidence that we collected through the tax enquiry
 5 was ever provided to the auditor in Cape Town.

6 MR KAHLA: Did you ever get any
 7 information or establish with the individual indeed had
 8 authority for the –

9 MR HENDRICKSE: We did ask, we did ask in
 10 an open forum, there were people from legal division there
 11 and they were told where is your authority to do this and
 12 they said they'll get it, but they never provided it.

13 PROF KATZ: Is the suggestion that that
 14 was done to benefit that taxpayer?

15 MR HENDRICKSE: That is my suggestion
 16 yes.

17 MS STEINBERG: And that's a crime boss.
 18 MR HENDRICKSE: Probably one of the
 19 biggest in South Africa.

20 PROF KATZ: Do we know who this auditor
 21 was who came into the offices and said I'm doing an audit –

22 MS STEINBERG: It's not in the affidavit,
 23 we'd have –

24 MR HENDRICKSE: I do know.
 25 COMMISSIONER: Well don't say it, but you

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1 do know –

2 MS STEINBERG: You'd have to do that –
 3 COMMISSIONER: Can you talk to this
 4 auditor, Ms Steinberg?
 5 MS STEINBERG: Certainly.
 6 COMMISSIONER: If you'll just tell her
 7 who the auditor is –

8 MR HENDRICKSE: That auditor was –
 9 COMMISSIONER: Is he still at SARS?
 10 MR HENDRICKSE: He's still at SARS.
 11 COMMISSIONER: Should I say is she or he
 12 still at SARS?
 13 MR HENDRICKSE: He is still at SARS. I
 14 might add and it's not an attempt to elevate myself at all,
 15 but the instruction, the so called instruction came from an
 16 auditor who was junior to me. The other person that I met
 17 with in head office was junior to me and I said to them if
 18 you want what you want give me an instruction in writing
 19 from someone who's authorised to instruct me, someone
 20 senior. It never, ever came, so I just never co-operated.

21 MS MASILO: How does it feel to you as
 22 senior SARS official, or who used to be, to watch you know
 23 the impactful work that you did within the industries that
 24 you are looking at just being, you know –
 25 MR HENDRICKSE: It is, it's soul

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1 destroying. When you know what you've been through and let
 2 me also just say when you're investigating people like that
 3 there's a lot of intimidation which we expected. But we
 4 took on that role, we wanted to do that kind of job. And
 5 it's not only intimidation for you, it's intimidation for
 6 your family and they are aware of what you're doing,
 7 they're aware of what's happening and you go through all
 8 that to see it destroyed literally by the stroke of a pen
 9 because there was no consultation. Had there been
 10 consultation they would have known that what National
 11 Projects did is very different to what any other audit
 12 division or compliance audit division does, it's not the
 13 same thing.

14 PROF KATZ: Mr Hendrickse, sorry. Just
 15 looking at process in SARS there's a case, is it not logged
 16 into further structures so that people would be asking
 17 what's happened to that case. In case someone gives an
 18 instruction to stop it, but it's not approved higher up,
 19 what kind of processes exist to stop this kind of thing if
 20 it is done at a lower level just to assist a taxpayer?
 21 What governance checks and balances are there as a matter
 22 of course in SARS?

23 MR HENDRICKSE: I think, I hope I'm going
 24 to answer correctly, if I understood it properly. For the
 25 audit division there's a civil case selection unit. Their

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1 job is to profile cases based on whatever information they
 2 might have and refer those cases to audit division. Once
 3 it's in that process it has to follow a certain protocol
 4 before it's signed off as being completed. So there are
 5 checks. For criminal investigations you have criminal case
 6 selection which is the unit that I work for. We do the
 7 same thing. We profile the case to see does it require
 8 criminal investigation, is that the approach SARS wants to
 9 adopt, does it fall within the mandate of CI and if it does
 10 we'll do our bit which is to at least prove that there was
 11 probably an offence. And the case is referred on a system
 12 to criminal investigations. After it goes to a committee,
 13 after a report is written it's properly looked, properly
 14 referred and once it's in the CI space they have their own
 15 process to make sure it gets finalised properly as did
 16 National Projects. Everything was properly governed in
 17 National Projects, there was no here's a project carry on.

18 PROF KATZ: It was properly governed
 19 under the old model.

20 MR HENDRICKSE: Yes. Ja now it doesn't
 21 exist, so we don't need that.

22 PROF KATZ: So anyone could have stopped,
 23 you yourself could have stopped this if you wanted to.

24 MR HENDRICKSE: Do you mean under the old
 25 model?

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1 PROF KATZ: No under the new.
 2 MR HENDRICKSE: No you can't stop it
 3 under the new, no, no –
 4 PROF KATZ: Oh under the old, you
 5 couldn't have stopped it.
 6 MR HENDRICKSE: I could not have stopped
 7 it. There was weekly reports on progress, there was
 8 monthly reports on progress, there was monthly management
 9 meetings where we met with our national manager and had to
 10 report back on progress on all those projects and cases.

11 PROF KATZ: Sorry carry on.
 12 MR HENDRICKSE: One of the things we were
 13 measured on was not necessarily how many cases or how much
 14 money, but it was adherence to deadlines. So you would
 15 have to have a project plan, that project plan was used to
 16 measure your progress on a project regularly. Did you do
 17 what you said you were going to do, if you wanted to change
 18 the scope of an investigation it had to be motivated and it
 19 had to be signed off to change your scope. It wasn't just
 20 me as the senior manager saying don't worry about that, add
 21 this on. There was no such thing.

22 COMMISSIONER: I mean the problem you're
 23 talking about happened after the – you disappeared as it
 24 were and you just had the files in your office and the
 25 auditor said can I have it.

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1 MR HENDRICKSE: I had no authority to do
 2 anything. I was just obstructive in their attempts to
 3 derail the project.

4 MS MASILO: You mentioned that you also
 5 used to prepare ministerial reports.

6 MR HENDRICKSE: Yes.
 7 MS MASILO: Would you know what National
 8 Treasury's reaction would have been or was when your unit
 9 was disbanded?

10 MR HENDRICKSE: I don't know.
 11 MS MASILO: Okay.
 12 MR HENDRICKSE: I don't know.

13 PROF KATZ: So what happens in the
 14 Western Cape at the moment to the criminal activity, is no
 15 one looking at it? I shouldn't say this because they hear
 16 that there is nothing going on.

17 MR HENDRICKSE: There's no one looking at
 18 that.

19 COMMISSIONER: Yes, Ms Steinberg.
 20 MS STEINBERG: Is there anything else?
 21 MR HENDRICKSE: I don't think so.
 22 MS STEINBERG: Thank you very much.
 23 COMMISSIONER: Mr Hendrickse, thank you
 24 very much indeed for being so frank with us. Thank you
 25 very much, very helpful.

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1 MS STEINBERG: Judge, before we close
 2 this morning, we could have had another morning on the same
 3 issue, enforcement within customs. Now we haven't heard
 4 anything about customs this morning. Customs is
 5 particularly sensitive, you're dealing with smuggling for
 6 example. We have two affidavits and one that is coming and
 7 really it's a mirror image of what happens here. There's a
 8 fragmentation of units who now can no longer operate.
 9 There is one additional factor that the last witness
 10 mentioned and that's this internal investigation team and
 11 what happened according to these affidavits in the customs
 12 space is that that team actually raided the office of
 13 customs enforcement and removed the files and the computers
 14 from those – like this witness who was involved.
 15 COMMISSIONER: Is that in affidavits you
 16 have that explain all of that? Is that yes.
 17 MS STEINBERG: That's a yes. And one of
 18 the witnesses says now with the new Acting Commissioner
 19 they're in the process of reassembling those files and
 20 they're doing an inventory of all those cases. And what
 21 they have found is that there has been no progress on those
 22 cases in the interim period from when those files were
 23 seized until now.
 24 PROF KATZ: When were they seized?
 25 MS STEINBERG: I would have to check that

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1 in the affidavits.
 2 COMMISSIONER: Are those affidavits that
 3 you're willing to sort of, that you're happy to make public
 4 or not?
 5 MS STEINBERG: No.
 6 COMMISSIONER: Okay.
 7 MR KAHLA: What are the objectives of the
 8 seizure of those – what was the objective of the seizure of
 9 those files?
 10 MS STEINBERG: I can't answer that.
 11 COMMISSIONER: I just want to say I mean
 12 to the press and to people over here that one would like
 13 all of this to have been dealt with publicly, but there's a
 14 bigger question and that is I think that one must look at
 15 these things and do what is necessary to change things if
 16 we find that it's necessary, sorry, if we find that it's
 17 necessary. So our regulations say we may receive evidence
 18 orally, public hearings or we may receive evidence on
 19 affidavit or we may receive evidence simply in the form of
 20 documents that we find. Well I think you will understand
 21 why it is that a lot of this will be dealt with on
 22 affidavits and documents and well as I said at the
 23 beginning of this Commission press must do as it wants to
 24 do, it's your – I'm not going to tell you how to do your
 25 job. But I hope you'll have some understanding for the

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1 difficulties we face.
 2 MS STEINBERG: Judge, may I say that no
 3 one has come forward with evidence or affidavits that
 4 counters this. I can't say it doesn't exist.
 5 COMMISSIONER: Yes of course.
 6 MS STEINBERG: But there's an
 7 opportunity, anybody who disagrees with this has an
 8 opportunity to submit affidavits as these witnesses have
 9 done.
 10 COMMISSIONER: Ja well I think it's
 11 important that you do announce that you have this -
 12 MS STEINBERG: Yes.
 13 COMMISSIONER: Because I've said, I don't
 14 know how many times here, anyone who has got any evidence
 15 to counter anything they hear they should come forward and
 16 including people within SARS. Anyone is invited to come
 17 forward, they must go and see Advocate Steinberg and deal
 18 through her as to how we deal with it. But you know, I'm
 19 not going to keep repeating to everyone you're welcome to
 20 come and tell us what you want to say and I'm not going to
 21 force anyone to come and tell us anything. If they want to
 22 tell us they'll tell us and if they don't want to tell us
 23 well that's – we'll deal with what we've got. The people
 24 are aware that we've got this.
 25 MS STEINBERG: Yes and that was part of

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1 the purpose of these hearings, we have these affidavits,
 2 we've given the public insight and we don't have any
 3 evidence that suggests that this is not correct. And there
 4 is an invitation to anybody who thinks this might be untrue
 5 to come and tell us.
 6 COMMISSIONER: Well as I understand it we
 7 haven't had any approach from anyone in relation to any of
 8 the evidence that has been heard in public. Is that right?
 9 MS STEINBERG: That's right. No, no
 10 that's not entirely accurate.
 11 COMMISSIONER: Okay.
 12 MS STEINBERG: I think we've had one or
 13 two witness who will appear who have contested elements of
 14 –
 15 COMMISSIONER: And we'll hear from them
 16 in due course.
 17 MS STEINBERG: We will.
 18 COMMISSIONER: Yes. Now what time do you
 19 want to resume, Ms Steinberg?
 20 MS STEINBERG: It's twenty to one, should
 21 we resume at quarter to two?
 22 COMMISSIONER: Ja that's fine. Thank
 23 you. Thank you very much.
 24 [INQUIRY ADJOURNS INQUIRY RESUMES]
 25 [13:52] MS STEINBERG: Judge, this afternoon's

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1 session is focusing on customs and we're looking at customs
 2 before the new operating model and after and our first
 3 witness is Ms Rae Vivier.
 4 COMMISSIONER: Thank you very much for
 5 coming. And relax, it's not a terrifying experience. It's
 6 not a terrifying experience. Will you affirm that the
 7 evidence you give will be the truth, the whole truth and
 8 nothing but the truth? If so, just say I do.
 9 RAE VIVIER: I do.
 10 COMMISSIONER: Thank you.
 11 EVIDENCE BY MS VIVIER
 12 MS STEINBERG: Judge, Ms Vivier has given
 13 us a submission which I think we should call a thesis,
 14 probably a Master's thesis for which we're very grateful.
 15 It's given us a lot of information about customs. We're
 16 really looking at, we've structured it so that there are
 17 five themes. The one is the customs modernisation
 18 programme that was in place before the end of 2014 and
 19 she'll tell us about the achievements of the customs
 20 division in that period. We're then looking at the Bain
 21 diagnostic and then the impact of the new operating model
 22 on the customs space and the current assessment now, as we
 23 speak of customs after the new operating model. And she
 24 will be followed by two other witnesses.
 25 COMMISSIONER: Sorry, where's the file?

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1 MS STEINBERG: So it's the modernisation
 2 programme, the achievements of customs.
 3 COMMISSIONER: Under that?
 4 MS STEINBERG: Yes.
 5 COMMISSIONER: That's the second one?
 6 MS STEINBERG: Second one. Then the Bain
 7 diagnostic, then the impact of the new operating model and
 8 the current assessment. There's both self-assessment and
 9 external assessment at all these points. So to begin, Ms
 10 Vivier, what were your positions at SARS before the new
 11 operating model and after?
 12 MS VIVIER: So thank you. I have, it's
 13 embarrassing to admit to this but I have - because it gives
 14 away my age - I have 33 years' experience in customs. I'm
 15 a true customs baby. I started as a young woman at a very,
 16 very junior level in the organisation and I have throughout
 17 the years been privileged enough to build my way up to
 18 where I end now. I have a Master in international customs
 19 law and customs administration from the University of
 20 Canberra in Australia, that is, in South Africa it's the
 21 SACWA equivalent is the Master of Arts in Law, NQF9. I, as
 22 I say I was appointed in the lowest level within the
 23 organisation. I've worked my way up. Throughout my career
 24 I've been very privileged, I've found myself constantly
 25 being placed in positions of higher authority, acting there

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1 and I have also been able to find myself being what was in
 2 previous years, preferentially promotable. In previous
 3 years within government you had lists for promotion and if
 4 you were preferentially promotable you jumped to the top of
 5 those lists.
 6 And I also throughout my career I've received
 7 very high performance bonuses for the work that I've done
 8 within customs. I was the first woman to be promoted to a
 9 large branch during the CIAKA transformation process in
 10 2001. It was our first transformation process. I was very
 11 privileged to lead a branch through that major
 12 transformation. And then I have been an executive or
 13 senior manager for 17 years and found myself very
 14 privileged in late 2010 to be promoted to the head of
 15 customs. Again that was the first time a woman has ever
 16 been given the honour and the privilege to lead a customs
 17 administration in this country in any case. And as I say I
 18 was very privileged to have been considered for that
 19 opportunity. At the time my task was to focus on
 20 operationalising, as you've alluded to, the modernisation
 21 programme of customs, which at that time was mainly the
 22 technological improvements and I will list them in my
 23 presentation. They were quite fundamental changes. But I
 24 think it's also important that I stress right now customs
 25 modernisation started already in 2001. It's been a journey

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1 that we've been on for many, many years. So it wasn't a
 2 once-off event in 2010, 2011, it has been an ongoing
 3 process. But perhaps the focus of the 2011/2013 customs
 4 modernisation was more on the technological advancement and
 5 the efficiencies that come from that technology.
 6 MS STEINBERG: Ms Vivier, what is your
 7 position now?
 8 MS VIVIER: I am a principal specialist.
 9 I was found, unfortunately found not suitable for my job
 10 when it was re-advertised and was in early 2016 appointed
 11 as a principal specialist.
 12 PROF KATZ: Sorry to interrupt. Before
 13 the new model, you were head of customs?
 14 MS VIVIER: That's correct.
 15 PROF KATZ: Nationally?
 16 MS VIVIER: Yes.
 17 MR KAHLA: And what changed in your role
 18 leading to it being re-advertised and you not getting it?
 19 Did anything change in the role?
 20 MS VIVIER: To be frank I am unable to
 21 find any particular changes that one would suggest that the
 22 role has changed fundamentally and would then require re-
 23 advertising. It did however shrink.
 24 MR KAHLA: It became a smaller role than
 25 it previously was?

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1 MS VIVIER: Yes. Yes.
 2 MS STEINBERG: Do you want to kick off
 3 with your presentation? We really want to start with a
 4 brief explanation of the customs modernisation programme
 5 because I don't think we can understand the restructuring
 6 or what happened in the space without that –
 7 COMMISSIONER: Are we going to see
 8 slides? Should we see from there or there?
 9 MS STEINBERG: I think we'll be able to
 10 see them here.
 11 COMMISSIONER: Okay.
 12 MS VIVIER: It jumps a little fast than,
 13 here we are. So would you prefer, Advocate, that I start
 14 with a brief of modernisation and then sort of go back to
 15 these slides, if that's –
 16 MS STEINBERG: You can do it as you wish.
 17 Can I just offer you this that where you're not talking to
 18 diagrams or graphs that you rather just talk to us.
 19 MS VIVIER: Okay.
 20 MS STEINBERG: I think the Judge and his
 21 assistants find it easier to take the evidence in that way.
 22 COMMISSIONER: I'll tell you why. You
 23 know PowerPoint is fine for graphs and so forth but I find,
 24 and I don't know what my colleagues do, but I find that
 25 one's spending so much time trying to work out the graphs

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1 that you don't listen to what you're saying, so it's a lot
 2 better for me to listen to what you're saying, personally.
 3 And you know also the lawyers are interested more in detail
 4 than in broad overviews. These overviews are fine for
 5 selling products and so forth but we're interested in
 6 detail. Thank you. Yes.
 7 MS VIVIER: So perhaps just to pause on
 8 this graph, which is a simple one. It's done by the World
 9 Bank and all it attempts to illustrate is the achievements
 10 that customs achieved after or post customs modernisation,
 11 talking to the fact that we halved the time that it takes
 12 to clear customs. So previously you'll see the graph shows
 13 that it was, took 19 days to do all of the customs
 14 formalities. Post the customs modernisation, it was down
 15 to nine days. Now why that's important and why we launched
 16 a fundamental customs modernisation programme was that in
 17 1% change to the costs of trade can increase your revenues
 18 within a country substantially. So for example on the
 19 graph we talk here that nine days equates to, in some
 20 instances, the OECD says 1% reduction in trade equates to
 21 an increase in world revenue of \$40 billion.
 22 So customs is constantly attempting to ensure
 23 that they're faster at what they do. There's another
 24 reason why customs administrations do it. We have
 25 unfortunately limited resources so if we can do our

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1 processing faster it allows us then to concentrate our
 2 limited resources on higher risk cargos. So those are
 3 international norms that come out of the OECD, it comes out
 4 of the World Customs Organisation and we attempt in South
 5 Africa to emulate many of those. So just to pause on that,
 6 when we were able to have the sort of efficiencies that we
 7 show here, it had an impact not only on South Africa but
 8 also on Southern Africa because so many countries used our
 9 country to get to our ports and get their products onto an
 10 overseas market. So the nine day reduction is something
 11 that countries like Zimbabwe, Lesotho, Swaziland also
 12 enjoyed and was able, to ensure they were able to get their
 13 export onto a foreign market in a much cheaper rate.
 14 MS STEINBERG: And Ms Vivier, you speak a
 15 lot about the World Customs Organisation and it seems to me
 16 from your submission that they offer a lot of very helpful
 17 guidance and benchmarks and they also audit different
 18 customs authorities around the world.
 19 MS VIVIER: You're correct.
 20 MS STEINBERG: So when you talk about the
 21 modernisation programme it is in line with what the World
 22 Customs Organisation would have been recommending at that
 23 time.
 24 MS VIVIER: Certainly. It's informed by,
 25 we had a comprehensive diagnostic done by the World Customs

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1 Organisation in 2006. They did a comprehensive diagnostic
 2 as they do of other customs administrations around the
 3 world. And they left us with 33 strategic recommendations
 4 on how we modernise or how we should modernise customs.
 5 And customs, it led then to the development of what we call
 6 the customs blueprint which in effect is the customs
 7 strategy for modernisation. And at the end of our
 8 modernisation journey, in sort of late 2013, early 2014 we
 9 had 79% of their recommendations had been put in place
 10 through the various iterations of modernisation. So they
 11 did a follow up diagnostic in 2016 and were very happy with
 12 the progress we'd made in operationalising their
 13 recommendations that are their 2006 diagnostic. But they
 14 are, as you say, they are an international body, we're a
 15 member of that body. They're in the international body
 16 that provides the standards, the guidelines, the
 17 recommendations for all customs administrations around the
 18 world. And you will find that we emulate not only many of
 19 their guidelines but we also emulate a very important
 20 document which is the revised CIAKA Convention. Remember
 21 the CIAKA Convention is again a document that provides the
 22 recommendations for modernised customs administrations
 23 around the world, so for example to use ICT to the best
 24 possible way to use risk management as opposed to gate-
 25 keeping, to look at post clearance audit rather than

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1 intervening at the front line to ensure that trade is not
 2 as impacted from a cost perspective as negatively as if we
 3 were doing front line examinations, and so on.
 4 MS STEINBERG: Would you elaborate,
 5 because I think this becomes important when we get to the
 6 diagnostic, risk management as opposed to, what did you
 7 say, manual –
 8 MS VIVIER: Gate-keeping.
 9 COMMISSIONER: Gate-keeping.
 10 MS STEINBERG: Gate-keeping, would you
 11 elaborate on that?
 12 MS VIVIER: Sure. So prior 2001 risk
 13 management was introduced into customs in during the CIAKA
 14 process which 2001, 2000/2001 was when the diagnostic and
 15 the three year programme rolled out. Prior to that customs
 16 officers literally stood at gates and checked every single
 17 piece of document that was presented to us as a customs
 18 declaration. I come from a world where we had large pools
 19 of data capturers and it was just paperwork wherever you
 20 looked, capturing. We had to as assessors assess every
 21 single document that was presented to us and we had to then
 22 from that make sure that we examined a certain percentage,
 23 physically examined a certain percentage of containers.
 24 When risk management was introduced what it
 25 suggests is look at your highest risk, concentrate your

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1 resources on your highest risk. It introduces a level of
 2 segmentation for compliant traders, at that time called
 3 accreditation, lately called trusted trader, preferred
 4 trader and throughout the world called authorised economic
 5 operator, where we seek to give benefits to larger clients
 6 who have very high levels of compliance. We place a level
 7 of trust in their systems and in their compliance level, so
 8 we would deal with those people as a post clearance
 9 intervention as opposed to front line.
 10 Front line you would want your capacity to be
 11 looking at elicited trade, smuggling, narcotics, cigarettes,
 12 chasing that sort of type of good and smuggling and
 13 allowing compliant traders to continue to do their work in
 14 the compliant way that they do. So that's what in effect
 15 risk management implies for customs.
 16 In customs 20% of our clients pay us 80% of our
 17 revenue. On the whole those tend to be large international
 18 corporates or national corporates whom, as I say we would
 19 have audited upfront to ensure that there's a high level of
 20 compliance. We seek as customs to improve compliance at
 21 all times, so if we find that there's somebody who's not
 22 complying, we have to ask the questions are they not
 23 complying because they don't know how to comply? Are they
 24 not complying because we're a burden and they find it
 25 difficult to comply with us? Or are they not complying

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1 because they simply are choosing not to comply? And then
 2 based on that we would have different means to address the
 3 non-compliance, so for example, we would educate those that
 4 are battling to comply – the customs world is very complex.
 5 To classify a glass is not as simple as saying oh by the
 6 way this is how much your duty is, it's a very complex
 7 world, one that I won't even try and educate you on. I'm
 8 certainly not an expert in that world. And then those that
 9 find that we are a burden, we attempt to ensure that we're
 10 able to service and ensure that we cost them as little as
 11 possible to comply and for those that choose to be non-
 12 compliant we ensure that we have what some people call the
 13 full arm of the law ready to deal with those sort of
 14 people.
 15 So as I suggested the customs modernisation is a
 16 journey we've been on since 2001. There've been different
 17 iterations of it, different parts of it have been rolled
 18 out, for example after 2001 where we had a total re-
 19 engineering of all processes and a total restructuring of
 20 the structure that supported customs and supported at that
 21 stage end to end value chain management, we kept that sort
 22 of structure but then started rolling out specialised units
 23 to deal with elicited trade. So an important time in our
 24 lives was the rollout of the customs border control unit.
 25 Prior to that we didn't have a para-military unit to deal

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1 with elicited trade. They went through, I think it's four
 2 months' training at a military base and were then put into
 3 branches in full uniform. I think you may have seen some
 4 of them around here with the marked vehicles. So that was
 5 a milestone for us in launching that. Attached to that was
 6 the launch of the customs detector dog unit which was also
 7 a first for customs at that time, which has grown
 8 substantially throughout the years and is quite a large
 9 unit now. And then in 2010 when I came into customs we
 10 started then with preparing the organisation for large
 11 scale technology changes, the main one being the
 12 replacement of our Legacy systems. Our systems at that
 13 time were 30 years old.
 14 [14:12] So the replacement of the customs' Legacy system,
 15 the replacement of the CCA system which is the system at
 16 SACU borders, also very old, was a huge change for us. You
 17 know there are other customs administrations in the world
 18 that have brought the ports to a standstill and you've had
 19 the entire leadership resigning. We had no such hitches.
 20 We replaced our systems. I think it was a flawless, I know
 21 it was a flawless replacement. We worked over weekends.
 22 We worked 24 hours in some instances to ensure that this
 23 large scale replacement could happen as flawlessly as
 24 possible.
 25 Other changes that we show, I show here is the

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1 inspection process. And just to pause the inspection
 2 process for customs is the - when we intervene in an
 3 assessment so when we've assessed something and suggested
 4 that there's a risk that we need to address and this was
 5 the inspection process. So importantly we must pause and
 6 remember customs prior to 2010 was largely manual, largely
 7 labour intensive, largely divergent systems, largely
 8 divergent processes.

9 So we introduced something called e-release. E-
 10 release, previously you could release a container on a
 11 piece of paper with a stamp. The pink stamps I'm sure you
 12 all have perhaps seen over the years. The opportunity for
 13 fraud I think you would understand was incredible. So e-
 14 release means that we were sending our release instructions
 15 to those people releasing containers electronically. So we
 16 cut out then the opportunity for fraud in that area. Okay,
 17 and we also then had an opportunity to ensure that what we
 18 sent as the release instruction was in fact followed
 19 through so nobody could say they didn't get it and so on.
 20 We also during the process - sorry, I just want to catch up
 21 on my slide if you don't mind.

22 MS STEINBERG: Can I suggest we move
 23 along?

24 MS VIVIER: Sure.

25 MS STEINBERG: I think we've got a good

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1 taste of a customs unit that was moving from a primitive
 2 manual system to a highly sophisticated electronic system.

3 MS VIVIER: Just then to pause if I
 4 could, Advocate, and just say so we cut the response time
 5 by using a new system from two hours to seven seconds.
 6 It's a world benchmark. And that is the sort of service
 7 that we were able to provide at that time to our clients.
 8 We also cut our inspection times from eight hours to two
 9 hours and I think that's just something we wanted to pause
 10 on. The next slide also lists more of the customs
 11 modernisation.

12 And I think here we were seeking to show that our
 13 efficiency increased from 35 cases per person per day to 75
 14 cases per person so it's an almost 100% improvement in our
 15 efficiency which we were able to do through the various
 16 systems enhancements that we introduced. And perhaps also
 17 then I can skip this one if that's okay. I would like to
 18 pause on this one if I may on the compliance improvement
 19 for illicit cigarettes because I know that for us we did
 20 something differently and that was we put in controls
 21 around cigarettes and were able to show as you can see here
 22 that when we talk about warehouses for exports it's an area
 23 that is traditionally abused where it's a duty suspension
 24 scheme where goods should be cleared out to move out of
 25 this country and in many instances we found that there was

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1 abuse around this area. So you can see that the reduction
 2 from 2 billion sticks to only 528 million sticks being
 3 cleared into warehouse.

4 So what we were able to do through the controls
 5 is to put in improvements that stop people from using these
 6 facilities to abuse the payment of substantial amounts of
 7 money on cigarettes, just to pause on that. On textile and
 8 clothing we worked out of the NETLAB process we worked in
 9 collaboration with labour, with business to develop a, in
 10 effect it's a risk profiling tool. Perhaps just to pause
 11 on the increases in values that were declared as a result
 12 of using the industry knowledge to inform customs service
 13 targeting and then further interventions going forward.

14 So you can see there a 23.2% increase in clothing
 15 values being declared to customs so it was a very
 16 successful initiative over the three or four years that
 17 I've reflected there. On the compliance improvement for
 18 narcotics I think it's very important that we pause on this
 19 and there's so many media releases and perhaps many of you
 20 have seen them over the years that I just pulled a snapshot
 21 just to give an indication of when we're dealing with
 22 narcotics smuggling it comes in all forms and it comes
 23 through all border posts.

24 But by increasing our efforts as customs at the
 25 time I think we were able to show in 72 hours 54 KGs of

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1 drugs were seized. You know, it's just to indicate how
 2 great we were becoming in stopping illicit narcotics in the
 3 country. And then also to show that it started moving
 4 around the country. Once we sort of clamped down on ORTIA
 5 you found suddenly heroin for example coming through an
 6 obscure border post like Gulele. So just to illustrate
 7 that that's part of being a customs officer is having to
 8 deal with those aspects. So the next part of the
 9 presentation then goes to the Bain diagnostic. Advocate
 10 Steinberg, are you okay if I move on that?

11 MS STEINBERG: I think what you haven't
 12 mentioned was the new customs legislation.

13 MS VIVIER: Oh yes, you're right. My
 14 apologies. So I think that we had five programmes for
 15 customs modernisation but in 2014 the new Customs Control
 16 Act and the Duty Control Act were passed into law. And
 17 those then form the next pattern for customs modernisation
 18 going forward because it's a substantial change to the
 19 legislation that we currently have. So what we were
 20 working on then was how we start then modernising customs.
 21 My apologies, my phone is making a noise here.

22 We were then working on how we modernise customs further
 23 using the new law as the basis for the development of new
 24 systems, the basis for the development of new processes,
 25 new policies and so on and so on. Unfortunately as I

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1 understand it the process was put on hold and I'm not
 2 really sure because I wasn't party to any of the
 3 communications on this but as I understand it the
 4 modernisation of systems development was placed on hold
 5 sometime in 2014 or perhaps it was early 2015 with the
 6 result that our modernisation process through the new
 7 Customs Control Act programme was severely delayed. At
 8 this moment - then we were expecting to have it fully
 9 implemented by the end of 2015. I understand now that
 10 final implementation is set for 2025. So there's been a
 11 substantial delay in the rollout of the new Customs Act and
 12 all of those modernised procedures that were, are envisaged
 13 in the new law.
 14 COMMISSIONER: Are they being worked on
 15 at the moment or -
 16 MS VIVIER: Yes, they have been. In fact
 17 they've had two rollouts this year which one being
 18 something that I'll talk to in a little more detail later
 19 and another that talks to how we register our clients. So
 20 those have been done. There has been work done. It's just
 21 had some delay from 2016 onwards.
 22 MS STEINBERG: If I understand correctly
 23 this complete rewrite of the Customs and Excise Act that
 24 must happen hand in hand with modernisation.
 25 MS VIVIER: Yes.

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1 MS STEINBERG: Because it changes the
 2 responsibilities and obligations of you and your customer.
 3 MS VIVIER: Yes, absolutely. It changes
 4 our processes. It changes their processes. So most
 5 definitely we have to - it is a modernisation of customs.
 6 It's the next iteration of modernisation.
 7 PROF KATZ: You would've recommended all
 8 of that.
 9 MS VIVIER: Yes, absolutely, yes. It's
 10 very exciting.
 11 MS STEINBERG: Yes, it would be a
 12 partnership between SARS and whoever in government is
 13 developing the new legislation I would imagine.
 14 MS VIVIER: Yes, we developed that
 15 legislation.
 16 MS STEINBERG: You developed it.
 17 MS VIVIER: Yes, it's from SARS. It's
 18 written by SARS.
 19 MS STEINBERG: And this was happening in
 20 2014.
 21 MS VIVIER: Yes.
 22 MS STEINBERG: Just before Bain arrived.
 23 Is that correct?
 24 MS VIVIER: Yes.
 25 MS STEINBERG: Okay. Maybe we can pick

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1 up there.
 2 PROF KATZ: So just forgive me, may I
 3 just -
 4 MS STEINBERG: Please.
 5 PROF KATZ: So the legislation was passed
 6 in 2014 to give effect to what you were seeking to achieve
 7 and then you were stopped from implementing.
 8 MS STEINBERG: It was a bill.
 9 MS VIVIER: Ja.
 10 MS STEINBERG: It was a bill, yes?
 11 MS VIVIER: Yes, and then it became an
 12 Act which was passed, yes.
 13 PROF KATZ: It became an Act.
 14 MS STEINBERG: It became an Act.
 15 MS VIVIER: Yes.
 16 PROF KATZ: 2014.
 17 MS VIVIER: 2014 it became an Act, two of
 18 them, the Customs Control Act and the Customs Duty Act,
 19 yes.
 20 PROF KATZ: So that was to enable you to
 21 do exactly what you were working on.
 22 MS VIVIER: The further, the further -
 23 MS STEINBERG: In fact -
 24 PROF KATZ: And then you were stopped.
 25 MS VIVIER: Yes, yes.

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1 MS STEINBERG: Okay. I think we'll get
 2 to that part of the story, yes.
 3 MS VIVIER: So I think perhaps I should
 4 also just mention I saw for the first time in July this
 5 year the full Bain diagnostic that I've done an assessment
 6 of. I hadn't seen the full one before. I had seen some
 7 parts of it, particularly the parts relating to revenue
 8 generation and where there were revenue opportunities. So
 9 I was somewhat surprised.
 10 COMMISSIONER: Can you just say that for
 11 me again slowly? You saw it in July this year?
 12 MS VIVIER: Yes.
 13 MS STEINBERG: That's when I gave it to
 14 her.
 15 MS VIVIER: Yes.
 16 COMMISSIONER: The first time you saw the
 17 Bain diagnostic on customs?
 18 MS VIVIER: Yes, the full comprehensive
 19 one that I've been given here.
 20 COMMISSIONER: Did no one from Bain talk
 21 to you at all?
 22 MS VIVIER: The SARS representative did
 23 but no, not from Bain.
 24 PROF KATZ: So your, sorry, your input
 25 into that was zero.

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1 MS VIVIER: Ja. That's correct.
 2 MS STEINBERG: I also - let's just pause
 3 there about the consultation now that we, now that we're on
 4 it if you don't mind. You weren't consulted and I also
 5 have an affidavit from Mr Baz Theron. Now, Mr Theron is
 6 the executive, is that correct, the acting executive?
 7 MS VIVIER: He's the acting chief officer
 8 at the moment.
 9 MS STEINBERG: Acting, sorry, the acting
 10 chief officer. And what he has to say about the
 11 consultation process -
 12 COMMISSIONER: And what was he at the
 13 time though?
 14 MS VIVIER: He was the head of
 15 modernisation, the customs modernisation.
 16 MS STEINBERG: In customs modernisation.
 17 MR KAHLA: Well, if you don't mind who
 18 was the previous chief officer for customs?
 19 MS STEINBERG: At that time in 2014.
 20 MS VIVIER: It was Barry Hore. He was
 21 the chief officer for operations.
 22 MR KAHLA: Okay.
 23 MS VIVIER: We were in the operations
 24 stable.
 25 MS STEINBERG: So Baz Theron would've

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1 reported to Barry Hore. Is that right?
 2 MS VIVIER: That's correct, yes.
 3 MS STEINBERG: Okay. So he was the most
 4 senior person in the customs space just dedicated to
 5 customs.
 6 MS VIVIER: Customs modernisation, yes.
 7 MS STEINBERG: Customs modernisation. He
 8 says, "To my knowledge Bain did not consult with anyone
 9 from the SARS customs division before publishing the
 10 diagnostic and proposed operating model. I believe there
 11 was some consultation from somebody within the enforcement
 12 division. Bain did not consult the external stakeholders
 13 who engaged with SARS customs and excise operations on a
 14 regular basis. Bain consulted with various experts rather
 15 than talking to the customers or people who used and
 16 required SARS' services.
 17 Bain approached the customs division for
 18 consultation in late 2016 after the new operating model had
 19 been designed and announced." He said, "I had some
 20 engagement with a Warren Chetty from Bain in November
 21 2016." He says, "I met with Warren Chetty from Bain in
 22 2016 after discussing some of the issues arising from the
 23 new operating model once it was already in place. He said
 24 to me but you have all the answers.
 25 I responded that they would have obtained this

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1 information if they'd consulted with us prior to
 2 implementing the new operating model. The lack of
 3 consultation meant that even where Bain correctly
 4 identified a problem with the current operations their
 5 proposed solution was inappropriate. In certain cases
 6 fundamental changes were in the pipeline I presume partly
 7 due to the new legislation and in other cases we had
 8 already identified the issue and begun taking steps to
 9 rectify them." Would you agree with that?
 10 MS VIVIER: Yes.
 11 MS STEINBERG: So then perhaps you can go
 12 on to discuss the diagnostic.
 13 MS VIVIER: So I think that just to pause
 14 on the heading here of concern to me is that the diagnostic
 15 is fraught with misleading statements or inaccurate
 16 statements. The one that I found the most difficult to
 17 swallow was that customs efficiency was painted as being
 18 very bad, that we were 61st out of 143 countries, but that's
 19 not actually the fact. It's not a fact. So I've put the
 20 corresponding facts on the other side, Judge, where I rank
 21 - at that time in 2015 we were the best that we've ever
 22 been. We were 18th out of 160 countries. They used the
 23 international LPI country scorecard, Bain -
 24 MS STEINBERG: They being Bain.
 25 MS VIVIER: Yes.

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1 MS STEINBERG: What's the LPI?
 2 MS VIVIER: It's the, I forget what LPI
 3 stands for now, Logistics P, P, P Indicator, my apologies.
 4 But certainly it's by Transparency International. They
 5 ignored the World Bank rating that I also allude to later
 6 on in our, in my presentation where we also had improved by
 7 49 points by 2015 on the ranking of how efficient we were
 8 as a customs administration.
 9 MS STEINBERG: But I think to stop you
 10 there it's worth saying that customs had started from a low
 11 base.
 12 MS VIVIER: Very low.
 13 MS STEINBERG: So the modernisation was,
 14 you were quickly climbing up the ranks of efficiency but
 15 from a low base.
 16 MS VIVIER: Yes.
 17 MS STEINBERG: So at the moment that that
 18 snapshot was taken if you didn't understand where you came
 19 from it might have looked less impressive than if you
 20 understood the gains that you'd made.
 21 MS VIVIER: Well, perhaps unless one
 22 really looks at the fact that we were on par with
 23 developing countries. That LPI score shows us on par with
 24 France and the USA. And we're a developing country so, you
 25 know, I think that it just, even if you didn't know where

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1 we came from to suggest that we were one point below France
 2 I think one couldn't suggest that we were actually not very
 3 highly ranked on our efficiency. And then as I say most
 4 people in the customs world know that we go to the World
 5 Bank Ease of Doing Business report. We go to the specific
 6 section which is ease of trading across borders. And you
 7 would have seen then by 2015 we had had fundamental and
 8 monumental leaps from where we were prior customs
 9 modernisation.
 10 PROF KATZ: Do you know, sorry, do you
 11 know where that, the first assertion in the diagnostic,
 12 customs efficiency ranked 61st, what ranking is that? Do
 13 you know?
 14 MS VIVIER: No, I couldn't find that
 15 ranking. It comes from the international LPI scorecard but
 16 I couldn't find ever that we were 61st and I went back to
 17 1976 when the LPI was put in place and was launched.
 18 MR KAHLA: But that says it's by the
 19 World Bank.
 20 MS VIVIER: Ja, I couldn't find that.
 21 The Transparency International I think is linked to the
 22 World Bank but I couldn't find a 61st.
 23 MR KAHLA: The point in relation, the
 24 assertion in relation to one and two, are they from the
 25 same report or are they from distinct reports, one by the

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1 World Bank and the other by Transparency International?
 2 MS VIVIER: I'm not sure right now. I'm
 3 a little bit confused if you forgive me. I'm going to just
 4 look at my notes. Is that okay?
 5 MR KAHLA: Okay.
 6 MS VIVIER: Thank you. I know I checked
 7 the LPI so unless I put World Bank in there by mistake.
 8 MS STEINBERG: We can sort that out.
 9 MS VIVIER: I apologise for that.
 10 MS STEINBERG: It was the World Bank Ease
 11 of Doing Business that said SARS customs is on the up and
 12 up.
 13 MS VIVIER: Yes.
 14 MS STEINBERG: Is that right?
 15 MS VIVIER: In fact we were rated as
 16 being the most improved customs in the world in 2013.
 17 MS STEINBERG: Right.
 18 MR KAHLA: So should we attribute the
 19 World Bank to the corresponding facts rather than to the
 20 diagnostic assertion?
 21 MS STEINBERG: In your words your -
 22 MS VIVIER: Yes, yes.
 23 MS STEINBERG: So your information comes
 24 from the World Bank.
 25 MS VIVIER: No, no, that information

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1 there, 18 out of 160 countries, is from the LPI
 2 transparency. That much I'm sure of, yes.
 3 MS STEINBERG: Okay.
 4 MS VIVIER: Okay. The further slide I
 5 will show you the World Bank ratings.
 6 MR KAHLA: Okay.
 7 MS VIVIER: They're a little different.
 8 Okay. Obviously that's where I get myself confused so I
 9 must apologise. So Transparency International is the issue
 10 relating to corruption. Okay. So the LPI scorecard is the
 11 World Bank scorecard. There we go. I apologise. So the
 12 second assertion that I think is concerning for me is that
 13 in the diagnostic it says Transparency International rated
 14 SARS' corruption high. That's the statement. The report
 15 that I found in fact first and foremost is a very outdated
 16 report. It's a public opinion survey done in 2010. And in
 17 actual fact the incidences of SARS corruption is very low
 18 compared to the countries that were part of the survey,
 19 very low, the lowest out of all of them.
 20 [14:32] So I think that that's a very misleading
 21 statement to suggest and I think that it's really outdated.
 22 This is a diagnostic done in 2014, 2015.
 23 MS STEINBERG: And you're saying that
 24 transparency international was a 2010 report.
 25 MS VIVIER: It was. It was a public

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1 opinion survey done in 2010.
 2 MR KAHLA: But the corresponding one also
 3 -
 4 MS VIVIER: It's the same report, it
 5 actually is very low.
 6 MR KAHLA: I'm sorry, I'm trying to
 7 understand you've got the transparency assessment which
 8 says customs is high in corruption and then you've got the
 9 corresponding suggestion that it is very low. What report
 10 is that?
 11 MS VIVIER: It's the same report. The
 12 diagnostics asserts that, that same report said that SARS
 13 corruption is high.
 14 MR KAHLA: Mm, mm.
 15 MS VIVIER: But the same report actually
 16 shows that it's low compared to all the other countries in
 17 the diagnostics.
 18 MR KAHLA: So you're effectively saying
 19 that Bain misrepresents and misinterprets the information
 20 in that report.
 21 MS VIVIER: That's what I'm saying. And
 22 then the third point goes to a lack of goods control, this
 23 becomes a very convoluted discussion around what is goods
 24 control, but I think perhaps just to try and package it so
 25 that we can all understand it, we have international

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1 conventions. We have legislation that places obligation on
 2 every actor in the value chain of an import, it places the
 3 obligations on them to clear to customs, to present to
 4 customs and so on and so on. At the same time the
 5 diagnostic refers to the transit and trans-shipment
 6 movement of containers within the country. Again those are
 7 dictated by international convention so it's dictated by
 8 our local legislation. So we would not consider those to
 9 be a lack of control, they are covered by the legislation
 10 and if you do not fulfil your obligations to customs you
 11 will be penalised. And your penalties can be as high three
 12 years imprisonment or three times the value of the goods
 13 and so on and so on depending on the particular
 14 contravention. I think it's same, just there was a goods
 15 control project that was launched in Durban after this
 16 diagnostic was presented. And they themselves did their
 17 own assessment and they found very contrary to what Bain
 18 suggested at the time. They found 1, that 55% of the –
 19 Bain suggested, sorry let me just go back a bit. The 20%
 20 of the goods that arrive in Durban are undeclared before
 21 they arrive. They also said 6% remain undeclared and 3%
 22 moved to City Deep and they suggested that this was a lack
 23 of control and a high risk.
 24 They also then projected that there was, as a
 25 result of this lack of goods control, there was a R24

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1 billion revenue gap. The project which I think also
 2 mention only collect 20 million over two years, not 24
 3 billion. Also then did their own analysis of the movement
 4 of goods containers through Durban, so they found that 55%
 5 of the containers that arrive in Durban do not require
 6 customs clearance because they are intended for trans-
 7 shipment or what we call re-stows in the customs world.
 8 18% of them were empties which are not required to be
 9 customs cleared and 8% of them are trans-shipment
 10 containers. So 55% of total population would not require a
 11 customs control in any case. They also then found that
 12 only 42% of the containers arriving in Durban are for
 13 import. Okay so the balance then would not then give you a
 14 revenue risk and only 1% are late declared. So 1% of the
 15 42 are late declared as opposed to 20 plus six, 26% that
 16 Bain asserted. And then informed the customs revenue risk
 17 of 24 billion on –
 18 PROF KATZ: Forgive my interrupting. Is
 19 all of this in Ms Vivier's statement?
 20 MS STEINBERG: It is. In more detail
 21 than this.
 22 MS VIVIER: And then only 1.5% of
 23 containers arriving at Durban are destined for trans-
 24 shipment again so statistically it's a very small amount.
 25 And then the very interesting fact that 95% arriving in

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1 Durban are controlled by 10 clients. So again you have a
 2 very good control of such a small client base in terms of
 3 ensuring that they meet the customs obligations. So again
 4 I think – I'm not sure if I have been able to articulate
 5 why for us it's not necessarily a lack of control, but for
 6 me I think the key points are there was apparently a R24
 7 billion revenue understatement based on the lack of goods
 8 control. The goods control project has only collected R20
 9 million over the last two years and in fact the team that's
 10 working on it in Durban have been able to refute the fact
 11 that there is so much of a lack of control and therefore a
 12 revenue leakage. Okay.
 13 MR KAHLA: Somehow I think it must in the
 14 diagnostic that part of the issue there is around the port
 15 of Durban is that there are too many gates or areas of
 16 entry and exit, but not all of those are covered by
 17 customs. Will you be dealing with that in your response?
 18 MS VIVIER: No again, but I can.
 19 MR KAHLA: I think it's important just
 20 for purpose of understanding the assertions in respect of
 21 lack of goods control.
 22 MS STEINBERG: Can I read to you a very
 23 quick statement from Mr Theron?
 24 MS VIVIER: Yes sure.
 25 MS STEINBERG: You can say whether it's

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1 right or wrong, whether it needs elaboration. "The
 2 diagnostic said that lack of customs visibility in the port
 3 due to the wide port layout, 30 plus gates and lack of
 4 resources, two offices on the ground per shift. It is
 5 correct that there 30 gates in Durban. Bain identified
 6 this as a problem and found that we were not controlling
 7 goods and that they were not accounted for. We simply do
 8 not have the resources to secure every gate, instead we
 9 manage the entity by monitoring the supply chain. The Bain
 10 model would require 30 000 custom officers, instead we had
 11 recently been through the modernisation process which had
 12 increased the numbers who declared goods electronically
 13 beforehand. The electronic systems can be used to cross
 14 check the self-declaration." So as I understand the short
 15 answer is that of modernisation you didn't need people on
 16 the ground in the way that Bain suggested you did because
 17 you had an electronic system that matched self-declaration
 18 with your own ways of confirming whether that was correct
 19 or not. Is that right?
 20 MS VIVIER: I agree with him, I'd like to
 21 enhance his response and also suggest risk management
 22 principles don't mean that you stand at the gate and check
 23 against what in any case. So the people within the port
 24 probably about 95% of all containers go through one gate at
 25 the port, at the terminal area. So your highest risk in

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1 any case is very well electronically managed by the ports
 2 authority themselves. So if anything that may be you would
 3 want to put your very limited resources, but again for
 4 what. You know because you have 100 containers does not
 5 mean that's 100 containers of risk, you may have only one
 6 in a 100 that is a risk that you would want to intercede
 7 on. And the movement from the terminal to the depot is
 8 very well monitored by the ports authority, they stand to
 9 lose far too much if they lose a container. And then
 10 within the depot environment you have security that is at,
 11 you know, it's world class security to ensure that those
 12 containers cannot move out of that depot unless all customs
 13 obligations have been met.

14 So I think risk management just dictates that we
 15 don't stand at gates anymore as customs officials and I've
 16 seen it, 20 years ago I did a site visit to the United
 17 States. They use electronic means to release goods out of
 18 their control areas. So again just to look at some of the
 19 misleading statements, here there's a customs and revenue
 20 excise gap of R70 billion. Unfortunately the reality is
 21 that customs collections have been declining since 2015 and
 22 have ended up, I have another graph or table to illustrate
 23 that, showing that we've got our highest deficit ever.

24 In that revenue gap of 70 billion for example was
 25 the goods control of 24 billion. There are some others

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1 relating to the lack or the high prevalence of transfer
 2 pricing and trade at mispricing and its impact on CIT and
 3 large underpayments in CIT. And there were some relating
 4 to – and I'll just get to that, under valuation a gap of 6
 5 billion was identified. 5% of all exports, this is what
 6 the Bain diagnostic asserts, that 5% of all exports are
 7 false or overvalued. And they attached a 5 billion gap to
 8 that. And so the 70 billion is based on assumptions and I
 9 saw that now in this diagnostic, was based on assumptions
 10 relating to the level of non-compliance in those areas. So
 11 we are not used to have that in SARS, we inform how we look
 12 for risk because we have a data rich environment based on
 13 data, actual data. So we would be able to extrapolate I
 14 suppose to assume a level of non-compliance based on
 15 previous detentions, previous interventions and the
 16 successes on that. So to assume a level of non-compliance
 17 and then to attach an amount of money to that is very
 18 dangerous. These figures were presented at the revenue
 19 forum while I was still the head of customs. I did
 20 question the underlying data, I was asking for the
 21 underlying data so that we could point the organisation in
 22 the correct direction because if I was missing R70 billion
 23 I needed to very quickly scramble my teams to get to it.
 24 Unfortunately I was never provided with that and I was
 25 subsequently removed from the position. So I know that

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1 they did become strategic revenue initiatives for the
 2 customs, the new customs management and leadership.

3 MR KAHLA: Now the 20 million collected
 4 over two years through the goods control project, is that a
 5 project that was initiated or informed by the advice of
 6 Bain?

7 MS VIVIER: That's correct yes.

8 MR KAHLA: And all it generated – is it
 9 just in respect of the port of Durban or was it extensive?

10 MS VIVIER: It was in the main in Durban,
 11 but linked then to City Deep and to – there is a terminal
 12 here at Dry Port in Pretoria as well, so it's linked to
 13 those three ports.

14 MR KAHLA: This project I suppose was a
 15 pilot -

16 MS VIVIER: Yes.

17 MR KAHLA: - and arising from the pilot
 18 anything's been done?

19 MS VIVIER: I understand that it's still
 20 ongoing, but what has happened is the new Customs Act
 21 modernisation has overtaken it in that it now provides the
 22 electronic matching of – well in effect the goods project
 23 was used in third party data to understand the risk in the
 24 port of Durban. Now it's done electronically. And then
 25 the last point that I also found some concern with is that

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1 the data quoted is self-reported by staff and it's at the
 2 bottom of the slides in very small print or management
 3 estimations. So they talk about for example, the capacity
 4 of the scanner in Durban. The container X-ray scanner in
 5 Durban. Unfortunately if you read at the bottom you'll see
 6 that that was self-reported by staff. So any of that
 7 information is available, we in customs as I say, we're
 8 data rich, we have daily production data that is available
 9 to anybody. So you can use that data I believe to
 10 triangulate what staff or leadership may been estimating at
 11 the time. And therefore provides us with information that
 12 you know is true and correct and robust.

13 MR KAHLA: So you're suggesting you're
 14 not data rich and information poor, so from that data
 15 you're able to draw up reliable information.

16 MS VIVIER: You should be able to. And
 17 certainly the data that I have provided in my report
 18 suggests that the scanner is not, as an example, is not
 19 underutilised and the successes are in fact at the level
 20 that they should be at. But that's using production data
 21 that I had access to. And I think this also just
 22 underscores what Mr Theron has said, but there was very
 23 limited consultation and more particularly our clients
 24 weren't consulted according to what Bain has declared.
 25 Knowing that we developed customs modernisation in

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1 consultation with most of our traders and many of our
 2 clients, you know, it's very sad that they didn't gauge
 3 their experience of customs modernisation. And what it is
 4 that they sought for customs to still do going forward in
 5 terms of decreasing trade costs, making sure we're not a
 6 burden, so I think that that is a concern and I find no
 7 reference in the diagnostic to the 2006 World Customs
 8 Organisation diagnostic that was done which was very
 9 comprehensive and I think that's a concern for me. And
 10 then I find no reference in the documents to international
 11 conventions. So you don't hear the talk of moving from
 12 gate-keeping to risk management. You don't hear the talk
 13 about building specialised teams to deal with illicit
 14 goods. You don't hear the talk about using information
 15 technology to improve our ability to be faster and so on.

16 PROF KATZ: Does this describe no
 17 consultation by Bain, but did anyone in SARS's leadership
 18 consult customs people?

19 MS VIVIER: So there is a and you'll
 20 forgive me if I get his particular title at the time wrong,
 21 there was a SARS person attached to Bain yes and if he
 22 consulted I'm not sure because it's not declared in the
 23 documents that Advocate Steinberg gave to me.

24 MS STEINBERG: Are you talking about Mr
 25 Mabuma?

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1 MS VIVIER: Mr Mashaba.

2 MS STEINBERG: Oh Mr Mashaba. Well he'll
 3 be testifying later, so we can ask him.

4 PROF KATZ: Yes but does this describe
 5 the lack of consultation by Bain?

6 MS VIVIER: Yes.

7 MR KAHLA: Would Mr Mashaba be that one
 8 person in the first bullet point?

9 MS VIVIER: Yes. That is declared in the
 10 documents.

11 COMMISSIONER: Who was Mr Mashaba?

12 MS VIVIER: He was the, again you'll
 13 forgive me if I get his title wrong at the time, he was the
 14 SARS person appointed to work with the Bain consultants.

15 COMMISSIONER: Was he on the steering
 16 committee as it were.

17 MS VIVIER: I'm not sure, Judge. And
 18 then I think perhaps this is an area perhaps we want to
 19 spend a little more time talking about and this is the
 20 operating model. This is a surprise to me to see the
 21 operating model, there were four models proposed by Bain in
 22 the diagnostic. The one proposed for customs interestingly
 23 enough remained the same across all four of the proposals.

24 MS STEINBERG: Had you seen those four
 25 models before I gave them to you?

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1 MS VIVIER: No, no. In fact, Advocate
 2 Steinberg, I'd never even seen the customs one. I'd asked
 3 for it at a session in this room and I was told it would be
 4 given to us if we were successful for the position. Seeing
 5 as I wasn't I never saw.

6 MS STEINBERG: You're talking about the
 7 final model.

8 MS VIVIER: Yes.

9 MS STEINBERG: You never saw the final
 10 model.

11 PROF KATZ: Did you apply for this
 12 position by the way?

13 MS VIVIER: Twice. My second attempt I
 14 was advised that it is with deep regret that I have been
 15 found not – I was not shortlisted for the position.

16 PROF KATZ: You weren't shortlisted.

17 MS VIVIER: No. The first time I was
 18 shortlisted and interviewed and went through the entire
 19 process. So you can see my concern here is that the
 20 operating model proposed by Bain which is largely one would
 21 suggest what international customs administration seek to
 22 have in their operating model and structure. The one that
 23 was finally adopted by SARS is very, very different. And
 24 what this model then does unfortunately is it's broken the
 25 end to end value chain and value chain management of

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1 customs because it's taken out parts of the customs
 2 business that should have been managed by one person with a
 3 view of the entire value chain.

4 [14:52] And where I think it has had a very negative
 5 impact, is that it impacted negatively on the ability to
 6 manage revenue collection and it also impacted very
 7 negatively on the ability to manage illicit trade because
 8 you have one person dealing with processing and you have
 9 another person dealing with your interventions at your
 10 branch. The previous model we had is that was all under
 11 one regional executive and they had the ability therefore
 12 to manage that entire chain. That implied if processing
 13 was not giving you enough cases for you to work on that you
 14 would be able to immediately pick that up as an issue and
 15 ensure then that you were able to rectify that and vice
 16 versa.

17 MS STEINBERG: So in short there was
 18 fragmentation?

19 MS VIVIER: Yes.

20 PROF KATZ: But with respect on the
 21 comments you're now making about fragmentation does that
 22 apply both to the Bain and the adopted or was the Bain okay
 23 but the adopted not okay?

24 MS VIVIER: The Bain in my opinion is
 25 okay, Professor because what it seeks to do is, there where

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1 it says border inland offices and warehouses it brings
 2 together the whole value chain here. The inspection and
 3 compliance assurance have moved out which is what one would
 4 consider now as your customs border control and they've
 5 always been a little bit outside because they have a very
 6 different focus.
 7 PROF KATZ: Sorry the Bain themselves did
 8 no consultation but arrived at a relatively -
 9 MS VIVIER: Yes.
 10 PROF KATZ: Good proposal.
 11 MS VIVIER: They're suggesting the
 12 diagnostic that they've looked at international best
 13 practice and they also, the model is based on either
 14 segmentation it's on a factory type.
 15 COMMISSIONER: Are you saying as I
 16 understand it, they looked at international best practice
 17 that is international best practice?
 18 MS VIVIER: Yes.
 19 COMMISSIONER: But you are at
 20 international best practice anyway?
 21 MS VIVIER: We were, yes.
 22 COMMISSIONER: But there might have been
 23 some changes, was it fundamentally different?
 24 MS VIVIER: What they've done there is
 25 they've brought strategy, legal and legal policy into

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1 customs whereas before that was a competency that we relied
 2 on that did the strategy legal and policy for the whole of
 3 SARS.
 4 COMMISSIONER: I just want to understand
 5 that, the proposed, is that the proposal in these four
 6 proposal -
 7 MS VIVIER: That's right.
 8 COMMISSIONER: You've only recently seen?
 9 MS VIVIER: Yes.
 10 COMMISSIONER: And the adopted was the
 11 one presented to you eventually. Bain was still here of
 12 course at the time or were they not?
 13 MS VIVIER: I only saw this adopted one
 14 now in the Bain documentation.
 15 COMMISSIONER: What do you mean, do you
 16 not, sorry.
 17 MS STEINBERG: No, no I think I can
 18 answer your question. That unlike in any other area Bain
 19 actually was involved in implementation in customs. There
 20 was another odd R55 billion contract given to Bain to
 21 implement the pilot in the customs area.
 22 COMMISSIONER: Yes.
 23 MS STEINBERG: So this is the one area of
 24 the organisation where they were, Bain were around from
 25 diagnosis through implementation.

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1 COMMISSIONER: Ja.
 2 MS STEINBERG: In the pilot.
 3 COMMISSIONER: Okay. Now let me just
 4 give you what my difficulty was and that was, you were
 5 still head of customs when the new operating model was
 6 presented at SARS?
 7 MS VIVIER: No, Judge -
 8 COMMISSIONER: You were -
 9 MS VIVIER: I was out by then. So the
 10 only new operating model that I saw was the one that said
 11 there will be a Chief Officer Customs and there will be the
 12 GE positions, okay.
 13 COMMISSIONER: But by the time you saw
 14 that were you no longer head of customs?
 15 MS VIVIER: NO, then I was still the head
 16 of customs.
 17 COMMISSIONER: That's why I'm saying,
 18 sorry, just, I'm a bit slow. At the time you saw that you
 19 were still head of, what did you see, did you see this what
 20 you call adopted?
 21 MS VIVIER: Yes, no, no. No, no, no. So
 22 there's some parts here that have been added. Okay so CNE
 23 processing is not what I saw initially. Let me just go
 24 through this. The CNE operational centre of excellence was
 25 not necessarily on that one initially. I think customs

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1 branch was there, because I applied for Customs branch and
 2 I applied for customs, so there was only three group
 3 executive positions in the new operating model. One was
 4 strategy, legal and policy, one was compliance and risk and
 5 case selection, one was the customs branch. That was all.
 6 COMMISSIONER: Let's just, sorry If I can
 7 just get this. Let's get this, put it in another way
 8 round. When you were, while you were head of customs did
 9 you see any presentation made of what Bain had proposed as
 10 the operating model?
 11 MS VIVIER: No.
 12 COMMISSIONER: None at all?
 13 MS VIVIER: No.
 14 COMMISSIONER: So the first you knew
 15 about it was when they said you've got to apply for a job,
 16 there's a new operating model and you're not on there,
 17 you've got to apply for the job.
 18 MS VIVIER: Yes.
 19 COMMISSIONER: Is that correct?
 20 MS VIVIER: Yes.
 21 COMMISSIONER: But you knew nothing
 22 about, you had never been even presented with what this
 23 operating model is?
 24 MS VIVIER: No, it was presented to all
 25 of the group executives in this room and that turned out to

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1 be a bit of this adopted model that you see here.
 2 MR KAHLA: And you were in that meeting?
 3 MS VIVIER: Yes, I was.
 4 PROF KATZ: So sorry, with respect,
 5 forgive my being repetitive. No consultation by Bain, some
 6 of their statistics and that in your first slide on the
 7 diagnostic, inaccurate. Yes they come out with a
 8 reasonably good proposal and that's because it accords with
 9 what you had which was in accordance with international
 10 best practice?
 11 MS VIVIER: Yes.
 12 MR KAHLA: Does it accord with what you
 13 heard or does it simply accord with what best practice,
 14 this is how you were structured before?
 15 MS VIVIER: To a large extent. The only
 16 difference being we reported into the CEO operations, so
 17 this proposal makes a CEO customs okay and then strategy
 18 legal and policy and compliance risk and case selection
 19 which were competencies that were leveraged on outside of
 20 customs, they were within SARS were now moved in.
 21 PROF KATZ: And you wouldn't have known
 22 from what you answered the Judge why the adopted deviated
 23 from the proposed.
 24 MS VIVIER: I have no idea, no.
 25 PROF KATZ: And was it a material

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1 deviation?
 2 MS VIVIER: Yes, it is.
 3 COMMISSIONER: The adopted is the
 4 fragmented?
 5 MS VIVIER: Yes.
 6 COMMISSIONER: Organisation.
 7 MS VIVIER: That's correct.
 8 MS STEINBERG: You can go on, Ms Vivier.
 9 MS VIVIER: So I'm not sure if you want
 10 to hear any more around why I feel that the model is not
 11 inappropriate one. I think that there's probably been
 12 submission on that. So I think then the next three slides
 13 which we can deal with very quickly is my assessment of the
 14 current state and it's important that I also pause and just
 15 reiterate. The figures that I show in these slides are
 16 taken from publically available documents on the main from
 17 the customs annual reports. So I haven't in any way
 18 changed them, directly from there. This is just an
 19 indication of, we were speaking earlier, I spoke earlier
 20 about the World Bank and the customs rating in the World
 21 Bank's ease of doing business. So you can see that in 2009
 22 we were a 147 in the World. When we launched our customs
 23 modernisation, which gained traction in 2011 but was
 24 finally in place by end 2012 we had moved from 144 to 115
 25 on our world ranking, in other words we had improved and

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1 then you can see 2014/2015 we continued to improve, in
 2 other words we became more efficient, we became easier to
 3 do business with and therefore cost hour trade less to do
 4 business or to declare to us. After 2016 you'll see the
 5 picture changes and we are in 2018 sitting at where we were
 6 in 2009 so we've regressed. So post modernisation we've
 7 regressed.
 8 PROF KATZ: Sorry this is not said
 9 ostensibly or anyway, in those three years a lot better but
 10 it's not a great ranking.
 11 MS VIVIER: No.
 12 PROF KATZ: So one would have, have then
 13 expected -
 14 MS VIVIER: That they will continue -
 15 PROF KATZ: For SARS to say I need to do
 16 something -
 17 MS VIVIER: Absolutely.
 18 PROF KATZ: I'm in a bad rank.
 19 MS VIVIER: Yes, one would want to be
 20 number 1, yes we want to be world class, we want to be
 21 number 1. Unfortunately I think Singapore holds that at
 22 the moment so you know we have a lot to do but certainly
 23 that's the way, we aspire to be that.
 24 PROF KATZ: So it's quite bad, it's not,
 25 we're not in number 1 territory.

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1 MS VIVIER: Yes.
 2 PROF KATZ: Even a 115 so what was, why
 3 did we have such a poor rank?
 4 MS VIVIER: In the ranking is, added to
 5 the ranking is not only, if you recall the first graph I
 6 showed. There's also the time it takes to transport your
 7 goods and the costs attached to that and the time it takes
 8 for your port authority and the cost attached to that. So
 9 again it underscores the need for collaborative border
 10 management, it underscores the fact that we would have to
 11 not only improve, so remember we said we had improved our
 12 time to clear to 9 days from 18. But as long as your
 13 transport costs are still the same or there's delays to
 14 your transport your number will be negatively impacted. So
 15 going into the future that's what you need to do, is
 16 collaborate with all of the actors to ensure that each one
 17 of those is as efficient as possible.
 18 MR KAHLA: So this is actually, it's more
 19 than just what you have control over.
 20 MS VIVIER: Yes.
 21 MR KAHLA: It also factors in the
 22 distance between your economic hub, namely Gauteng and the
 23 ports which is also a huge distance.
 24 MS VIVIER: And your efficiencies in that
 25 process.

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1 MR KAHLA: Okay.

2 MS STEINBERG: Okay.

3 MS VIVIER: And then I alluded to this

4 point in a previous slides. Just to look at the difference

5 in our revenue collection. So up until financial year

6 2014/15 Customs was on the whole able to bring in at least

7 a billion over target and in that bringing that amount of

8 money over target there's a lot of effort by customs

9 officials, particular in the audit, post audit clearance

10 field to ensure that we collect over target. So you'll see

11 that from 2015/16 and 2016/17 unfortunately Customs not

12 only stopped growing, you'll see actual amounts for 2016/17

13 is a 194.8 billion whereas the year before it had been a

14 197.6 it started, growth actually no longer existed and

15 then they were 3 billion under target in their last

16 financial year.

17 MR KAHLA: And what would have been the

18 cause of this?

19 MS VIVIER: Well I think that's something

20 that I am unable to answer because I'm unable to do the

21 sort of analysis that one would want to do to see, is it

22 because trade has declined to such an extent, is it because

23 of poor customs controls. I can't answer that. It would

24 be mischievous for me to suggest that I know why. But I

25 think that it does point to the fact that we do need to

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1 intercede and at least address this and then the last

2 slide, and there's a caveat attached to this slide. In

3 going through the various annual reports unfortunately

4 you'll find that the reporting on elicit goods is

5 different, it's not always every year the same. So I

6 haven't really been able to draw any major conclusions from

7 the analysis. What I can however show is, it appears in

8 some instances that your elicit trade interventions are on

9 the decline but that may just be because it wasn't reported

10 in the annual report and I think the scenario that we

11 perhaps look at in a little more detail.

12 MS STEINBERG: So just so that we're

13 clear with regard to the new operating model. We have a,

14 we have four models that were proposed that made sense to

15 you, that, in fact you had planned to go along that route.

16 There was then the actual model that was finally

17 implemented differed drastically from that. Bain was then

18 hired to help with customs specifically and was that to

19 implement one of the four models or that final different

20 model, do you know?

21 MS VIVIER: No, I don't know.

22 MS STEINBERG: What you do know is that

23 was that final model, that fragmented model that ended up

24 being implemented?

25 MS VIVIER: I checked during the week

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1 online and it's on our internet, intranet. I checked that

2 is the model that has been put in place yes.

3 MS STEINBERG: And can you explain with

4 the implementation of that model, you've told me that

5 there's certain regressions. For example you've now

6 regressed back to gate-keeping.

7 MS VIVIER: Yes.

8 MS STEINBERG: Now how did that come

9 along with the new model?

10 MS VIVIER: In the Bain diagnostic it

11 suggested that the risk engine was not optimal and that,

12 some people call the customs nodes was more appropriate in

13 identifying risk and what was then created was the ability

14 to do manual case selection. Now during my tenure we did

15 away with manual case selection because of its, it lends

16 itself to collusion. Particularly at sort of border posts

17 where we have very little view of what's happening there

18 and so when you have somebody pulling over a container and

19 they've got nothing, they've got no documentation, they've

20 got nothing to inform the risk it becomes a very difficult

21 situation to suggest that they weren't targeted for other

22 reasons.

23 So with the, what then happened is they started

24 doing, after the new operating model they started doing

25 manual case selection and then the system was then

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1 developed to allow them to do, to actually create their own

2 case on the system. I was in Durban last week on a site

3 visit and was at the container X-ray scanner site and saw

4 that that has become a real problem for them because they

5 create a manual case but they've got no supporting

6 documents. So in effect they're blind and so again it's

7 created - in the process it's now created the fact that we

8 are wanting to check almost everything and the customs

9 leadership at the moment has suggested that our capacity

10 has now changed from where the slimming of the waist, where

11 we would move people away from non-value adding work to

12 value adding work is now back to fat waist, not that I can

13 talk about fat waists. But certainly you know it's gone

14 back to us being more of gate keepers where people are not

15 using risk management to identify high risk, they are using

16 their nose or, we found in Durban they're doing random

17 pulling of containers off of the street to scan containers.

18 PROF KATZ: This is, if I may, Advocate

19 Steinberg. If you were asked now what's your

20 recommendation what route would you take to ensure that

21 problems are remedied? One of our terms of reference we

22 must recommend remedial action, what remedial action would

23 you recommend?

24 MS VIVIER: So I think that there's quite

25 a few that I would consider. I think the first one would

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1 be that one would want to get your customs modernisation
 2 back on track and by that I mean, much of what we rolled
 3 out that still required some enhancements. There's still
 4 some manual parts to customs that need to be brought on and
 5 one in particular would be the movement of goods through
 6 the post offices, E-commerce is a huge growth area for
 7 customs administration around the world and we need to
 8 ensure that we have a sophisticated response to that going
 9 forward. So I would, the new Customs Act becomes a key
 10 priority for customs. It would ensure that it is a
 11 modernised, efficient -

12 PROF KATZ: The 2.14 Act?
 13 MS VIVIER: Yes. It would ensure that
 14 customs is a modernised efficient and effective
 15 administration. But at the same time we've got opinion
 16 around the world with other areas that potentially provide
 17 risk for customs administrations. One of them is we need
 18 to be able to ensure that we have an appropriate response
 19 for what is assumed to be a very large growth in E-commerce
 20 and the World Customs Organisation is suggesting that the
 21 advent of E-commerce will totally change the processes and
 22 procedures of government and how they deal with suppliers
 23 and importers of those goods. We would have to ensure that
 24 this investment, although there's not a lot of money in
 25 that at this moment in time it certainly into the future

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1 that will your trade flows and we would need to ensure that
 2 we're appropriately positioned to respond to that and then
 3 I think the advent of big data and data analytics is an
 4 area that customs needs to desperately start ensuring that
 5 they develop. So that we are able to pinpoint exactly
 6 where we should be pointing our very scarce resources.

7 PROF KATZ: And if all those
 8 recommendations were adopted how quickly, what's the time
 9 line for it?
 10 MS VIVIER: Well the -
 11 PROF KATZ: What's the cost of it?
 12 MS VIVIER: The cost of the new Customs
 13 Act I have no idea, I wouldn't even pretend to have an idea
 14 of that. The cost I think you have a very sound customs
 15 administration, you may have a - and sound leaders and very
 16 sound customs officers. So you -
 17 [15:12] So you should be able to if you are able to fix
 18 your fragmented structure, if you are able to appropriate
 19 leadership, performance management, make sure that you
 20 measure the right things. I think that you could turn it
 21 around within a year to two years. I think you could show
 22 some substantial changes and I must say it's important that
 23 I pause and, the acting Commissioner has appointed Beyers
 24 Theron as the acting Chief Officer Customs so you have a
 25 well-versed, many years in customs person leading customs.

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1 I think already we're starting to see some changes. And I
 2 think then just the sorting out the operating model, bring
 3 your value chain together, you should be able to show
 4 substantial changes. I have no doubt about it.

5 MR SIUO: Just a question of for clarity
 6 on my side, the manual case selection you've just made
 7 reference to is it part of, has it emerged from the goods
 8 control pilot project that Bain is advising on?
 9 MS VIVIER: No I don't understand that it
 10 came from that. It was a separate proposal in the
 11 diagnostic.

12 MR SIUO: It was a separate proposal?
 13 MS VIVIER: Yes.

14 MS STEINBERG: Just two points from the
 15 affidavits I have here. The question of the risk engine, I
 16 just want to flag that. It's part of the Bain diagnostic,
 17 not only with customs but actually across the organisation.
 18 They make the point that the risk engine was only spitting
 19 out a small quantity of cases for further examination. And
 20 Mr Theron says Bain pointed out that more than 80% of
 21 declarations are released by the system as low risk and
 22 Bain signals that being a problem. He said, Mr Theron
 23 said, "in my view the risk engine was perfectly calibrated
 24 for the level of competence and resources of the
 25 organisation. We would focus on quality 100 to 40 per

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1 day."

2 Now what he and numerous other people involved
 3 with the risk engine have said is that you calibrate a risk
 4 engine according to the capacity, human capacity you have
 5 in the organisation to deal with the number of cases that
 6 the risk engine spits out. So you can calibrate it to spit
 7 out 10% 20% 2% but you've got to have the human beings on
 8 the other side of that who can take those cases and
 9 investigate them and audit them, otherwise you're back to
 10 where you were before your automisation process where
 11 you've got too much paper and too few people. So his input
 12 here, and it's the same across the organisation is that
 13 it's meaningless to say but 80% of declarations are low
 14 risk. You calibrate it that way because that's what you
 15 could cope with.

16 MS VIVIER: Yes.
 17 MS STEINBERG: Is that correct?
 18 MS VIVIER: Absolutely. And every single
 19 date we calibrate it so if for some odd reason we would in
 20 a processing centre have only 50% of the staff there, we
 21 would not be able to have a risk engine firing at the level
 22 it had been firing at the day before and would calibrate it
 23 then to our resources when we'd have to do that.

24 MS STEINBERG: Yes. And finally I do
 25 have an affidavit from someone from Durban port who would

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1 like to remain anonymous and briefly just to say this
 2 affidavit in terms of the impact of the new operating model
 3 confirms what you've said. The words used are
 4 fragmentation. The new operating model has broken up the
 5 inspection value chain which has given rise to a number of
 6 service failures in customs. This is further exacerbated
 7 by the fact that there's no longer a single accountable
 8 head of operations in the region rendering client service
 9 at an all-time low. Staff morale is at an all-time low.
 10 Everything has become slow and bureaucratic requiring a
 11 memo. As a result there's much frustration on the ground.
 12 And then more about silos and fragmentation.
 13 MS VIVIER: That's heart-breaking.
 14 MR SIUO: So you agree with what –
 15 MS VIVIER: Yes, yes, it's in my
 16 submission as well.
 17 COMMISSIONER: May I ask you what you do
 18 every day?
 19 MS VIVIER: I've been lucky enough, Judge
 20 to find a niche for myself researching the international
 21 customs developments and at the moment I'm very intimately
 22 involved with the modernisation of our trade statistics
 23 reporting which is very intimately linked to customs so I
 24 have sufficient work, if that's what you're asking.
 25 COMMISSIONER: No, no, I'm not asking if

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1 you've got sufficient work, I just want to know whether
 2 your work that is being used properly, that's all.
 3 MS VIVIER: Well I think that that's
 4 another thing. Whether people are going to read my
 5 dissertations, as Advocate calls them, I'm not really sure,
 6 but certainly if one considers when I was head of customs
 7 which is a 24-hour business –
 8 COMMISSIONER: But you, sorry, so you're
 9 doing research on what, things that interest you or are you
 10 given particular areas to research or?
 11 MS VIVIER: I'm given particular areas.
 12 I did some research on game farming which I've never had
 13 any experience in and I found that extremely valuable.
 14 MS STEINBERG: But Ms Vivier, you're an
 15 experienced operational person and presumably if you had
 16 the opportunity to go back to managing operations you would
 17 grab that opportunity?
 18 MS VIVIER: Absolutely. I think that's
 19 where my passion is.
 20 COMMISSIONER: Ja of course -
 21 MS VIVIER: And the organisation has
 22 invested 33 years in developing me to be this person that
 23 sits before you.
 24 COMMISSIONER: I understand. I think
 25 that that goes without saying. It's quite obvious but I

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1 just want to know, so people say well do some research onto
 2 game farming and you do some research, and what do you do
 3 with it?
 4 MS VIVIER: I would hand it over,
 5 depending on where it comes from, so for example game
 6 farming with around revenue risk, so I just hand it over,
 7 Sir.
 8 COMMISSIONER: You hand it over and you
 9 never see it again?
 10 MS VIVIER: No. You're right, yes.
 11 COMMISSIONER: Okay. Thank you.
 12 MS STEINBERG: Thank you very much. And
 13 thanks for the dissertation.
 14 MS VIVIER: Thank you very much for the
 15 opportunity.
 16 COMMISSIONER: Thank you very much
 17 indeed. We really do appreciate it.
 18 MS VIVIER: Thank you.
 19 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 20 COMMISSIONER: Thank you. Ms Steinberg,
 21 sorry what is your plan at the moment?
 22 MS STEINBERG: There are two more
 23 witnesses, one of whom is Mr Mashaba who was involved in
 24 the diagnostic and the other is somebody that Mr Siuo is
 25 going to lead.

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1 COMMISSIONER: What time do you expect to
 2 complete them?
 3 MS STEINBERG: I would imagine your
 4 witness is quite quick.
 5 MR SIUO: Ja.
 6 COMMISSIONER: And yours?
 7 MS STEINBERG: I would imagine that we
 8 would need another hour all in all.
 9 COMMISSIONER: Do you want to hear the
 10 short one first and then we go?
 11 PROF KATZ: Ja.
 12 COMMISSIONER: You can go and we can
 13 carry on.
 14 PROF KATZ: Okay.
 15 COMMISSIONER: There's a difficulty here
 16 that Professor Katz has to leave at about 4:00 or so and
 17 he's here with Mr Kahla so the two of them will need to
 18 leave. I see no difficulty in us remaining and the
 19 transcript will be available to them for the balance. Is
 20 that okay?
 21 MS STEINBERG: That's fine with me.
 22 COMMISSIONER: So if you just, whenever
 23 they're ready to go they'll up and go and it won't be
 24 because they're not interested, okay? Not at all.
 25 MR SIUO: Judge, may I call Mr Sydwell

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1 Phokane.

2 COMMISSIONER: Yes alright.

3 MR SIUO: Thank you.

4 COMMISSIONER: Good afternoon.

5 MR PHOKANE: Good afternoon Judge.

6 COMMISSIONER: Thank you very much for

7 coming. I appreciate it. It's all very informative and

8 I'm sure what we hear from you is going to be equally

9 informative. Would you affirm that the evidence you give

10 will be the truth, the whole truth and nothing but the

11 truth? If so will you say I do.

12 SYDWELL PHOKANE: I do.

13 COMMISSIONER: Thank you very much.

14 EVIDENCE BY MR PHOKANE

15 MR SIUO: Mr Phokane, we don't have a lot

16 of –

17 COMMISSIONER: May I just ask you to put

18 your names on the record, please?

19 MR PHOKANE: My name is Sydwell Phokane.

20 MR SIUO: Thank you. So we don't have a

21 lot of time on our hands so I'd like us to get straight

22 into it. Could you please give us a summary of your

23 employment background at SARS?

24 MR PHOKANE: Thank you, Advocate. My

25 history in SARS stands for the past 17 years and seven

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1 months. I started as a customs officer in the year 2000

2 and ja, I was quite fortunate enough to being accorded the

3 opportunity to serve in various portfolio including team

4 leader level which is operations management rather. I then

5 got also an opportunity to serve as a group manager which

6 is also part of the (inaudible) management. That was also

7 still in the customs environment. About a year later after

8 the group manager operations I was then appointed as a

9 branch manager for tax. I served in one or two branches in

10 Limpopo. I think I spent about a year and a half in the

11 tax environment and then I was later then appointed as a

12 provincial coordinator for the inter-border agency co-

13 ordination structure because at the time SARS was appointed

14 by Parliament to be the leading agency in the ports of

15 entries. So I was responsible for that at provincial level

16 for Limpopo Province. Then in 2009 I was as a senior

17 manager to manage Beit Bridge, the border that connects

18 South Africa and Zimbabwe and I was there 2009 up to 2011.

19 Then on 2011 that's when at the time SARS was introducing a

20 new operational model which I think pretty much Mrs Vivier

21 touch on it. I was then invited at the time to come and

22 join the customs executive management team. At the time

23 the model had four regions responsible for operations and

24 then I was one of the regional executive responsible for

25 one of the regions. That was on an acting basis. I think

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1 about a year later I was then appointed formally as an

2 executive responsible for the customs compliance audit

3 within the customs environment. I only served there for

4 about nine months.

5 At the time under Mrs Vivier there was a new

6 initiative to improve the living conditions of our

7 employees at the borders mainly, which then we launched an

8 initiative called Profit Port which then resulted in the

9 regional executive of the, at that time to be tasked with

10 the responsibility to lead that initiative. As a result

11 then I was then requested to anchor or take responsibility

12 for the regional operations for region 3 and at that time

13 region 3 made up of KwaZulu-Natal, the port of Durban as

14 well as the borders to Lesotho which is Free State. And

15 then region 4 which was also simultaneously managing was,

16 was made up of the whole Cape block, the Western, Eastern

17 and the Northern Cape. So at the time when this

18 (inaudible) was launched and implemented that was the last

19 space in which I served.

20 MR SIUO: Okay. And at some point you

21 were appointed onto the steering committee of the operating

22 model, is that correct?

23 MR PHOKANE: Yes, during that period in

24 2015, the 2nd September to be exact, I received a call from

25 Mrs Vivier because I was reporting into, and I was in

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1 Durban, I remember very well, to say Syd, did you check

2 your email? I says no, I'm driving to the airport, is

3 there anything urgent? She says no, no it's fine. If you

4 get, if you find time please check the email. When I

5 arrived at the airport I immediately, because my mobile

6 phone I had access to SARS emails. I then needed to check

7 the email. Then it was an email coming from Mr Makwakwa

8 informing her that Sydwell, I've decided to include Sydwell

9 in the operational model. So please make alternative

10 arrangements for his current role to be managed by others.

11 MR SIUO: Ja, and what was your role?

12 MR PHOKANE: At that time he didn't

13 explain what my role. The following day I then contacted

14 Mr Ronald Macongo because he was CC'd on that email. He

15 then instructed his PA to say please make time during the

16 course of the week so that I can take Sydwell through. So

17 when I met him then he explained that I was responsible for

18 RDO which stand for results driven office. I must say it

19 was a brief meeting because at that time I think much work

20 has already been done by the operating model project team.

21 By the time when I joined I think they were on phase 2A or

22 phase 2B, I can't remember exact, which they were already

23 on solution mode, it means implementing some of the

24 recommendations that the 4AD worked with the Bain

25 consultants. So quite frankly I didn't have much really to

1 contribute. I know, I remember there were few
 2 correspondence, mainly from one or two of the consultants
 3 in terms of having to confirm the current structure of the
 4 previous operation model in terms of, because they were
 5 doing what you call interim placement, especially on the
 6 structure and minus 3 level across the different regions
 7 and sub-units of customs. Then around November, December
 8 2015 and January then we launched the pilot in Durban, the
 9 goods control pilot which in the main working with Mr
 10 Mashaba and some few of the consultants. But I was looking
 11 on the stream of, or supporting the team on the stream of
 12 the consequence management which was looking at the
 13 penalties that need to be imposed on non-compliant traders.
 14 MR SIUO: Yes, and at some point you had
 15 a fall-out.
 16 MR PHOKANE: Yes, it was not quite
 17 evident because as I said I think it only dawned to me very
 18 late, after the operating model was implemented to say what
 19 was the real reason for me to be included in the operation
 20 model? And even today I'm still struggling to really make
 21 sense of why I was included there because I was never
 22 really given to do anything meaningful, if I may use that
 23 word. Because when you look most of the things that will
 24 be tabled in meetings it will be one or two slides,
 25 presentations that are already done by Bain. So most of

1 the things if I say, if I may use this word, in my view the
 2 script was already written of what needs to happen. So in
 3 terms of me having to make input, especially having to look
 4 at the exposure and experience that I've acquired because I
 5 thought I'll add value in that space and quite frankly I
 6 was just one of the numbers in there.
 7 MR SIUO: Yes. Can you just take us
 8 through, there was a particular document that you refused
 9 to sign?
 10 MR PHOKANE: Yes, the role of the RDO,
 11 initially what I was explained is that on the solutions,
 12 because they were always on the solutions model, on the
 13 solutions that will have already presented I will have to
 14 go through them before the sponsor and, of the project, of
 15 the operational model project could sign, they'll also be
 16 dependent on me because I was regarded to be the link
 17 between operations and the project team and the
 18 consultants.
 19 So one day there was a document, I think it was
 20 one page where I needed to sign but it didn't have a
 21 provision for me to make my comments, in case where I have
 22 further input or I did not necessarily fully agree with
 23 some of the things that were there. Then the consultant
 24 told me, no look, you just need to sign. I said no but I
 25 need to make some few inputs because the manner in which

1 this page is structured doesn't make provision for me to
 2 include my inputs. And I had to resort to sign at the back
 3 of that page because, and still I didn't feel quite
 4 comfortable because it's very much easy for my comments to
 5 not to be documented properly. And that was the last time
 6 I interacted with that consultant or anything coming to me
 7 as part of the process.
 8 [15:32] I never had anything coming to me to, either for
 9 value add or anything except few meetings that will be
 10 convened.
 11 MR SIUO: And where was the document
 12 coming from?
 13 MR PHOKANE: It was coming from one of
 14 the Bain consultants.
 15 COMMISSIONER: Did you sign the document?
 16 MR PHOKANE: Yes, I signed but I made
 17 notes at the back.
 18 COMMISSIONER: Do we have the document?
 19 MR PHOKANE: No.
 20 MR SIUO: What was the document about?
 21 MR PHOKANE: The document was confirming
 22 one, the, I think the structure that Ms Vivier - the
 23 adopted structure that was posed in there. Mainly I was
 24 focusing on the - there's one component called (inaudible)
 25 branch. In that it had about 16 direct reports and I was

1 questioning that to say I don't see it working quite
 2 frankly. I mean, even the previous group executive had
 3 about, span of control of about six, seven. And even then
 4 we felt it was stretched for her. And with that background
 5 my view was that having to have a group executive to have
 6 around 16 direct reports that will not be, necessarily be
 7 manageable.
 8 COMMISSIONER: So did you annotate all
 9 your comments, all your concerns?
 10 MR PHOKANE: That's correct. That's
 11 correct.
 12 MR SIUO: And the concerns that you
 13 would've annotated are the ones that you express here
 14 today.
 15 MR PHOKANE: That's correct.
 16 MR SIUO: All right. And you remained on
 17 the steering committee.
 18 MR PHOKANE: I was just a number there.
 19 MR SIUO: Okay.
 20 COMMISSIONER: But physically you were
 21 there.
 22 MR PHOKANE: Physically I was there.
 23 MR SIUO: But you were there. Any
 24 communication that came your way?
 25 MR PHOKANE: There'll be - from there,

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1 there was then a communication to say we need to be, spend
 2 much of the time in the implement or overseeing the pilot
 3 at the port of Durban. Even there, there was really
 4 nothing much as part of my contributions or either specific
 5 tasks that I will say was responsible for. It will be just
 6 few meetings with the project or pilot team which was made
 7 up of a few of the Durban customs staff and some of the
 8 teams that came from other areas such as Cape Town and
 9 Limpopo and ja.

10 MR SIOU: And during this stage we were
 11 in you were still sitting on the steering committee. You
 12 received a letter. What did that letter say?

13 MR PHOKANE: The letter came after -
 14 because during that December, the very same period they
 15 were beginning to recruit for the new position of the
 16 operating model because I'd received a letter that my role
 17 was affected. Because I think what was confusing is that I
 18 was viewed as a regional executive though I was only
 19 seconded there because the responsible executives were
 20 seconded into this port initiative but my formal placement
 21 at the time was executive, customs compliance audit.

22 So when I received a letter to say your job is
 23 being impacted which then meant that I'm supposed to apply,
 24 there was, I think that was the due process that everyone
 25 else needed to follow, and I duly complied with the

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1 process. I can't, I don't have the specific date but it
 2 was in December 2015. I was then invited for the interview
 3 which I had applied about two/three positions. One, two of
 4 them were at the executive level and then the other one was
 5 the group executive branch because they were running the
 6 recruitment in phases.

7 So first they had to, you know, afford the
 8 opportunity to group executive levels. Once then they were
 9 done then they were, you know, they'll open, there will be
 10 an open window for executive level positions and allow
 11 those who were impacted to apply. So of the group
 12 executive levels the group executive branch was, remained
 13 vacant. We were also encouraged as executives to, or the
 14 impacted executive to also apply those. And ja, and I was
 15 not, I was not considered or ja.

16 COMMISSIONER: Yes, and what happened to
 17 you, you - you're still at SARS?

18 MR PHOKANE: Yes, I'm still at SARS.

19 COMMISSIONER: What position?

20 MR PHOKANE: I'm a domain specialist.

21 Ja.

22 COMMISSIONER: Well, it's better than a
 23 generic specialist.

24 MR SIOU: Just remind us where did the
 25 letter come from, the one that informed you that your

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1 position had been affected?

2 MR PHOKANE: It came from HR.

3 MR SIOU: From HR.

4 MR PHOKANE: Ja, it came from HR.

5 MR SIOU: And what roles were you
 6 assigned to as a domain specialist? What was your
 7 function?

8 MR PHOKANE: I think around February,
 9 late January to early Feb they started to communicate the
 10 outcome.

11 MR SIOU: Is that 2016?

12 MR PHOKANE: 2016, yes. They were
 13 starting, they were beginning to, you know, communicate the
 14 outcome of the interview process. As it would happen with
 15 everybody I communicate with, you know, patience or
 16 eagerness to know, you know, if I've been placed or not.
 17 And ja, there was nothing. I think after weeks I then
 18 received a regret letter. Then it went dead silent and I
 19 think from Feb, February 2016 till around July I will just
 20 come to the office and do nothing.

21 COMMISSIONER: You just?

22 MR PHOKANE: Come to the office and do
 23 nothing.

24 MR SIOU: As of now? Sorry, as of now?

25 MR PHOKANE: As of now, I think before I

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1 get to as of now I think it's important that I plot out the
 2 sequence of events leading to where I am now if I may be
 3 allowed to do that. Then I then, you know, because that
 4 was not sitting well with me that I'll come to the office
 5 and do nothing. I wrote to Mr Makwakwa because at that
 6 time I wasn't even sure whether I'm still part of the
 7 operating model team because now the operating model
 8 project was scaled, down you know, and - but also it was
 9 very clear I'm not part of the customs operations
 10 management team.

11 So I didn't have a, you know, where I will say I
 12 belonging to the, you know, greater scheme of things in
 13 terms of the structure. I then wrote to Mr Makwakwa
 14 primarily because he was my leader in terms of the
 15 operating model and I explained the situations that I'm
 16 getting frustrated for coming to work and have nothing to
 17 contribute. He then acknowledged my email and says I will
 18 arrange a meeting in the next two weeks. It never
 19 materialised.

20 I then wrote to the newly appointed chief
 21 officer, customs at the time because when he was responding
 22 to me he had cc'd him. I then wrote to him and explained.
 23 He then promised to - actually he acknowledged that this is
 24 wrong. He committed to set up a meeting. And subsequently
 25 there was a meeting after a week or so. That was end of

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1 July. By that time I'd already signed the domain
 2 specialist documents and if I may touch on the domain
 3 specialist one day I just come into the office in the
 4 afternoon and when I opened the door there was a pack of, a
 5 set of documents.
 6 It would appear to have been shifted under the
 7 door. So I didn't know what those documents were. I went
 8 through them, you know. It's more like an employment
 9 contract, the appointment letter and appointment contract.
 10 So I asked because I didn't have a PA at the time but there
 11 was a lady that used to support me at the time when I was
 12 executive. She was a PA. She said she's not aware of, you
 13 know, it looked like whoever that came, she did after
 14 hours.
 15 So I just kept those documents. I didn't sign
 16 them. I didn't do anything. But I could hear from the
 17 other colleagues who were impacted to say the people are
 18 being placed as domain specialists. Then I started getting
 19 reminders from HR through the lady that was supporting me
 20 as a PA to say please get Sydwell to sign this document.
 21 Then I said let them - because I need an explanation,
 22 somebody to take me through, you know, what is this domain
 23 specialist.
 24 You know, what will be the roles and
 25 responsibilities and I think that stalled for almost two

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1 weeks. And in that meeting when I met the chief officer
 2 that was part of the agenda item to say please sign but
 3 very sadly neither the chief officer and one of the group
 4 executive in attendance could explain what this domain
 5 specialist role is all about. Even the HR present in that
 6 meeting also they could not explain what it was.
 7 PROF KATZ: And was your position in fact
 8 affected?
 9 MR PHOKANE: It was only later when I
 10 enquired - actually it was an informal chat. Then I was
 11 told but why didn't you raise these things on time because
 12 there were people that their positions were deemed to be
 13 impacted and they came forward and it was rectified. I
 14 said no, but I trusted the process. I trusted - I didn't
 15 have any sort of doubt that I could start questioning if my
 16 - because otherwise then it will imply that I will have
 17 regarded myself as special and then I had to, I needed to
 18 be treated very differently. Ja.
 19 MR SIOU: All right. And we've also
 20 received extensive evidence relating to the operational
 21 model, relating to customs before the implementation of the
 22 operating model. So I won't go into that in much detail.
 23 But what I do want us to touch on is in your view what
 24 transpired after the implementation of the operating model
 25 and what your assessment is on its impact on customs.

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1 MR PHOKANE: Thanks, Advocate. I think
 2 it was difficult for me really to make an assessment
 3 primarily especially on the operating model and fairly so
 4 because I've been adversely impacted by the very same
 5 process and owing to the fact that I'll appear before the
 6 commission and make my input and I needed to make sure that
 7 it's a very objective one. So in my view customs by its
 8 very nature is an international administration because it
 9 administers trade.
 10 Therefore, you know, reducing it only in terms of
 11 understanding its level of efficiency and effectiveness
 12 only looking at internal processes I felt perhaps I may not
 13 necessarily do it justice. So on the documents that I've
 14 submitted I then look at first and foremost, try to
 15 understand the primary reason for customs' existence and I
 16 came to only three reasons, you know, that it exists to
 17 facilitate legitimate trade, it exists to protect the
 18 economy and the society from illicit and unfair trade
 19 practices and lastly it exists to collect revenue.
 20 So with that I then (inaudible) in terms of prior
 21 the operating model how did customs at the time fared
 22 against the three. And I also took time to assess, you
 23 know, after the implementation of the operating model how
 24 was the performance levels. Okay. So but also looking at
 25 the revenue conditions I learnt over time that any customs

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1 administration or any revenue authority in the world, you
 2 know, there will be key or four key drivers that, you know,
 3 influences its ability to collect revenue.
 4 One of them it's how the economy is performing.
 5 Secondly it will be the issue of the legislative changes
 6 that government will pass from time to time and thirdly it
 7 would be how the revenue authority or the customs
 8 administration itself, how effectively it manages
 9 compliance. And then lastly it will be the issue of the
 10 internal operational efficiencies. Okay. And in my
 11 experience is that the first two, the economy and the
 12 legislative changes, customs in particular or the revenue
 13 administrations do not necessarily have control over.
 14 For example, I mean, just recently VAT
 15 legislation was changed from 14% to 15%. It's nothing that
 16 as a revenue authority - but of course we stand to benefit
 17 in terms of those practices. The last two that I place on
 18 record is to say, you know, whereas customs my view is that
 19 we've got the full control, it's how well we manage
 20 compliance and lastly it's how well we manage our internal
 21 processes in terms of productivity.
 22 So looking at the current performance, let's say
 23 the post implementations of the operating model, mainly
 24 looking at the revenue performance and I was glad to see
 25 that the previous speaker had put a table on how, you know,

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1 the performance was structured. On the document I put a
 2 table there. I think it's 5.1. If you look and without
 3 really wasting much time because Ms Vivier touched on these
 4 numbers but quite evidently is that the customs performance
 5 on the collection of revenue really declined.
 6 And when you compare and contrast it before then,
 7 you know, I'm not sure if this was a coincidence but, you
 8 know, the customs performance on revenue was at all
 9 material times above target. I then to support that put a
 10 slide, I think that is on page 10, that then plot out the
 11 trends in terms of how trade, the trade patterns, you know,
 12 how trade aren't making their declarations for into
 13 customs. Within the customs environment and we've got what
 14 we call purpose codes in which they inform us, you know,
 15 how are they declaring this particular consignment.
 16 So we've got duty paid purpose code which implies
 17 that trade or the importer is obliged to pay into customs
 18 immediately. Then we've got the different purpose codes in
 19 which like warehouse for export, warehouse for home
 20 consumptions, general rebates, removal in transit which
 21 means at that time of the importations duties and VAT are
 22 suspended, you know, pending subsequent compliance with the
 23 said conditions of those. So what I then looked was that
 24 from 2015/2016 in terms of the trade stats it was showing a
 25 trend where more and more of trade were moving away from

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1 the duty paid. They were preferring to import or move
 2 their goods using other purpose codes and that in itself
 3 immediately impacted the revenue base in what you need to
 4 collect.
 5 MR SIOU: Is this caused by the new
 6 operating model?
 7 MR PHOKANE: It will not necessarily in
 8 my view be attributed to the operating model. Mainly it
 9 would be because I think during that time also the economy
 10 was not doing well. And I think it's a normal practice
 11 across the world where traders will prefer to warehouse
 12 their goods, you know, before they could ship it out to any
 13 other foreign markets.
 14 MR SIOU: And the revenue shortfall, do
 15 you attribute that to the new operating model?
 16 MR PHOKANE: Partly. Partly I think that
 17 impacted because when you look at some of the key things
 18 that - because I was part of the executive management team
 19 before the operating model was implemented. We had a
 20 couple of things that we implemented which in my view
 21 directly and positively impacted on customs performance
 22 overall both on the revenue, on the trade facilitation as
 23 well as protecting of our economy and society.
 24 So if I may touch on that Ms Vivier touched on
 25 the issue of the use of technology since 2011. I'm not

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1 going to waste much of the time there. But most
 2 importantly as the management what are the key things that
 3 operationally we implemented? One was the - I termed it
 4 strategic stakeholder partnership because in the world of
 5 customs for you to be quite effective and efficient in
 6 customs you need to appreciate the existence of the other,
 7 of other role-players in the value chain.
 8 So we had a participation or partnership with -
 9 we were part of the Nedlac subcommittee. We had one of the
 10 executive that was part of those standing meetings. And
 11 how this partnership was adding value back to our work was
 12 that in the Nedlac subcommittee we had labour, we had also
 13 organised business. And they were a primary source or
 14 added source in terms of making us to understand, you know,
 15 from their side how are they receiving or experiencing our
 16 level of service.
 17 [15:52] And in that I think they shared with us how
 18 SACTWU in particular the union that's responsible for the
 19 clothing and textile workers wherein told us that most of
 20 their factories are being closed down because they cannot
 21 keep up or compete with the cheap imports that are flooding
 22 our streets.
 23 MR SIOU: And you attribute this to the
 24 new operating model.
 25 MR PHOKANE: This is prior. The

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1 partnership that we had before the operating model. It was
 2 even at the time the issue of cheap imports were still
 3 there, but I think the difference between then and now is
 4 how we responded to the issue of cheap imports especially
 5 clothing and textiles. So that really helped us because it
 6 also gave that to what you call, we formed a working
 7 committee with industry experts from the clothing and
 8 textile environment wherein they will give us for example,
 9 given the complexity of, you know, managing the value,
 10 customs valuation. It don't, after you know, enlighten us
 11 that they would give us the bare minimum prices of the
 12 materials that are used. For example to a suit, so we used
 13 that as an indicator if a client or traders, those who are
 14 importing clothing if there's - you know issues were about
 15 around the values that you have declared. So that Nedlac
 16 structure really helped us to put that response back to -
 17 we were also very active in managing our stakeholders
 18 through the forum called the South African Association of
 19 Freight and Forwarders. SAAFF in particular. There was
 20 also the - then there was the issue of being proactive in
 21 dealing with issues that affect them. But also afford as
 22 an opportunity to raise issues they're also contributing
 23 to, you know, either the effectiveness of managing our
 24 ports. And the other last thing was we had - they were
 25 also joined by FITA which is the other association that

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1 represent the small role-players in the tobacco industry
 2 environment.
 3 MR SIUO: For the benefit of time –
 4 COMMISSIONER: It's all in his statement
 5 is it?
 6 MR SIUO: Yes, yes ja.
 7 COMMISSIONER: Can we read the rest of
 8 his statement because my colleagues must get on their way –
 9 MR SIUO: The rest I think we can quite
 10 well cover in the statement, Judge.
 11 MR PHOKANE: Shall I proceed?
 12 COMMISSIONER: Anything in particular you
 13 want to add?
 14 MR SIUO: That you want to add.
 15 MR PHOKANE: Maybe let me touch on –
 16 because I'm touching on what we did as an operations
 17 management team at the time which influenced the
 18 performance levels like we saw. The other thing that we
 19 introduce, very basic -
 20 COMMISSIONER: Could you just wait one
 21 minute and let my colleagues go and then we'll carry on?
 22 Thank you, carry on.
 23 MR PHOKANE: I regard the managing and
 24 running of customs to that of factory meaning you know, the
 25 managing of the inventory or the day to day activities need

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1 to be managed very lively, very closely. What I mean by
 2 that, my view is that customs unlike the other divisions or
 3 like tax we run a very live business because as we speak
 4 there are thousands and thousands of declarations that
 5 trade is submitting to us for considerations. Those very
 6 same declarations there is a container or a truck at the
 7 border, you know, waiting for – linked to that. So it
 8 means, you know, the speed with which we process those
 9 declarations has got a huge impact on how well we collect
 10 what is due to the state. But also, you know, how then the
 11 service that we render to the clients will be as speedily
 12 and flawless as possible. So what then we did was all the
 13 different management levels starting from at a branch level
 14 those were organised into teams, was to introduce what we
 15 call some basic management principles. You know like
 16 today's work today, so that principle what it meant to
 17 achieve was to inculcate a culture of saying whilst then we
 18 would touch on a case you're going to defer it to be
 19 concluded some other day. You know what came into an in
 20 box today it needs to be concluded today unless there if
 21 there is very sound reasons. And at different levels of
 22 management these are somebody that will look to say what
 23 was the inflow today, how much productivity was, you know
 24 how much is left and what are the reasons. So we never
 25 left it to chance and as I'll explain later in terms of my

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1 observations post the operation model. We also, you know
 2 incorporated the culture of all managers regardless of your
 3 level to walk the floor. So for an example ops managers
 4 because they are right at the coalface they are expected to
 5 be, you know, not sitting in their work stations, but to be
 6 part either physical inspectors that are doing the job or
 7 the processing, the inspectors who were passing the
 8 declarations.
 9 COMMISSIONER: And how did that change
 10 when the new operating model came into effect there?
 11 MR PHOKANE: Judge, all I can say is that
 12 all these things fell apart and I can't really tell you
 13 because I'm not part of the team that runs operations.
 14 Obviously at the time what is very evident is that we had a
 15 very low inventory levels. In simple, basic language it's
 16 called backlogs. Their golden rule at the time was that
 17 when we close the financial year any one of 2 500 entries
 18 nationally, as we speak today the inventory for customs is
 19 sitting at 20 000 unfinalised cases.
 20 MR SIUO: Can you just explain what you
 21 mean by inventory?
 22 MR PHOKANE: So this is the inflow of
 23 cases that traders submitted for declaring their various
 24 goods that they are importing into the country or exporting
 25 to the country. So what that would then mean is that if it

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1 were 20 or more than 20 000 cases in the inventory, one it
 2 means you inputting on the service that you're offering
 3 because the owner of the goods as I've explained. There's
 4 a container in our various ports whether at a sea, at our
 5 harbours and airports or truck, you know, that's awaiting a
 6 decision so that those goods can move from, you know, from
 7 one point to the next. But what it also means is that for
 8 customs to be able to collect its revenue it's only one
 9 way, the declarations, we should have made the final
 10 decisions on the declaration.
 11 COMMISSIONER: Mr Siuo, may I just
 12 interrupt and say you know think that we are able to manage
 13 SARS and manage customs ourselves, so isn't a lot of this
 14 really for discussion within the organisation? These are
 15 managerial things.
 16 MR SIUO: Indeed, Judge. I don't have
 17 any further questions myself and I've indicated I'm quite
 18 happy for the rest of –
 19 COMMISSIONER: I hope that you'd get back
 20 into the operations of SARS because all of this is so well-
 21 known to you with so much of your experience and knowledge
 22 and it seems to me a complete waste that you're sitting as
 23 a domain specialist when you could be contributing to the
 24 operations of customs with all the knowledge that you're
 25 giving us. But thank you very much for what you've told

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1 us, it's been very helpful and very interesting and we
 2 appreciate it very much.
 3 MR PHOKANE: Thank you so much, Judge and
 4 Advocate. In closing, if I may, I think for the past three
 5 weeks as Ms Vivier submitted there is a new acting chief
 6 for customs, subsequently has been requested to join one
 7 unit within that division. I've been seconded, let me use
 8 the correct SARS HR language, I've been seconded to support
 9 that area. We are still refining the exact role, but I
 10 still remain the domain specialist. Thank you.
 11 COMMISSIONER: I hope that will change.
 12 Thank you very much.
 13 MR PHOKANE: Thank you.
 14 MR SIUO: Thank you.
 15 COMMISSIONER: And if you're sitting
 16 doing nothing tomorrow can you do my tax return for me?
 17 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 18 COMMISSIONER: It's very tiring, but your
 19 witness has been waiting all day has he? And we'll deal
 20 with that. Do you think he'll be very long because I
 21 wouldn't mind just a 2 minute break if –
 22 MS STEINBERG: I can't predict quite how
 23 long it would be.
 24 PROF KATZ: Can we just have a few
 25 minute4s?

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1 MS STEINBERG: Sure.
 2 PROF KATZ: Thanks is it okay?
 3 MS STEINBERG: So we'll reconvene in five
 4 minutes, before ten past four.
 5 [INQUIRY ADJOURNS INQUIRY RESUMES]
 6 [16:09] MS STEINBERG: Mr Mpho Mashaba.
 7 COMMISSIONER: Good afternoon Mr Mashaba.
 8 MR MASHABA: Good afternoon Judge.
 9 COMMISSIONER: Thank you very much for
 10 coming to assist us. We appreciate it. Would you affirm
 11 that the evidence you give will be the truth, the whole
 12 truth and nothing but the truth? If so will you say I do.
 13 EVIDENCE BY MR MASHABA
 14 MR MASHABA: I do.
 15 MS STEINBERG: Hi Mr Mashaba. Thank you
 16 for the long wait this afternoon and for your time now. Mr
 17 Mashaba, you're also a SARS veteran.
 18 MR MASHABA: Yes.
 19 MS STEINBERG: You've been here for over
 20 23 years, is that right?
 21 MR MASHABA: 25 years, ja.
 22 MS STEINBERG: 25 years.
 23 MR MASHABA: Yes.
 24 MS STEINBERG: And what is your position
 25 now?

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1 MR MASHABA: My position is a senior
 2 specialist, investigations.
 3 MS STEINBERG: And in 2014 what was your
 4 position?
 5 MR MASHABA: My position was a project
 6 lead for customs modernisation, local customs review of the
 7 new model.
 8 MS STEINBERG: Sorry before the new model
 9 came in what was your position?
 10 MR MASHABA: So before the new model came
 11 I was an acting Chair in Botswana, that is 2013, so I was a
 12 diplomat representing SARS customs on the SADC customs
 13 programme. Then when I came back in 2014 I was then
 14 approached and requested to sort of provide oversight on
 15 Bain consultants, on the work that they were doing on the
 16 customs side. But prior to that I've been the national
 17 manager of customs investigations, I've been the zonal head
 18 for both tax and customs. I was responsible for three
 19 areas, Mpumalanga, North West for all tax types, not only
 20 customs and then I was the head of operations for OR Tambo
 21 International. I was regional manager for North West on
 22 the customs side, so I've been around and held various
 23 senior management positions in customs.
 24 MS STEINBERG: So you came back to join
 25 the project team for customs and this was a project team,

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1 as I understand that comprised some of the Bain consultants
 2 and then people like yourself who were appointed by SARS to
 3 work with them and guide them, is that right?
 4 MR MASHABA: Ja correct. Maybe just to
 5 put it much more clearer. So what you had is that for the
 6 entire tax and customs component you had various channels.
 7 So you had the tax channel, the service channel, you had a
 8 customs channel, you an org design channel so people would
 9 look at the structure and so forth and so I would want to
 10 suspect that at the time you had more than 15 different
 11 channels. So I was given the channel that dealt with the
 12 control component of customs.
 13 MS STEINBERG: Now in that capacity you,
 14 as I understand, helped to draw up the diagnostic, is that
 15 right?
 16 MR MASHABA: Yes that's correct.
 17 MS STEINBERG: Now you've heard Ms
 18 Vivier's criticisms of the diagnostic and perhaps you'd
 19 like to offer us another view.
 20 MR MASHABA: Yes thank you. First of all
 21 I think I think I must indicate, Judge, I'm not sure
 22 whether I should own the outcome of these two reports
 23 because I've indicated that these final reports that were
 24 generated by Bain with myself were no handed over to me
 25 because I was removed out of the project at, it was the end

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1 of the project so I could not evaluate whether Bain was
 2 within the terms of reference as agreed from the onset. So
 3 I seek to be advised or I stand to be advised whether it is
 4 correct that I should own this. But for the purpose of
 5 assisting the commission, let me say that –
 6 MS STEINBERG: Sorry, I think we need to
 7 be, just let's be clear on this.
 8 MR MASHABA: Ja.
 9 MS STEINBERG: You were in, as I
 10 understand – and tell me if I'm wrong – you were involved
 11 in drawing up the diagnostic, right?
 12 MR MASHABA: Yes.
 13 MS STEINBERG: But then after the
 14 diagnostic phase came an implementation phase.
 15 MR MASHABA: Yes.
 16 MS STEINBERG: And at that point you were
 17 taken out of the implementation phase, is that right?
 18 MR MASHABA: Ja. Yes, okay.
 19 COMMISSIONER: And what is the document
 20 you're referring to?
 21 MR MASHABA: The document that I'm
 22 referring to, Judge, the first one is the result document,
 23 the final document that the consultant handed over to SARS
 24 when they were leaving, which is literally –
 25 COMMISSIONER: After the implementation

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1 you mean?
 2 MR MASHABA: Ja. Well let me first
 3 clarify one thing also because when we were talking about
 4 implementation I think we might not actually be taking the
 5 right direction. Nothing that is sitting in these
 6 documents that Bain has done has been implemented in
 7 customs, so far as I am concerned. What people are
 8 mistaken to be implementation is the org design. You see
 9 the movement of people and when others lost their positions
 10 and whatever and so forth, that is the only component in my
 11 own understanding if you want to talk about the
 12 implementation of Bain, what they've implemented, and that
 13 is done by another stream, so I will not be able to explain
 14 how the design of the structure and how people were moved
 15 because I was not party to that.
 16 MS STEINBERG: That was more HR.
 17 MR MASHABA: That was much more HR
 18 related. You had a SARS person who was a lead, so we had
 19 stream leads. So I was the customs control lead and then
 20 you had somebody who was an org design lead. So if you had
 21 Advocate, Sydwell my colleague made reference to the fact
 22 that he was brought into the RDO stream where he was
 23 supposed to assist on the structure, right. So what people
 24 mistaken to be implementation is one, the organisational
 25 change which is the structure which had to do with people.

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1 When people were changed to domain specialists and people
 2 were changed from group executive and whatever and so
 3 forth, that's what, in my own personal view, having been
 4 around, I see as to be what Bain has actually implemented.
 5 The misunderstanding on the processes and systems it is the
 6 pilot and in Durban. So maybe I'll come to that later but
 7 what it literally means is that some of the solutions that
 8 they have proposed you will go and test them. So what you
 9 do is that you don't actually eradicate the current
 10 processes, you run a parallel system to test if your
 11 solutions that you are proposing are going to be correct or
 12 not. So literally there is no policy change, there is no
 13 system change because there is governance processes that
 14 you need to follow that Bain has actually, Bain has
 15 actually ended up with testing and the conceptualisation.
 16 That is exactly what they were paid for, right, and I would
 17 attest to that later why I said that's what we were paid
 18 for because I was responsible for managing their
 19 deliverables and I understood what the scope is.
 20 MS STEINBERG: So they came up with a
 21 diagnostic, they came up with some solutions.
 22 MR MASHABA: Yes.
 23 MS STEINBERG: Right?
 24 MR MASHABA: Ja.
 25 MS STEINBERG: Then there was this pilot

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1 in Durban and they were involved in implementing that
 2 pilot, is that right?
 3 MR MASHABA: Yes. Yes.
 4 MS STEINBERG: And that's the sum total.
 5 MR MASHABA: Yes, that's all. That's
 6 what they were paid for.
 7 MS STEINBERG: Okay. Please carry on?
 8 MR MASHABA: So basically what happened
 9 is that I was requested in 2015 or 2014 late to sort of
 10 assist in providing oversight on the work that Bain is
 11 actually going to, in fact it was even before Bain came in
 12 2014. So in the document that I've given you that talks to
 13 the results you will see that we're talking about phases.
 14 I'm sorry Judge that you don't have it. I actually brought
 15 it because I was looking for all these documents because
 16 I've been out of this project for more than a year.
 17 COMMISSIONER: That's fine, ja.
 18 MR MASHABA: So I've made it available.
 19 So you had different phases. You have phase 1 up to phase
 20 3 and in page 4 we actually demonstrating all the
 21 deliverables that were supposed to be like done in those
 22 periods, right. So in phase 1 that's where the diagnostics
 23 started. And the diagnostic literally, and my own brief
 24 and my understanding at the time was that it is common
 25 cause that every business requires to be reviewed and for

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1 continuous improvement and whatever and so forth. So
 2 having, you know you have this new Commissioner who comes
 3 and say look, can you guys look at what is it that is going
 4 wrong in the business? And another time you had the chief
 5 operating officer was Mr Makwakwa, was acting, he had
 6 actually replaced Mr Barry Hall. So I was actually
 7 personally approached by him to come on board and the
 8 Commissioner later confirmed that I will provide oversight
 9 in the stream that I was in which dealt with the goods
 10 control component. So we start with the diagnostic and I
 11 think the document will show you the primary research for
 12 an example, just to deal with some of the things that Madam
 13 Rae dealt with. It's difficult for me to pronounce her
 14 surname. I excuse, is it Vivier?
 15 COMMISSIONER: Call her Mrs Rae if you
 16 like.
 17 MR MASHABA: Mrs Rae, ja. So if you look
 18 at the first primary search here we even sort of stated the
 19 people that were interviewed, so I'm talking, I'm dealing
 20 with the issue around consultation. The people were
 21 interviewed, the dates and times and what were the
 22 interviews all about?
 23 MS STEINBERG: Which page are you on?
 24 MR MASHABA: I'm on page 10, sorry
 25 Advocate. Then on page, same page you'll see there's

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1 primary research and secondary research. Secondary
 2 research deals with the literature that was taken in
 3 consideration, you know, during the period of proposing
 4 some of the solutions. So this document, the whole
 5 document deals with sort of a summary of all the work that
 6 they've done under my supervision. So one thing for sure
 7 that is important, and I want to, I don't want to waste too
 8 much time. I can confirm here that from the onset this
 9 project was never properly managed, 1, 2 was not welcomed.
 10 And I'll tell you why I'm saying this. Bain will be at
 11 some point if requested to do so, and I was looking for the
 12 data that they used for analytics. Remember the outcome of
 13 your analytics is the type of data that you're sitting with
 14 that you are getting the input. At first one of the role
 15 that I was supposed to play, Judge, was to facilitate that
 16 the internal staff could cooperate in terms of giving them
 17 the data, and the data was lying all over. I will not be
 18 surprised if Mrs Rae comes back and say but this could be
 19 wrong, that could be wrong, because I'm sure even during
 20 the analytics themselves we used to sit with various people
 21 in SARS arguing about which data is accurate, depending on
 22 the source and where you are getting it from. So there
 23 were a lot of arguments about this thing.
 24 MS STEINBERG: But can I ask you why
 25 wasn't Mrs Vivier consulted and why wasn't Mr Theron

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1 consulted? I see there are someone from the dog unit was
 2 consulted, but why not the head of, you know senior people
 3 in customs?
 4 MR MASHABA: Ja okay, let me explain
 5 that. I don't totally agree that there was no
 6 consultation. I want to place it on record and I will make
 7 an affidavit to that effect.
 8 COMMISSIONER: Well you're giving
 9 evidence, you don't need to make an affidavit.
 10 MR MASHABA: Okay.
 11 COMMISSIONER: But I think perhaps just,
 12 the thing is – sorry, if I may interrupt – the important
 13 thing is to listen to the question and answer the question.
 14 It helps me a lot.
 15 MR MASHABA: Okay.
 16 COMMISSIONER: If I hear a question here
 17 and I get an answer to some other question, I get very
 18 confused.
 19 MR MASHABA: Okay.
 20 COMMISSIONER: The question was why was
 21 Mrs Vivier, Mrs Rae, why was she not involved in this whole
 22 process bearing in mind that she was the head of the
 23 department, of customs and why was the dog handler or the
 24 dog unit consulted instead?
 25 MS STEINBERG: And then of course Mr

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1 Theron who was the CO, the acting CO.
 2 COMMISSIONER: Ja, the CO, can you just
 3 explain to us?
 4 MR MASHABA: Let me explain. So as far
 5 as I'm concerned there was consultation.
 6 COMMISSIONER: No, no sorry, may I have
 7 an answer to that question. Why was she not involved in
 8 it?
 9 MR MASHABA: Okay, as far as the
 10 involvement into the actual project there, I didn't have
 11 decision. I was requested to come in and the team was set
 12 up by the chief operating officer. So her not being
 13 involved it's something that probably the chief operating
 14 officer at that time would be able to answer.
 15 COMMISSIONER: Do you know why she was
 16 not involved?
 17 MR MASHABA: I will not be able to know.
 18 COMMISSIONER: Did you ask anybody to
 19 involve her at all?
 20 MR MASHABA: Well I did not, but what I
 21 did personally I did talk to her on time to time, so when I
 22 was going to go to branches and whatever because she was in
 23 charge, there was no way that I could visit her branch or
 24 her office and come back and not talk to her. So what I
 25 will do is that I will go to the branch, visit the branch

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1 in terms of the schedule, come back and sit down and
 2 discuss with her what the findings are. So that was –
 3 COMMISSIONER: It's still a bit confusing
 4 to me. Why didn't you say to Mr Makwakwa, look, there's
 5 the head of the unit, it's no good me talking here, I go
 6 back to talk to the head of the unit then I come back here
 7 and I report back to her, why don't you just bring her in?
 8 That's what I, did you suggest that to Mr Makwakwa?
 9 MR MASHABA: There was a team so what was
 10 happening is that I did not suggest specifically about Mr
 11 Rae.
 12 COMMISSIONER: Would that not have been a
 13 good idea though, don't you think in retrospect?
 14 MR MASHABA: Of course. My approach
 15 Judge, maybe to answer that, I don't want to sound
 16 defensive.
 17 COMMISSIONER: No, no. I'm not accusing
 18 anyone of anything.
 19 MR MASHABA: My approach was, my approach
 20 would have been that a team, there were a team of experts
 21 within customs, including her that I consulted, so I used
 22 to go to them and actually would discuss with them the
 23 findings and the diagnostics because she was in charge in
 24 the office. I could have not concluded any finding
 25 without, it will be improper to conclude the finding of a

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1 report of an office that Mrs Rae is in charge of without
 2 necessarily going back to her.
 3 COMMISSIONER: No okay I understand. So
 4 you were going back and forth between the team and Mrs Rae?
 5 MR MASHABA: Because I thought it was the
 6 right thing.
 7 COMMISSIONER: You thought it was the
 8 right thing, okay. Ja.
 9 MR MASHABA: Then the second one on Mr
 10 Beyers, Mr Beyers was actually quite involved and I'll tell
 11 you why. He was quite involved in the sense that part of
 12 the input that – I wish I could find the document – part of
 13 the input of which informs some of the solutions that were
 14 here I used his documents. So what we did was, is to look
 15 at what is it available in-house so that we don't reinvent
 16 the same thing. If there's something available that was
 17 drafted before that was not used, was not executed, I went
 18 to him personally, he gave me a thick documents of what
 19 they were doing in modernisation and what they were looking
 20 at and so forth. So that consultation took place.
 21 Secondly, when this pilot was in Durban, I've
 22 invited him, he attended that particular session in Durban,
 23 he was not the only one. So if you look at SARS you have
 24 got various specialised areas. So the IT component, the
 25 process designers and all these people were actually in

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1 Durban because the mandate of this team was never to
 2 implement, the mandate of this team was to conceptualise
 3 and then however, after conceptualising these documents and
 4 solutions must go back to highly specialised areas within
 5 customs, like Mr Beyers as a person who's in charge of
 6 processes or IT and whatever, who would have taken this
 7 thing and make it a reality. So that's my understanding of
 8 exactly what happened. That's how I can clarify the issue
 9 around consultation.
 10 COMMISSIONER: So I understand are you
 11 really saying consultation did take place in that you
 12 consulted with them, as it were, and took it back to Bain,
 13 to the project committee?
 14 MR MASHABA: In fact Bain was actually
 15 sitting in those particular meetings that I was talking
 16 about. So when I was in Durban –
 17 COMMISSIONER: Sorry, with Mrs Rae? Was
 18 Bain representative sitting with Mrs Rae?
 19 MR MASHABA: No, when I was consulting
 20 Mrs Rae Bain was not there, it was myself. It was my own
 21 initiative. When I was consulting in Durban with the team
 22 of various experts within SARS Bain team was actually
 23 there.
 24 COMMISSIONER: Like the dog unit and
 25 things like that?

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1 MR MASHABA: And there were also ad hoc
 2 consultation between the Bain team and various other
 3 specialised area within SARS.
 4 COMMISSIONER: Okay.
 5 MS STEINBERG: I must just say that Mr
 6 Beyers says that Bain approached the customs division for
 7 consultation in late 2016 after the new operating model had
 8 been designed and announced. And then he actually attaches
 9 some emails, the contact he had with Mr Warren Chetty from
 10 Bain and he said I read it out, he said, Mr Chetty said,
 11 but you have all the answers and he said well maybe you
 12 should have asked me first. So we do seem to have a
 13 mismatch here of versions.
 14 COMMISSIONER: What would you say about
 15 that?
 16 MR MASHABA: I will not deny that because
 17 I was not there when he was discussing with Mr Chetty and I
 18 don't know what informed that because other than me I was
 19 not like a gate-keeper. The Bain consultants were given
 20 authority to consult. All I will do is to quality assure
 21 that they are sticking to the terms of reference. So they
 22 could have consulted him and whatsoever. But I must place
 23 on record that I had a very good relationship with him, I
 24 have recognised his presence that this type of a project
 25 cannot continue without having to talk to him and getting

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1 his documents and his inputs. That one is –
 2 MS STEINBERG: So you –
 3 COMMISSIONER: But you don't dispute what
 4 Mr Chetty says?
 5 MR MASHABA: No definitely.
 6 MS STEINBERG: Okay, let's carry on.
 7 MR MASHABA: So what happened is, and I
 8 think it is important to indicate Judge here that from the
 9 onset when Bain came here, when the review process started
 10 there was no peace in the organisation. There was a lot of
 11 push-back. I've seen it. Whether it could have been as a
 12 result of the approach by the executive team, whether it
 13 could have been something else that I would not know but I
 14 must tell you it has not been easy for this thing to start.
 15 One of the reasons which I thought was the
 16 problem is other people understood this project as to be an
 17 investigation. Others understood it as to be some sort of
 18 an inquiry that will make findings against them and that
 19 will lead to them being misplaced or removed from their
 20 jobs. I was not in operations when I was brought into, I
 21 was not in the customs operations, so I know all my
 22 colleagues who are experts there and so forth and so forth.
 23 And my own understanding – and it's contained in the final
 24 document that Bain has that this project can never be
 25 implemented because nobody has bought into, from the onset.

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1 So the disparities, the differences that you see Advocate,
 2 on the analysis and the outcomes and whatever, I've seen
 3 where it comes from, is the type of data. I've got emails
 4 to the effect that where Bain would write to the
 5 Commissioner saying that we are not getting co-operation,
 6 we are not getting the data on time, we are not able to
 7 complete the analytics that we need to use to inform some
 8 of the solution. I will not be able to understand because
 9 I've not done an assessment as to why was the organisation
 10 resisting.
 11 COMMISSIONER: Well I mean I suppose the
 12 answer to that is why not tell people what it is all about
 13 so tha they are not confused.
 14 MR MASHABA: Yes.
 15 [16:29] COMMISSIONER: I would have thought
 16 that's very good management of a project.
 17 MR MASHABA: I agree.
 18 COMMISSIONER: Tell them, this is what
 19 we're doing, this is why we're doing it and please assist
 20 us. But you say that didn't happen.
 21 MR MASHABA: There was some level of
 22 confidentiality and that -
 23 COMMISSIONER: I understand but my is you
 24 say that didn't happen. People were not called in, for
 25 whatever reason and I'm not being critical, I'm just

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1 asking. For whatever reason the people weren't called
 2 together, the heads of the various departments, they
 3 weren't called together by Bain and said look this is what
 4 we're about. We're having a review of this thing, you all
 5 understand what the process is and so forth, that didn't
 6 happen?
 7 MR MASHABA: Correct.
 8 COMMISSIONER: Okay.
 9 MS STEINBERG: And to add to that we're
 10 talking about a period of instability and fear where an
 11 Exco had been suspended and many senior managers had left
 12 or were leaving and we had people knowing that certain jobs
 13 were going to be affected and they'd have to reapply. So
 14 that was the environment we're talking about.
 15 COMMISSIONER: Would that be correct?
 16 MR MASHABA: True. True, it coincided
 17 with the issue around the allegations around the rogue
 18 unit.
 19 MS STEINBERG: Yes.
 20 MR MASHABA: I think that could be the
 21 reasons why from the onset we could tell that this project
 22 is not going to fly. You're correct, I agree with you a
 23 100%.
 24 MS STEINBERG: Ja, alright. Please carry
 25 on.

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1 MR MASHABA: So -
 2 COMMISSIONER: You knew at the beginning
 3 that this project, you mean the Bain project was not going
 4 to fly?
 5 MR MASHABA: Yes, it was not accepted
 6 from the onset. It was not accepted in my -
 7 COMMISSIONER: People didn't buy into it
 8 -
 9 MR MASHABA: Ja.
 10 COMMISSIONER: And mainly because there
 11 was a bad atmosphere here, people were suspicious, no one
 12 told them what was going on and so people didn't abide -
 13 MR MASHABA: That's true, I agree.
 14 COMMISSIONER: That sort of generally
 15 correct?
 16 MR MASHABA: I agree with you and I'll
 17 tell you why Judge.
 18 COMMISSIONER: Yes.
 19 MR MASHABA: As an experienced customs
 20 officer there are certain things that I will not allow to
 21 happen in the environment in the business as a manager.
 22 That's why at a later stage you will see what I've done in
 23 terms of and I have said that before. That I had to write
 24 a huge grievance concerning how this projects and all those
 25 things were being managed to an extent that an independent

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1 lawyer was appointed and I was raising fundamental issues.
 2 I raised for an example the issue around wasteful
 3 expenditure. I said you can't be spending money on
 4 something in this way and you're not going to be able to
 5 implement it, I've got it in writing. I'll submit it.
 6 COMMISSIONER: You say wasteful
 7 expenditure on this exercise?
 8 MR MASHABA: Yes, and I'll explain to you
 9 and why I said this thing is actually going to be wasteful
 10 expenditure. That's why at the beginning Judge I placed it
 11 on record and I said I'm not sure whether should I own to
 12 this thing because the actual reconciliation of what would
 13 have been the terms of reference of Bain and what they did,
 14 I was not given the opportunity to look in that and why I
 15 almost sorry used a wrong word. I, why bother enter into
 16 something of this nature and at the end of the project the
 17 person who was providing oversight he's not able to
 18 reconcile whether these guys before we pay them have
 19 delivered what they were supposed to deliver.
 20 So I have a difficulty in taking ownership to an
 21 extent there are certain things yes I can identify within
 22 this document but there are certain things that I'm
 23 refusing to take ownership of and I'll tell you Judge, why
 24 and Advocate I was responsible for making payments. So for
 25 each deliverable that Bain would actually do, I'll go and

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1 check on the terms of reference whether they've done the
 2 correct thing, I must sign the invoice. Now you're making
 3 it very difficult for me and when the final product that
 4 comes I'm no longer there but you expect me to authorise
 5 other payments and I refused to authorise those payments.
 6 I don't know who authorised those payments.
 7 But I was very clear in my mind that what I think
 8 and I must say, I must say that when this project started
 9 in my understanding was that continuous improvement is a
 10 common thing in any business and I'll tell you one of the
 11 biggest thing. I was also been appointed to lead, to help,
 12 to represent SARS in the border management agency. You
 13 probably would know that there's a bill now before the NCOP
 14 select committee. It has been approved by the national
 15 assembly. It went to the select committee. As we speak
 16 now it appears to be final that that bill might actually be
 17 passed in the end. What informs the establishment of
 18 border management agency was that there's a general
 19 consensus Judge, in South Africa, security cluster,
 20 everybody that our borders are not managed as effective and
 21 as efficient as supposed to be. There is that consensus.
 22 COMMISSIONER: Ja.
 23 MR MASHABA: Because it can't be only the
 24 responsibility of SARS to manage the border, you've got
 25 other role-player.

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1 COMMISSIONER: But look we need to go
 2 down the question of the borders, I mean everyone knows
 3 there's borders.
 4 MR MASHABA: Yes.
 5 COMMISSIONER: Borders and it must be a
 6 huge problem but I'm not sure that we need to go down that
 7 route. Ja, continue, you were saying that look you thought
 8 that this whole thing -
 9 MR MASHABA: I thought it was going to,
 10 it was going to help us in terms of you know showing some
 11 level of commitment because as SARS we've been accused
 12 Judge by the, you know various structures that we're not
 13 doing our job. So my understanding was that this
 14 diagnostic was sort of going to help us sort of -
 15 COMMISSIONER: Sure.
 16 MR MASHABA: You know get to the bottom
 17 of the issues to enhance. Firstly, secondly Mrs Rae spoke
 18 about modernisation and the automation. Wonderful, as a
 19 customs officer I witnessed that. I've joined this
 20 organisation in 1993. I have grown in this organisation,
 21 I've worked with all various commissioners that were here.
 22 She's correct in terms of how we've moved. Part of what
 23 this was looking at is that sometimes you tend to over
 24 automate. Now customs by its very nature is an
 25 enforcement, has got a very huge enforcement leg. You have

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1 to have people intervening in certain areas. This was
 2 investigating also that we have been automating so people
 3 are now able to you know submit their declaration
 4 electronically. What are the levels of controls because
 5 it's normal that sometimes in the process of modernising
 6 you may leave one leg.
 7 COMMISSIONER: No but look I, look you
 8 know I'm not doing a project on how the place should run.
 9 So what do you say about Bain's conclusions? Do you agree
 10 with them or not?
 11 MR MASHABA: To a large extent there is
 12 some, some realities in this document.
 13 COMMISSIONER: And what about -
 14 MR MASHABA: I think it will be dishonest
 15 of me Judge -
 16 COMMISSIONER: Ja.
 17 MR MASHABA: To disown the entire thing
 18 and say that this document -
 19 COMMISSIONER: That's fine.
 20 MR MASHABA: There are certain key
 21 things, I'll give you one example which I believe in.
 22 Which is the core in this particular document, is the issue
 23 around goods control and it doesn't mean that modernisation
 24 and all other customs experts they don't know about that.
 25 It's a common thing that customs is all about goods

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1 accountability. Trade facilitation and revenue will follow
 2 automatically.
 3 COMMISSIONER: Sure.
 4 MR MASHABA: Now all that here what Bain
 5 was actually proposing in some of the things, like I've
 6 heard the argument on the, not the presentation on the
 7 gates, I just want to give you one example in Durban.
 8 COMMISSIONER: Ja.
 9 MR MASHABA: In this document we were
 10 quite aware that there's a designated gate not, containers
 11 can't just flow and you know into a 100 gates or 50 gates.
 12 There's a designated gate that containers that if they are
 13 from berthing and they are going out of the port bay needs
 14 to go through. The concern was how do we make sure that
 15 nobody takes advantage of this concession that exists so
 16 what type of controls, so if say for an example the
 17 shipping lines or Transnet for an example has got some
 18 electronic means of controlling that, do we have access to
 19 data, are we, can we then link to their cameras and be able
 20 to see that nobody takes advantage of that arrangement. I
 21 think to a large extent there are certain things that when
 22 I was reading, you know the past few days, because I've not
 23 seen this documents since the 12th of March 2017 when I was
 24 divorced from the project.
 25 That I believe that because of the tensions,

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1 because of the tensions we are not really very factual in
 2 terms of going page to page, solution by solution. But
 3 because people lacked trust so to an extent Judge, at some
 4 point you know you probably realise that people do not even
 5 want to read as long as it's coming from Bain and it was in
 6 that particular environment.
 7 MS STEINBERG: Can I just intervene
 8 there.
 9 MR MASHABA: Yes.
 10 MS STEINBERG: Our witnesses say actually
 11 they hadn't seen any of this, it wasn't a question of they
 12 didn't want to read, they weren't given anything to read.
 13 Now as an outsider when I come to the diagnostic,
 14 particularly on customs in layman's terms in colloquial
 15 language it says customs is one big mess.
 16 MR MASHABA: Yes.
 17 MS STEINBERG: Now what you're telling me
 18 here is because you're a person from the inside you know it
 19 wasn't one big mess, there were certainly areas to be
 20 improved. But if you take what the diagnostic says about
 21 Durban. It says Durban's one big leaking hole. It doesn't
 22 work. Now what our witnesses are saying and not only these
 23 two, is why, why did you have a diagnostic that says it's
 24 one big mess, rather than the more nuanced view that you've
 25 given us here that actually a lot was working but there was

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1 room for improvement and what's more the people within
 2 customs knows there's room for improvement and they've got
 3 plans in the pipeline. Why isn't that reflected in the
 4 diagnostic?
 5 COMMISSIONER: Well I don't think you can
 6 ask him, he didn't draw the diagnostic.
 7 MS STEINBERG: He did draw the
 8 diagnostic, Judge.
 9 MR MASHABA: I was not responsible for
 10 drawing the diagnostics. I was actually responsible for
 11 providing oversight. Let me give you an example.
 12 COMMISSIONER: No, no just let's not go
 13 an example yet. Let's deal with counsel's question.
 14 MR MASHABA: So the diagnostic was drawn
 15 by Bain because they had to be independent. So the
 16 instruction and the terms of reference was that the
 17 diagnostic needs to be conducted by an independent party.
 18 That's the reason why Bain were brought in.
 19 MS STEINBERG: But they relied on you,
 20 yes.
 21 MR MASHABA: My role would have been for
 22 an example to make sure that they've consulted the people
 23 that they need, so if they're going to Beit Bridge, I'd
 24 make sure that there's transport to take them to Beit
 25 Bridge, that there's somebody in Beit Bridge. So sort of

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1 coordinative in nature.
 2 COMMISSIONER: Ja.
 3 MR MASHABA: And every single finding
 4 that you see here, Advocate there will be a report per
 5 office that was acknowledged by either the branch manager
 6 of that particular office and so forth to say this, so the
 7 wording around using mess and using that, it's something
 8 else that I am not able to really deal with.
 9 COMMISSIONER: Well let's just stop on
 10 that point.
 11 MR MASHABA: Yes.
 12 COMMISSIONER: And say this. So your
 13 role was really a facilitator, a coordinator.
 14 MR MASHABA: Yes.
 15 COMMISSIONER: That was your role?
 16 MR MASHABA: That's the role that -
 17 COMMISSIONER: You weren't the advisor to
 18 them on how to do things, they were the independent people,
 19 you were the coordinator?
 20 MR MASHABA: Exactly.
 21 COMMISSIONER: You would put them in
 22 touch with people etcetera.
 23 MR MASHABA: Exactly.
 24 COMMISSIONER: And then, sorry can I just
 25 -

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1 MR MASHABA: Sorry, sorry.

2 COMMISSIONER: See where we differ and

3 not and what do you say when they say, Advocate Steinberg

4 said they say Durban docks was a mess do you agree with

5 that or not?

6 MR MASHABA: I, the wording I don't

7 understand. Let me tell you and let me just go

8 specifically to what Mrs Rae was saying, for an example.

9 In terms of the revenue component, the estimations that

10 they've made. So what will happen is that you probably

11 realise that and this, the new laws are going to solve that

12 problem, is that not all cargo was actually declared at the

13 port of entry. So the cargo would at some point berth and

14 after berthing it will move from the port to the bonded

15 warehouse for an example and what Bain was actually doing

16 in terms of the data that they were, they were having was

17 to look at, say for an example if one container was to be

18 smuggled here were estimates, pure estimates, if one

19 container was smuggled and looking at the tariff lines,

20 let's look at the top ten commodities that are coming

21 through Durban. What would have been the revenue

22 implications and I can tell you Mrs Rae is correct when the

23 pilot started in Durban all those figures started coming

24 down. The final document shows that the original gap that

25 was estimated was sitting at X, it's just that I don't have

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1 the figures here with me, when the pilot was actually

2 happening it was actually proving that the controls are not

3 as bad as supposed to be, however there's room for

4 improvement and I think -

5 COMMISSIONER: That's what, I think

6 that's what counsel is putting to you.

7 MR MASHABA: Yes.

8 COMMISSIONER: You know in any, I think

9 we don't need education in one thing and that in any

10 organisation -

11 MR MASHABA: Ja.

12 COMMISSIONER: You can find faults and

13 you hope that's what management is about, improving,

14 improving, so one never goes to a, gives there's a 100% to

15 any organisation. I think counsel is putting to you look

16 the place was functioning pretty well, it wasn't

17 dysfunctional there were places that you could improve on.

18 MR MASHABA: I agree.

19 COMMISSIONER: And that, as Mrs, I don't

20 think there's actually any difference between you and Mrs

21 Rae.

22 MR MASHABA: No, I agree.

23 COMMISSIONER: That she said yes we

24 acknowledge that, we're on a journey and the journey

25 wasn't, hadn't got to the designation and in fact you never

Page 1152

1 get to the designation. But you agree broadly with what -

2 MR MASHABA: Yes.

3 COMMISSIONER: What she says.

4 MR MASHABA: I agree with it.

5 COMMISSIONER: Well yes.

6 MS STEINBERG: You see I'm trying to

7 locate everybody I interview says they weren't responsible.

8 I'm trying to understand -

9 COMMISSIONER: Well let's not try and

10 understand. Let's just finish the evidence and then we'll

11 understand it all at the end hopefully.

12 MS STEINBERG: So I just want to be

13 absolutely clear on this. Mr Mashaba, you're saying your

14 role was more of a coordinating role, you enabled Bain to

15 go from place to place and it is Bain who put pen to paper

16 and drew up this diagnostic?

17 MR MASHABA: 100%.

18 MS STEINBERG: Am I clear? Thanks.

19 MR MASHABA: This report is written by

20 Bain.

21 MS STEINBERG: We can go on.

22 MR MASHABA: Bain product.

23 COMMISSIONER: Okay.

24 MS STEINBERG: And nor was it you who

25 decided who to consult, who decided who should and

Page 1153

1 shouldn't be consulted?

2 MS STEINBERG: Well I can't remember if

3 there was any, Advocate any instruction or directive to

4 that effect. I think Bain had a sort of a scope that they

5 have drafted with Jonas, that's why my involvement must be

6 clearly understood.

7 COMMISSIONER: No we understand it now.

8 MS STEINBERG: I understand your

9 involvement. Are you suggesting Mr Makwakwa had decided

10 with Bain who to consult?

11 MR MASHABA: He might have because the

12 scope was discussed between the two of them.

13 MS STEINBERG: Okay.

14 MR MASHABA: Between the top management.

15 MS STEINBERG: Okay I'm now clear because

16 I wanted to understand your role and the limits of your

17 role and I think I understand that now.

18 MR MASHABA: Ja.

19 MS STEINBERG: So let's go on.

20 COMMISSIONER: Where are we going onto?

21 There's largely, as I understand it largely just no

22 disagreement between Mr Mashaba and Mrs Rae. So where do

23 we go from here?

24 MS STEINBERG: Well I think Mr Mashaba

25 wants to talk about his grievance and where he saw this

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1 breaking down.

2 COMMISSIONER: Oh okay.

3 MR MASHABA: So why I'm saying the

4 grievance came about -

5 COMMISSIONER: Is this a grievance of

6 yours?

7 MR MASHABA: Yes.

8 COMMISSIONER: Yes.

9 MR MASHABA: Concerning which is related

10 to this very same project. Right I will understand why you

11 would have wanted to bring me, number 1 onto the project to

12 provide this oversight and you also want me to be

13 responsible for payments and whatever. When they final

14 product is coming out I will not have, what was the, I will

15 not have the right to provide the same oversight so that I

16 could satisfy myself that the terms of reference have been

17 reached and have been met. That the final document, that's

18 why sometimes the wording that you are talking about if I'm

19 saying this document was not handed over to me. There is a

20 general assumption Advocate, and understand why some of my

21 colleagues are agitated about this for the lack of a better

22 word. The general assumption was that I was in charge of

23 this project and I was taking all the decisions. To a

24 larger extent the general assumption is that I designed

25 even the customs structure and I even decided who gets

Page 1155

1 appointed where and I must dismiss that now, categorically.

2 COMMISSIONER: Well I haven't heard that

3 said, I must say.

4 MR MASHABA: NO I'm saying there's a

5 perception, a general perception. I am a victim of this

6 very same new operating model, as I speak today I am still

7 holding the same position that I held before I was brought

8 in. I was been pulled from pillar to post, no, no you

9 can't, you can't go to this position now, wait on, we'll

10 create something for you now because you have been

11 providing oversight, we'll do, there were a lot of stories

12 around it but let me go back to, and I think it's very

13 important for people to understand that I'm equally the

14 victim, like Sydwell, like Mrs Rae, like everyone. There's

15 no reason why I should lie about it because I put my

16 country first. The grievance then starts why from the

17 onset did you appoint me on this project. One, I was not

18 happy with the design structure.

19 COMMISSIONER: Sorry, I'm not quite sure

20 where we're going, though with all of this. I mean this is

21 not a grievance procedure. This is an inquiry into how

22 this customs works and how it doesn't. Have you lodged a

23 grievance somewhere?

24 MR MASHABA: Yes, Judge.

25 COMMISSIONER: Where did you lodge the

Page 1156

1 grievance?

2 MR MASHABA: So Judge -

3 COMMISSIONER: Sorry where -

4 MR MASHABA: I lodged it with the

5 Commissioner.

6 COMMISSIONER: And is it with the

7 Commissioner now?

8 MR MASHABA: The process which followed

9 was that the independent lawyer was hired, there was an

10 outcome on that particular, but the relevance Judge, which

11 I thought -

12 COMMISSIONER: Just stop, let me

13 understand this. The lawyer was hired to hear the

14 grievance.

15 MR MASHABA: Yes.

16 COMMISSIONER: And he dealt with it.

17 MR MASHABA: yes.

18 COMMISSIONER: And you told him what your

19 grievance is?

20 MR MASHABA: Yes.

21 COMMISSIONER: And he made a report or

22 did whatever.

23 MR MASHABA: Yes.

24 COMMISSIONER: And did he dismiss the

25 grievance or uphold the grievance?

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1 MR MASHABA: So he did not adequately

2 deal with it.

3 COMMISSIONER: I just want to know, what

4 did he do with the grievance, the lawyer?

5 MR MASHABA: He actually found that there

6 was nothing wrong that I was removed. That there was money

7 that was been spent which was wasteful.

8 COMMISSIONER: Yes.

9 MR MASHABA: Which I was, the relevance

10 I'm trying to put too much to it is that he felt and I was

11 shocked, that looking at the grievance, the way, it was not

12 much more of a personal grievance or my personal pain or

13 something. It was mainly about the money being spent on

14 the project, the outcome of the project and the way the

15 project had been managed. The way he had dealt with the

16 outcome of that particular grievance it was almost

17 dismissive to say there's nothing wrong with what was

18 happening. Even though there's proof there's evidence.

19 COMMISSIONER: Well look, I, so you want

20 to appeal against that grievance as it were here? I mean,

21 I understand your concern, I really do understand your

22 concern but I'm not sure that it falls within our terms of

23 reference to deal with your grievance. Do you understand

24 what I'm saying?

25 MR MASHABA: I agree, Judge. Perhaps

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1 what I was raising it was not as a matter of something that
 2 you need to deal with but I was just indicating -
 3 COMMISSIONER: Yes.
 4 MR MASHABA: When I say I disowned this.
 5 COMMISSIONER: No, I understand.
 6 MR MASHABA: That I have taken steps
 7 prior to my understanding that there's going to be an
 8 inquiry or anything.
 9 COMMISSIONER: Ja.
 10 MR MASHABA: Independently I felt as a
 11 responsible citizen that I need to do something about
 12 something that I was seeing that was wrong. That is the
 13 reason why I was mentioning that.
 14 COMMISSIONER: Thank you. You've
 15 actually been very helpful in many ways but I don't, you
 16 know I just don't think that we can deal with your
 17 grievance as it were and resolve the grievance. It's just
 18 not good in our scope to do so.
 19 MR MASHABA: Ja.
 20 COMMISSIONER: So, but thank you very
 21 much I really have appreciated your evidence, it's taught
 22 me a lot. Thank you very much.
 23 MR MASHABA: Okay.
 24 COMMISSIONER: Is that it?
 25 MS STEINBERG: Unless the witness has

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1 something in addition to say?
 2 COMMISSIONER: Sorry. Is there anything
 3 further Mr Mashaba?
 4 MR MASHABA: No I don't think, if there's
 5 no, any other further questions -
 6 MS STEINBERG: I think I should say that
 7 where the witnesses also all agree is that, that what was
 8 recommended never got implemented.
 9 COMMISSIONER: Ja.
 10 MS STEINBERG: And I know Mr Mashaba, he
 11 said beforehand it's a white elephant. It didn't get
 12 implemented.
 13 COMMISSIONER: Is that so?
 14 MR MASHABA: Yes, yes, Judge, it's
 15 correct, I said that before and that is my major concern.
 16 My major concern is that why start something and spend
 17 money on something and you don't implement it. That is
 18 incorrect. To a larger extent it creates, it makes all
 19 other witnesses that are saying but what was the purpose of
 20 this because if really indeed you are the purpose and your
 21 purpose to improve operations why did you not go ahead and
 22 implement it.
 23 [16:49] COMMISSIONER: Were you told, was did you
 24 get into some sort of trouble because you had approved
 25 payments for this, is that what caused your difficulty?

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1 Did you approve payments for this Bain thing?
 2 MR MASHABA: Yes.
 3 COMMISSIONER: And I get the impression
 4 from what you're saying now that someone came late and said
 5 why did you approve the approved payments for this.
 6 MR MASHABA: No.
 7 COMMISSIONER: Not?
 8 MR MASHABA: No.
 9 COMMISSIONER: So I don't know how the
 10 grievance arose then but did someone accuse you of
 11 something?
 12 MR MASHABA: No. So what was happening,
 13 Judge, is that in making payments, I need to satisfy myself
 14 that the deliverables have been met.
 15 COMMISSIONER: No but I understand, but
 16 did you do that, you did that or not?
 17 MR MASHABA: Yes I did that.
 18 COMMISSIONER: Well then what's the
 19 problem?
 20 MR MASHABA: The problem was I could not
 21 at some point be able to provide the oversight that will
 22 allow me to confidently sign and say this payment is
 23 actually due and payable.
 24 COMMISSIONER: No I quite agree.
 25 MR MASHABA: That's my frustration.

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1 MS MASILO: So on what basis did you make
 2 those payments then if you could not satisfy yourself with
 3 the work that was done?
 4 MR MASHABA: No I refused. So there's an
 5 element that I could authorise because I could tell that
 6 the deliverables were met. There are those that I felt
 7 that because I'm not able to provide oversight you can't
 8 expect me to be authorising payment.
 9 COMMISSIONER: Did you authorise them?
 10 MR MASHABA: No.
 11 COMMISSIONER: So how did they get paid?
 12 Or did they not get paid?
 13 MR MASHABA: That's what I don't know.
 14 COMMISSIONER: You don't know if they got
 15 paid?
 16 MR MASHABA: I really don't know, Judge.
 17 COMMISSIONER: Did you authorise any
 18 payments that you had not yourself verified as being due?
 19 MR MASHABA: No. All that I've paid is
 20 what -
 21 COMMISSIONER: Then I don't see the
 22 problem. No one said to you afterwards, well why didn't
 23 you pay, did they?
 24 MR MASHABA: Ja.
 25 COMMISSIONER: So I don't know how the

1 problem arose. I don't know what the problem is. You've,
2 you said one of your jobs was to certify payments where
3 there had been a delivery. That's what you did. Sometimes
4 they asked you to sign thing, authorise payments where you
5 were not sure whether there had been a delivery and you
6 didn't sign them.

7 MR MASHABA: Yes.

8 COMMISSIONER: And that's what happened.

9 MR MASHABA: Ja.

10 COMMISSIONER: I think we've got enough.

11 MS STEINBERG: Thank you Mr Mashaba.

12 MR MASHABA: Thank you.

13 COMMISSIONER: Thanks very much.

14 MS STEINBERG: Perhaps you could send
15 your grievance –

16 COMMISSIONER: Will you do that? I'd
17 like to see –

18 MS STEINBERG: And the ruling you spoke
19 about.

20 MR MASHABA: Yes.

21 COMMISSIONER: Would you do that for me?

22 MS STEINBERG: I'd be very grateful.

23 COMMISSIONER: Have you got your
24 grievance written down in some way.

25 MR MASHABA: Ja it is.

1 COMMISSIONER: Did the lawyer give a
2 written ruling?

3 MR MASHABA: Yes I've got.

4 COMMISSIONER: I'd like to see those if
5 you could give it to Ms Steinberg.

6 MR MASHABA: I'll do that.

7 COMMISSIONER: Thanks very much.

8 MS STEINBERG: Thanks very much.

9 MR MASHABA: Okay.

10 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

11 COMMISSIONER: Is that the business for
12 today?

13 MS STEINBERG: That's business for today.
14 9 o'clock tomorrow morning.

15 COMMISSIONER: Quite relentless –
16 [INQUIRY ADJOURNED]

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25 .

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