

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 9

24 AUGUST 2018

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HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street,
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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@mweb.co.za
Web Address: <http://www.realtimesa.co.za>



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1 [PROCEEDINGS ON 24 AUGUST 2018]
 2 [09:05] COMMISSIONER: Ms Hobden, are you ready?
 3 MS HOBDEN: Morning Judge and panel. Our
 4 first witness this morning is Mr Eric Mkhawane from the
 5 office of the ombud.
 6 COMMISSIONER: Good morning.
 7 MR MKHAWANE: Good morning.
 8 COMMISSIONER: Thank you very much for
 9 coming to assist us. Will you affirm that the evidence you
 10 give will be the truth, the whole truth and nothing but the
 11 truth, if so will you just say I do.
 12 MR MKHAWANE: I do.
 13 COMMISSIONER: Thank you very much.
 14 EVIDENCE OF MR MKHAWANE
 15 MS HOBDEN: Sir, could you describe your
 16 position and the office for which you work?
 17 MR MKHAWANE: I'm the – okay first it's
 18 Advocate Eric Mkhawane. I'm the chief executive officer in
 19 the office of the tax ombud.
 20 MS HOBDEN: And can you tell us when the
 21 office of the ombud was established and what its function
 22 is?
 23 MR MKHAWANE: Well the office was
 24 established in October 2013 when Judge Bennett was
 25 appointed as a tax ombud. I was appointed a month or two

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1 later and then we started to establish the office and it
 2 was officially launched in April of 2014. Now the role of
 3 the ombud as described in the Act, section 16 of the Tax
 4 Administration Act is to review and address any complaint
 5 by a taxpayer on a service related issue, procedural issue
 6 or administration issues arising from the application by
 7 the, arising from the application of the Tax Act by SARS.
 8 Now just to elaborate on that the ombud looks at all
 9 complaints relating to the Act administered by the
 10 Commissioner ranging from the VAT Act, Income Tax Act and
 11 all of them, I think there are more than 20 all in all.
 12 MS HOBDEN: And the ombud's role of
 13 investigating systemic issues, can you just explain how
 14 that particular function and role arose and when?
 15 MR MKHAWANE: Okay. Previously when, in
 16 fact when the Act was passed it only provided that the
 17 ombud should only identify systemic issues from the
 18 complaints that were received. So it was, it gave the
 19 ombud in a way a pro, I mean a reactive role. You needed
 20 to wait for complaints to come before you can actually
 21 analyse and come up or identify systemic issues. So we
 22 found that the mandate was not sufficient, we needed to
 23 make a proposal for it to be expanded to include the
 24 ability to initiate investigations of a systemic nature and
 25 that proposal was accepted and it became law last year in

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1 January, that's 2017.
 2 MS HOBDEN: And the reporting and
 3 consultative functions of the ombud in relation to SARS,
 4 what are they? What is the relationship there and the
 5 engagement that happened?
 6 MR MKHAWANE: Look in terms of the Act
 7 the ombud would produce a quarterly report which would go
 8 to the Commissioner. That's in terms of section 19 of the
 9 Tax Act our TAA and that we have to identify at least the
 10 ten most serious issues people are complaining about and to
 11 also look at what action has been taken on those issues,
 12 for example we will indicate to SARS, we'll make this kind
 13 of recommendation and we must also indicate whether those
 14 recommendations were accepted or implemented. If not, why?
 15 So it's a bit, the requirement is that we must set out
 16 these things and give to the Commissioner. Now it's not in
 17 terms of maybe the reporting lines but in terms of
 18 highlighting the issues the taxpayers are experiencing and
 19 that is also similar to a similar report but that one is
 20 compiled annually. It's the one that goes to the Minister
 21 which he tables before Parliament so that will be done once
 22 in a year.
 23 MS HOBDEN: And I'd like to move to focus
 24 on a particular report that the ombud has compiled relating
 25 to the delay of payments of refunds. Could you tell us,

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1 the lead up to that report and why the ombud's office felt
 2 it was necessary?
 3 MR MKHAWANE: Well since inception of the
 4 office the issue of refunds have always been an issue. It
 5 was amongst the top three kind of complaints, but until
 6 2017 we could not go deeper and to do that investigation
 7 thoroughly. And taxpayers also we found that late in 2016
 8 they were complaining a lot about refunds. People were
 9 complaining that their refunds are withheld for no reason.
 10 In some instances taxpayers will even phone radio stations
 11 and say we are experiencing this problem, we are
 12 experiencing these problems. So the best we could do was
 13 to say they should lodge complaints with our office. At
 14 that stage we were resolving complaints then on a, as the
 15 complaints came we would resolve the issue but could not do
 16 the underlying causes of that complaint, until when we, our
 17 mandate was increased last year to be able to do that. So
 18 upon receiving, about a month or two after the Act came
 19 into being we took advantage of those provisions and we
 20 requested the Minister to grant us approval, but what
 21 really prompted us to do so it was because now more and
 22 more people were complaining about the refunds being
 23 withheld by SARS.
 24 MS HOBDEN: And had you raised these
 25 issues with SARS previously, before you were required to go

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1 to the Minister to request permission to investigate and
 2 report?
 3 MR MKHAWANE: Yes, we did so, during
 4 November at some stage in 2016 we, I think it was about the
 5 8th November where we wrote a letter to the Commissioner
 6 highlighting these issues and saying that they really need
 7 attention. Somewhere we did not understand why taxpayers
 8 who for example were requested to go to the bank, to the
 9 branch of SARS to update their banking details. We would
 10 not understand the basis of such, even where, especially
 11 where there were no changes in the banking details. And as
 12 you know or some taxpayers live far away from the branch
 13 office. For taxpayers to go to the branch, some live up
 14 even up to 200 kilometres from the branch, from the nearest
 15 branch of SARS. So for that taxpayer it means that they
 16 must take a day off from work and travel and go there,
 17 present themselves, update their banking details and go
 18 back. So if they were lucky to be served for that matter.
 19 So if, and then we found that even after the taxpayer had
 20 done that there will still be two months, two months will
 21 still go by, the refund is not released, they will tell the
 22 taxpayer there's still a stopper which was causing a lot of
 23 inconvenience for such taxpayers.
 24 MS HOBDEN: So we see in the report under
 25 a heading of the history of the complaint that the issue in

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1 particularly in relation to the delay in VAT refunds was
 2 raised in the annual report in 2014/15 and it was raised
 3 again in the annual report for 2015/16 and there, there was
 4 a great increase in the actual number of complaints, 317.
 5 And the report says the same issue was raised in our
 6 periodical report issued in terms of section 19(1)(c) to
 7 the Commissioner of SARS. Is that correct that the issue
 8 of the delay in refunds was reported and the annual reports
 9 that went to the Minister in Parliament and was included in
 10 the quarterly reports to the Commissioner.
 11 MR MKHAWANE: That is correct.
 12 MS HOBDEN: That was over the period from
 13 2014 up until the report was compiled.
 14 MR MKHAWANE: That's correct.
 15 MS HOBDEN: I'd like us to look at some
 16 of the key issues and findings that the report made and you
 17 can perhaps just elaborate on some of them. The first is
 18 the timing of the release of refunds and what inference can
 19 perhaps be drawn from that. And I understand that the
 20 ombud's role was really just to look at the facts and that
 21 inferences may or may, can or cannot be drawn from those
 22 facts. But perhaps we can go to the graph that's graph D
 23 in the report, page 16.
 24 MR MKHAWANE: Yes I'm there.
 25 MS HOBDEN: And can you explain what this

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1 graph shows?
 2 MR MKHAWANE: This graph shows the
 3 various refunds in values that were paid over the period
 4 and various years. The blue, I'm not sure yours if it's
 5 with colour, it's the 2016 tax year and then the red being
 6 the 2017 financial year. Now the green is an average, on
 7 average and if you take it from April you will see that on
 8 the 2016 there was about 12.99 billion that was paid out.
 9 In May you find that there's just over 14 billion paid out
 10 in refunds. And then the figure was lower in June of 2016,
 11 and then but it will go up around July, August, September,
 12 coming down in October, November, December. But what we
 13 pick up for 2016 that in February and March the amounts
 14 were much lower. So it was 11.6 billion that was paid in
 15 February and 11.65 in March.
 16 MS HOBDEN: So what we see from the graph
 17 is a decrease in the value of refunds paid to taxpayers in
 18 the months preceding the end of the financial year.
 19 MR MKHAWANE: That's correct. But if you
 20 look there, because from March there, then you start with
 21 the, you go onto April of the following year which is now
 22 16 billion in April, 15 billion in May and then 14.7
 23 billion in June. And then again when January there was an
 24 anomaly, there was one matter as explained by SARS which
 25 was a high value amount but it was 22 billion which was an

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1 exception. But apart from that February and March is
 2 always, it's below the average.
 3 MS HOBDEN: And then we see it increase
 4 from April.
 5 MR MKHAWANE: We see it increasing in
 6 April, May again.
 7 MS HOBDEN: Now just to look at some of
 8 the obstacles raised in the report, the second one – and we
 9 see it on page 10 of my version is the unwarranted placing
 10 of special stoppers.
 11 MR MKHAWANE: Yes.
 12 MS HOBDEN: And as I understand those
 13 relate to – and a stopper is what is placed in the SARS
 14 system that prevents a refund being paid. And as I
 15 understand it those special stoppers relate to the
 16 verification of bank details.
 17 MR MKHAWANE: Yes.
 18 MS HOBDEN: Can you just explain a bit
 19 about what that meant and the impact of that?
 20 MR MKHAWANE: Taxpayers would file their
 21 return, whether they changed the banking details or did not
 22 change the banking details, if they were in a refund
 23 position they would be required to go to the branch and
 24 verify the banking details. Now the problem with that is
 25 that in some instances you find the taxpayer has had the

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1 very same bank account for 20 years. It has already or
 2 always submitted returns and paid a refund into that
 3 account, but all of a sudden there's now a requirement that
 4 they must, the taxpayer must present himself to the branch
 5 and update the banking details. Now the impact of that, as
 6 I explained, in some instances it caused a lot of hardship
 7 for taxpayers. Some taxpayer in particular would, one
 8 taxpayer in particular called and said I cannot handle
 9 this. I've been to the branch, I could not even be served
 10 because the queues are too long. I took a day off, now I
 11 have to come back to the next day to update, to try to
 12 update. But you know the impact it has on that individual
 13 taxpayer it is tough, yes it's a mess. Now even after,
 14 even after presenting themselves to the bank, there will
 15 still be delays of up to two months, in some instances
 16 three months and we actually elaborate that in the report
 17 where we show when the taxpayer went to the bank and when
 18 the money was paid into the taxpayer's account.
 19 MS HOBDEN: So there was a delay both
 20 caused by a stopper being put on that payment and a flag
 21 that said bank details need to be verified for reasons
 22 unknown.
 23 MR MKHAWANE: Yes.
 24 MS HOBDEN: And even when the taxpayer
 25 had presented themselves at the office and provided the

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1 necessary information there was then a further delay in the
 2 lifting of that stopper for the refund to go through?
 3 MR MKHAWANE: That's correct, and when
 4 taxpayers phoned SARS they will be told no, there's no time
 5 lines for the lifting of the stopper. So the stopper has
 6 been placed. We can understand in some instances where
 7 SARS needs to make sure that this refund is legitimate and
 8 it's been paid to the right taxpayer. We understand in
 9 that regard. But once the taxpayer has complied with all
 10 the SARS requirements there's really no legal basis for
 11 withholding the refund and that's what we found to be
 12 common. They will still have to wait another two months,
 13 three months instead of being paid almost immediately.
 14 MS HOBDEN: And was SARS able to explain
 15 the reason for that delay once documents had been properly
 16 submitted and the bank details verified and then the actual
 17 lifting and the payments of the refund, did they provide a
 18 reason for that?
 19 MR MKHAWANE: The reasons that were
 20 provided are actually, they actually relate to prior to the
 21 banking details because they'd say no, we are trying to
 22 prevent fraud, we don't want fraud to be committed and so
 23 that's why they require this kind of details to be updated.
 24 But post that, there would be no good explanation for that.
 25 MS HOBDEN: And I see that from the

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1 report because the report sets out SARS' response to the
 2 interim report. And SARS' response was really that what
 3 it's trying to do is to balance fraud risk and the burden
 4 of tax compliance and it said, it indicated it felt it was
 5 doing that appropriately, which is the reason for the
 6 special stoppers is to ensure that the money meant for a
 7 certain taxpayer goes to that taxpayer. But in terms of
 8 the explanation as to why once that risk had been
 9 eliminated by the taxpayer presenting themselves and then
 10 another two week or sometimes more delay in actually the
 11 payment coming through, there was no explanation from SARS.
 12 MR MKHAWANE: No there was no
 13 explanation.
 14 MS HOBDEN: The second issue I'd like to
 15 look at is the issue of the request for information arising
 16 from an audit, and –
 17 PROF KATZ: Sorry counsel, can I just
 18 ask?
 19 MS HOBDEN: Sure.
 20 [09:25] PROF KATZ: On these delays the ones in,
 21 just before financial year-end and the, that pattern that
 22 emerged was that applied selectively to some taxpayers or
 23 was it consistent in that period every refund that came up
 24 was delayed? Was there any pattern, was it consistent, was
 25 it selective on particular taxpayers, did other taxpayers

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1 escape the delays?
 2 MR MKHAWANE: We didn't, I think our
 3 investigation did not go to that extent to check whether
 4 there's any pattern in that regard. What we can say,
 5 safely is that maybe we'll touch on that at a later stage
 6 when one looks at the list that we requested to see the
 7 number of refunds and also the values and also to just see
 8 exactly what happens with those refunds when they were paid
 9 and when they were not paid and the likes. But in a
 10 nutshell we have not really gone closely to look at whether
 11 it's selected individuals who are not being paid.
 12 PROF KATZ: Or rather being accelerated
 13 when everyone else is been delayed?
 14 MR MKHAWANE: We also could not, with the
 15 kind of -
 16 PROF KATZ: And the same questions on the
 17 stoppers was that consistently applied and in all offices,
 18 were there patterns that advantaged some taxpayers,
 19 disadvantaged others, was there any pattern in?
 20 MR MKHAWANE: We couldn't establish the
 21 pattern in that sense. The, some of this information was
 22 actually complaint's based. So you have those that have
 23 complained to the office and we look at the, it's not very
 24 easy to establish a pattern from the complainants in the
 25 scheme of things.

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1 MS HOBDEN: Perhaps just to clarify. The
 2 Ombud's report did not go into that level of detail and
 3 look at what, at what stage the delay has arisen. These
 4 graphs and these statistics show overall refunds being paid
 5 out by SARS but can't point to why in particular cases
 6 there was a reason for a delay, just, it's a more global
 7 question. The issue really arises in some cases the delays
 8 is inexplicable and further investigation that was beyond
 9 the ambit of this report would need to be done in order to
 10 identify where exactly in the refund process the delay
 11 arose. Sometimes it's special stoppers, other times it's
 12 an audit process and other times there's no explanation.

13 COMMISSIONER: Are these graphs though,
 14 are these only complaints that are being mapped in the
 15 graphs or is it or are you mapping refunds across SARS?

16 MR MKHAWANE: We mapped refunds across
 17 SARS. In the course of our investigation we requested
 18 information from SARS like information in terms of the
 19 values of refunds and also looking at the growth of refunds
 20 and when there were, the payment, the values and based on
 21 that information that we received from SARS we populated
 22 this diagrams and just as a basis for our analysis.

23 MS HOBDEN: Perhaps since Professor Katz
 24 raised it we can go to the table that you provide on page
 25 65 and we can look at what you explained to me was the

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1 table shows the number of particular cases of a delay in a
 2 refund mapped against its value.

3 MR MKHAWANE: The one on the numbers of -
 4 MS HOBDEN: Page 65 of the report.
 5 MS MASILO: Sorry, Advocate Hobden, can
 6 you please just tell us in the main reports of the Tax
 7 Ombud, what page is that, because we are in possession of
 8 the copy of the actual report.

9 MS HOBDEN: I have the report that just
 10 relates to the VAT refunds, not the annual reports, I'm
 11 referring to that report.

12 MS MASILO: Okay.

13 MR MKHAWANE: Perhaps you can, if you
 14 tell me which one are you referring to the one with values
 15 or you're referring to the one with the numbers, the 5
 16 million, the refund cases.

17 MS MASILO: Then you would know which
 18 page -

19 MR MKHAWANE: I will know which one -
 20 MS MASILO: Is in your report, yes, okay.
 21 MR MKHAWANE: And then I can -
 22 MS MASILO: Okay. That will assist.
 23 MS HOBDEN: Let's refer to the slides you
 24 referred to because I think that might -
 25 MR MKHAWANE: Which one are you referring

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1 to, diagram or, okay. Alright that is -
 2 MS MASILO: We've got a copy now.
 3 MR MKHAWANE: You have got a copy?
 4 MS MASILO: Yes, thank you.
 5 MR MKHAWANE: Yes. Now if you look on
 6 that, in terms of -
 7 COMMISSIONER: Which one are we looking
 8 at now, graphs?
 9 MR MKHAWANE: It's an, this is the value
 10 of, value -
 11 COMMISSIONER: Okay thank you very much.
 12 MR MKHAWANE: And then the numbers. Now
 13 if you look on that diagram you'll see that overall, on the
 14 left hand side you'll see the value that will be from less
 15 than 100, ranging from less than 100 up to 62 million right
 16 at the bottom or more than 62 million. So we broke it
 17 down. Those values less than 100 it is R3 724 202 and then
 18 between 100 and 1 000 it's just almost 600 000 and then
 19 from 1 000 to 5 000 it's 381 613 but if you look at the
 20 whole values right to the bottom, you'll find that the
 21 highest values being 60, more than 62 million it's 84. It
 22 was 84 that was given to us and then just immediately above
 23 that from 50 million to about 62 million it was 20 of them
 24 and then from 25 million to 50 million it was 122 and then
 25 from 10 million to 25 million it was 404.

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1 But just to give context to this the top 630
 2 which is just the last four at the bottom the value of
 3 that, the value of those amounts it was over 25 billion.
 4 Only 630 cases, the value it's over 25 billion. Now SARS
 5 always said we'll pay, it doesn't matter the, you know but
 6 over 90 refunds within a specified period and then the
 7 complaints here it's less than 1% but if you look at the
 8 630 out of the 5 million cases, in terms of percentage it's
 9 less than 0.01% but the value thereof is 25 billion.

10 So it is, it can be easy to release all the other
 11 lower value refunds and what we also found is that those
 12 630 they were way above 60 days, they were older than 60
 13 days all in all. So the question may be why were they
 14 withheld. Which is something that we could have, given the
 15 time and the capacity we could have just gone in and to
 16 check exactly on a case by case basis but it is no defence
 17 for SARS, it's not a good reason to say well we release 90
 18 or 92 or 99, even if it's 99% if you release them and then
 19 you leave out that 1% that 1% constitute way, even that
 20 0.01% constitutes 25 billion.

21 MR KAHLA: Was there ever a point made by
 22 SARS that that perhaps 1%, those 630 cases maybe perhaps
 23 higher risk cases or not?
 24 MR MKHAWANE: Look, not so much. Not so
 25 much so. We deal with that in the report, I just can't

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1 pick it up exactly where but we deal with that aspect
 2 because when we indicated to SARS that this 630 we did an
 3 analysis and we took a sample of those cases. SARS's
 4 defence was that no we are not aware of your sample, you
 5 never told us what sample. But SARS failed to ask specific
 6 questions relating to that sample. So they would not, they
 7 would not comment but they say they never were, they were
 8 not privy to the sample that was used by the Tax Ombud.
 9 But never requested.

10 MS MASILO: And these particular
 11 taxpayers were there disputes in relation to their refunds
 12 or they were just lying somewhere in the system and SARS
 13 just giving the taxpayer run around?

14 MR MKHAWANE: Look this one were not
 15 specific complaints. These people have not specifically
 16 complained. So we would not delve deeper into why they
 17 were, we just did an analysis of the information that we
 18 requested from SARS and only to pick up that these refunds
 19 were out of time. They were older than 60 days and there
 20 were, we actually deal with that specifically, maybe I'll
 21 pick up the page and then I can refer you to it.

22 COMMISSIONER: Sorry are you saying they
 23 were outstanding for more than 60 days from the time -

24 MR MKHAWANE: They were out -

25 COMMISSIONER: From the time the refund

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1 became due for payment?

2 MR MKHAWANE: That's correct.

3 PROF KATZ: Sorry can I just ask one
 4 question. Following Mabongi's question, in all of this did
 5 SARS justify on grounds that but we're finding a lot of
 6 fraud, we have to be careful, did that arise in the
 7 discussions, did they justify it from the basis that the
 8 claims, there was to high an incidents of fraud or non-
 9 compliance in the claims?

10 MR MKHAWANE: Well in the report they do
 11 mention that we have to prevent fraud but when it comes to
 12 this very specific ones we understand the high value and
 13 also high risk and but our observation was that this, these
 14 figures are too high and of course without delving into the
 15 specific cases and analysing exactly why each one of them
 16 is withheld it's, I think we cannot comment too much on
 17 that.

18 MS HOBDEN: Thank you. The next issue
 19 I'd like to look at is the issue of SARS raising an
 20 assessment or a journal entry to offset a refund or a
 21 credit that is due to a taxpayer and in the report dealing
 22 with VAT refunds it was dealt, it was looked at only in
 23 respect of VAT refunds but I'd like you to also talk about
 24 what you've subsequently discovered in respect of PAYE
 25 credits that are due to taxpayers.

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1 MR MKHAWANE: Okay. First of all SARS is
 2 entitled to raise assessments under certain circumstances.
 3 In this particular issue SARS would simply raise what it,
 4 what amazed us was the fact was that SARS will raise an
 5 assessment to clear of a credit. A taxpayer would not
 6 receive any letter of assessment. A taxpayer would not
 7 know why the assessment was raised. Now we give a perfect
 8 example, I'm not sure on the annual report we, it is on
 9 page 107 where this issue is addressed. What happened
 10 normally is if a taxpayer over pays, so his account will be
 11 in credit meaning that SARS must refund the money. In some
 12 instances a taxpayer may not be aware that the money is
 13 going to be deducted from his bank and then he goes and he
 14 pays the SARS debt and unknown to him SARS also collects
 15 money from his bank account. So there's two payments going
 16 off at the same time.

17 Now this particular taxpayer had paid, it was
 18 R555 000 and that was back in 2014. Now shortly thereafter
 19 SARS collected money from the bank account, the very same
 20 amount R555 000. So overall the taxpayers paid more than
 21 1.1 million. So the taxpayer goes, says look I need the
 22 money, I had already paid, in fact through a representative
 23 I have already paid my debt but then you went on and you
 24 collected that money. So SARS says that look there's a
 25 small adjustment that we need to take from this amount

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1 we'll take about R2 900 to offset another debt. But the
 2 taxpayer requested that the money be refunded. But
 3 notwithstanding that SARS decided to keep the money and
 4 never refunded that taxpayer. The period, it started back
 5 in 2014, in 2015 there's an exchange of emails, the
 6 taxpayer says look I need the money back, SARS says no is
 7 there any reason why, it doesn't do anything, it just
 8 writes to the taxpayer and says no you have a credit and
 9 doesn't request any further information and then we set out
 10 the sequence of events. It just, you know the exchange of
 11 emails from 2014 all the way to 2017. So the taxpayer is
 12 still battling to get the refund and which was really
 13 uncalled for and in the end what, to make it worse in 2015
 14 SARS had raised an assessment to clear that credit. So
 15 instead of paying back the taxpayer the 550 and odd Rands,
 16 R550 000 they simply raised an assessment equal by the way
 17 to the amount of the refund and they don't do that on the
 18 PAYE side, they do it on UIF. That carries on until the
 19 taxpayer lodged a complaint with us and we investigated.
 20 We found that the taxpayer had been hard done. There was
 21 no justification first of all to raise an assessment and no
 22 communication to the taxpayer to say an assessment now has
 23 been raised because if they do so obviously the taxpayer
 24 will object.

25 So that carried on until we intervened and then

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1 and SARS acknowledged that, each time, in fact each time
 2 the taxpayer made an inquiry the taxpayer will even be
 3 asked, you know give us proof that you paid the money. So
 4 in a way frustrating the taxpayer further and at some stage
 5 the taxpayer was now deregistering its business and really
 6 and, at the end of the day around end of March 2017 on the
 7 last day of 2017 the 31st of March SARS actions the refund
 8 but it doesn't pay immediately. The refund is paid on the
 9 4th of April after the financial year-end and you can
 10 imagine if SARS met its target for the 2017 this was
 11 included in the target. So the refund was only paid in
 12 April.

13 MS MASILO: So what happened to the UIF
 14 assessment? Did SARS withdraw that assessment?

15 MR MKHAWANE: Well they had to because
 16 there was no basis for that after we intervened and they
 17 refunded the money.

18 MS HOBDEN: So in that example we see a
 19 couple of issues. First we see just a general delay in
 20 SARS dealing with the issue of money that needed to be
 21 repaid.

22 MR MKHAWANE: Yes.

23 MS HOBDEN: And communication
 24 difficulties and difficulty really just cutting to the core
 25 of the issue. We then see an assessment raised for the

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1 exact amount of the amount that was due to the taxpayer and
 2 we then see a further delay when the amount is actually due
 3 and payable and SARS has agreed to pay that runs across
 4 into the next financial year.

5 MR MKHAWANE: Yes, indeed.

6 [09:45] PROF KATZ: Sorry, can I ask that last
 7 one you mention that after the financial year inflating the
 8 amount of tax collected in the year. Is there a great
 9 incidence of this, did you come across anything, have you
 10 come across that, just raising assessments just before the
 11 end of financial year and reversing it after that could
 12 have had a material impact on the tax collection figures?

13 MR MKHAWANE: I would not hastily say
 14 that it's been prevalent. We can only use this as an
 15 example, this one was just a perfect example where the
 16 delay, eventually the payment is made in April and not in
 17 March. But there are other amounts that maybe perhaps if I
 18 elaborate on that, is an issue of Pay As You Earn because
 19 what we did with SARS we requested information relating to
 20 incidences where they raised assessments to clear the
 21 credits, specifically with PAYE we picked up that – from
 22 their answer, the answer they gave us was there was R220
 23 million credits that were cleared through this process.
 24 But that was only between August of 2016 and March of 2017.
 25 Now we wanted to understand and we were concerned because

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1 the practise in that respect to simply raise an assessment
 2 to clear the credit exactly up to the last cent which, if
 3 you look at it in the scheme, we deal with this in the
 4 report and I think it's paragraph 2.6, where we made a
 5 remark. And maybe I should go there and just read exactly
 6 what we said in that regard.

7 Paragraph 2.6 and this is what we say
 8 "Unfortunately the information provided by SARS does not
 9 give a complete picture of the full financial impact this
 10 practise has on refunds. This is because SARS was not able
 11 to trace a large portion of this data prior to 2016 August.
 12 What is also clear from the previous year's report is that
 13 the allocated payment reduced significantly over several
 14 years and it would have been helpful to be able to
 15 establish the vary of those reductions. Allegedly
 16 attributable to SARS's practise to raise assessments purely
 17 to absolve this credit."

18 And we say what is important to note is that from
 19 August 2016 to March 2017 more than 220 million was reduced
 20 on PAYE in this fashion. While this number may seem
 21 trivial in the scheme of things, you know when SARS
 22 collects over a trillion rand the practise of raising
 23 assessments to clear credit is of grave concern and that's
 24 what we were concerned about. And we said we expected SARS
 25 to respond to this concern that we raised. Unfortunately

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1 SARS did not respond, never responded. So what was
 2 disturbing here mainly is the fact that it's even in the
 3 complaints that we received and I can touch on that briefly
 4 because I mentioned one example. There were other examples
 5 as well where a taxpayer for example would have overpaid by
 6 a certain amount, in fact one taxpayer overpaid by in fact
 7 paid 121 269 and so that was the amount that was supposed
 8 to be refunded to the taxpayer. And SARS raised an
 9 assessment to clear that credit, passed a journal to clear
 10 the credit. Not one, I mean it's several cases, but what
 11 we say was problematic is the fact that the law does not
 12 permit SARS to do that. And the question is what happened
 13 to those taxpayers. Unfortunately it's those taxpayers who
 14 may not have complained, but because they didn't complain
 15 the money will not be refunded and has been taken from
 16 them.

17 MR KAHLA: Besides having raised that
 18 point in the report to which you got no commentary or
 19 response on, was the issue raised in any other way with the
 20 Commissioner? You've given the report, nothing's come out
 21 of the report in terms of any response or commentary, does
 22 that issue then get taken up with the Commissioner and
 23 steps put in place around how to resolve then going
 24 forward?

25 MR MKHAWANE: I suppose the report is

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1 probably the ultimate because you would expect, you give
 2 the report based on your findings and you expect a response
 3 in that regard.
 4 MR KAHLA: And nothing came.
 5 MR MKHAWANE: Nothing came except to say
 6 we will stop this or we have stopped this, that practise.
 7 MS HOBDEN: May I just, sorry may I just
 8 make comment? What we see in the report is where the issue
 9 of raising assessments to set off or offset debts in
 10 personal income tax is raised the response by SARS is SARS
 11 has discontinued the practise and instances where it is
 12 inappropriate and the ombud's response to that says it's
 13 difficult to understand what you mean by inappropriate.
 14 But be that as it may, that was the response. Then where
 15 the issue of a similar thing happening in respect of PAYE
 16 where it's not an additional assessment, it's just a
 17 journal entry, where that is raised in the report SARS
 18 doesn't respond to it at all. And we have heard and what
 19 we discussed is that the issue of the PAYE journal entries
 20 continues. Is that correct?
 21 MR MKHAWANE: Well it does continue, but
 22 I may just mention that although this is outside the
 23 report, but it's linked to this aspect. The industry and
 24 taxpayers do complain that each time they raise an issue on
 25 a statement account on PAYE that is not being addressed.

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1 One of the complaints is that if you go and try to draw a
 2 statement in the morning on the Pay As You Earn Account and
 3 also you try to draw another statement later on in the day
 4 you may find two different amounts.
 5 Now that statement of account issue it's almost
 6 linked to this because journal entries are entered, people
 7 never understand exactly why certain journal entries are
 8 entered and a taxpayer who may be thinking that he's
 9 compliant may find himself not compliant. And if I'm
 10 talking big corporates they end up even appointing people
 11 fulltime to deal only with statement of account relating to
 12 pay as you earn. So journal entries being entered and
 13 confusing not only SARS' officials, but also taxpayers as
 14 well.
 15 MS HOBDEN: And those journal entries are
 16 unjustified, they are made assumingly to offset a credit
 17 owed to –
 18 MR MKHAWANE: Instances like those, so
 19 far –
 20 MS HOBDEN: And others who have been –
 21 MR MKHAWANE: So far that's an issue that
 22 we are trying get approval from the Minister to do a
 23 thorough investigation into.
 24 PROF KATZ: But they acknowledge there's
 25 a practise of doing so. And it's only being discontinued

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1 where inappropriate, but the practise itself seems to be
 2 inappropriate, just raising a journal entry to –
 3 MR MKHAWANE: Yes it's actually – because
 4 once you do a journal entry and the credit that was there
 5 it's cleared it may be counted as production. So that
 6 means instead of paying 100 000 in refund then you claim
 7 that you collect 100 000.
 8 COMMISSIONER: But the point is that it's
 9 always inappropriate.
 10 MR MKHAWANE: It's been inappropriate in
 11 the beginning.
 12 COMMISSIONER: Every one is
 13 inappropriate.
 14 MR MKHAWANE: It's really taking what
 15 you're not entitled to.
 16 PROF KATZ: What kind of investigation
 17 would be required, in your view, in order to see just how
 18 deep the problem is? And would one need an accountant to –
 19 MR MKHAWANE: It would need those kind of
 20 skills as well because it is – the industry is frustrated.
 21 Taxpayers, large corporates are frustrated because of this
 22 practise.
 23 COMMISSIONER: Well there's a lot of
 24 money withheld from the economy isn't it?
 25 MR MKHAWANE: That's correct and not only

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1 that, you can imagine a big corporate being found to be
 2 non-compliant because now SARS has got a compliance status,
 3 a system where one can check the compliance status of any
 4 entity, so when you think you are compliant and it turns
 5 out somebody checks and they find that you know, something
 6 happened between the time when you checked and when the
 7 other person checks. So you are not able to tell for sure
 8 and guarantee that you're compliant and the person who
 9 picks up on the other side he only sees the non-compliant.
 10 Maybe the amount that is owed is a minimal amount, but then
 11 it's got a very – it's got far reaching consequences.
 12 PROF KATZ: But it's not only what the
 13 Judge says that withholds money from the economy, it
 14 inflates the statement of how much tax is collected because
 15 it's expunging refunds which would reduce the tax
 16 collected.
 17 COMMISSIONER: I think we're interrupting
 18 you are we?
 19 MS HOBDEN: I just want to deal with the
 20 impact of the delay of refunds and on the impact of a
 21 company suddenly discovering they're non-compliant. And
 22 perhaps just to mention that without a tax clearance
 23 certificate a business in today's industry just can't do
 24 business.
 25 MR MKHAWANE: Maybe just to add there,

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1 companies sometimes end up paying a debt even though they
 2 don't know where it's coming from, that on its own is also
 3 a problem because they don't want to find themselves to be
 4 non-compliant.
 5 MS HOBDEN: And to answer the question
 6 from some of the panel members, after the report you have
 7 said the ombud's role is now to monitor and that these
 8 issues remain open, you will see what the impact is. Can
 9 you tell us about what the office Ombud has seen since the
 10 publication of this report, are you still getting
 11 complaints on these same issues?
 12 MR MKHAWANE: What we have done because
 13 the response after publishing the report was that we are
 14 doing this, we will do this, we will do that, but those
 15 answers were not very specific. We had to request that
 16 SARS to indicate what the timeframes, when it says it will
 17 do something it must indicate when it will do that and when
 18 it says it has ceased the practise it must indicate when
 19 did it cease the practise. We are yet to receive that
 20 response. But in the meantime, in the meantime we are
 21 monitoring the situation. So on each category we look and
 22 check whether there's any change. Are we receiving
 23 complaints of that nature and what we have also done
 24 recently is to also check with the industries because it
 25 doesn't mean – the fact that we don't receive complaints

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1 will not necessarily mean that the issue is gone. It may
 2 also mean that maybe people do not have the energy to
 3 complain. Not everyone who should be complaining is
 4 complaining in the first place.
 5 So the industry has given – we conducted a survey
 6 just to get a dipstick of exactly what is happening with
 7 these particular issues and we find from that exercise that
 8 people are still experiencing the problems. Now from our
 9 side as well we still find certain complaints, the latest
 10 one complaint where maybe one of the issues we haven't
 11 touched on is where SARS will withhold a refund, a verified
 12 refund I must emphasise, of one period. Say for example
 13 the 2016 tax year and withhold that even though it's
 14 verified, just simply because somebody filed a new return
 15 which is the 2017 return. So that - we found that
 16 happening, the taxpayer was not paid a refund for the 2016
 17 period because 2017 was being audited.
 18 MS HOBDEN: So can I just clarify? You
 19 said that the office of the ombud has asked SARS to provide
 20 a more detailed response and more specific timelines about
 21 what exactly they were going to do to solve some of the
 22 issues that had been raised in the report. And you said
 23 you have yet to receive that response. Is that right?
 24 MR MKHAWANE: Yes in fact I must just be
 25 specific. It was indicated about two months ago where

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1 there was a meeting between the Commissioner and the tax
 2 ombud that perhaps the tax – or SARS should indicate those
 3 specific timelines.
 4 MS HOBDEN: So prior to end of March
 5 nothing – you had not made that request, but nothing had
 6 happened further from SARS.
 7 MR MKHAWANE: Well the response from SARS
 8 which was not detailed enough came in just shortly before
 9 the end of March.
 10 MS HOBDEN: And the issues that have
 11 arisen since the report was published on July 27, outside
 12 of the report, that the office of the ombud has explored,
 13 you mentioned that there have been requests to the Minister
 14 for other investigations and reports by the office. What
 15 are some of those issues that have arisen?
 16 MR MKHAWANE: The issue relating to the
 17 pay as you earn statement of account, that's an issue that
 18 we've requested approval from the Minister to look into.
 19 This is linked the passing of journals to clear credits and
 20 also we requested approval to look into dispute resolution
 21 because we found that that is also one of the former issues
 22 that taxpayers are experiencing.
 23 MS HOBDEN: And we had evidence yesterday
 24 from some external stakeholders who spoke about some of the
 25 issues, their members as tax practitioners or taxpayers

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1 experience. One of those issues did relate to dispute
 2 resolution and the difficulty with finding a person in SARS
 3 who could resolve a taxpayer efficiently. Is that part of
 4 what you've asked the Minister if you can investigate and
 5 give recommendations on?
 6 MR MKHAWANE: Yes that is precisely one
 7 of the reasons why we're requesting the Minister. It's one
 8 of the issues that we'll look at. Generally it's non-
 9 observance of the timeframes by SARS when it comes to
 10 dispute resolution.
 11 MS HOBDEN: And speaking of timeframes,
 12 the new service charter that has recently been published
 13 what is the office of the ombud's view and response to
 14 that?
 15 MR MKHAWANE: Well I think it's a good
 16 start at least to give an indication of what level of
 17 service taxpayers can expect from SARS. In fact we've been
 18 calling for this document to be released for a number of
 19 years, actually even from the inception of the office of
 20 the tax ombud. So it may not be perfect, there may be some
 21 gaps which we have commented on and mentioned to SARS and
 22 we hope that those issues will be included soon.
 23 MS HOBDEN: Just to mention to one of the
 24 question from Professor Katz about the – well what we can
 25 infer as inflation of revenue by artificial assessments of

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1 PAYE being raised. Advocate Steinberg points out to me
 2 that there is a finding about the overstatement of revenue
 3 by the Auditor General which – and we will be addressing
 4 that with Treasury next week and perhaps also to say in the
 5 work of the evidence team we have seen some instances where
 6 payment due to taxpayers and particularly large payments
 7 have been delayed and at this point unjustified or
 8 justified, we don't know, over a period just to the end of
 9 a financial year.

10 PROF KATZ: What would be useful, if I
 11 may, is preparing for that discussion with Treasury to see
 12 exactly what the Auditor General's, the detail of what the
 13 incorrect claims were and whether this forms part of it.

14 MS HOBDEN: We'll do so. Those are my
 15 questions. I don't know if the panel would like to address
 16 any further questions or if you have any closing comments
 17 or recommendations for the Commission.

18 [10:05] COMMISSIONER: Is there anything further
 19 you would like to tell us?

20 MR MKHAWANE: I would. I think most of
 21 the things I mentioned in our report. It is, I can't add
 22 more than what is in the report. Whatever I didn't mention
 23 the report stands.

24 MS HOBDEN: We have just highlighted a
 25 few aspects. There are – there's a great detail in the

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1 report which we will read it later.

2 COMMISSIONER: Ms Hobden, these journal
 3 entries, I presume one can identify the person who makes
 4 these journal entries within the organisation.

5 MS HOBDEN: I imagine that is possible,
 6 yes.

7 COMMISSIONER: And we can ask them why
 8 the journal entry is made.

9 MS HOBDEN: We can.

10 PROF KATZ: But they say that it's a
 11 matter of practice. So –

12 COMMISSIONER: I'm just –

13 PROF KATZ: - I presume that everyone's
 14 doing that.

15 MS HOBDEN: From –

16 PROF KATZ: The -

17 COMMISSIONER: But at least the person in
 18 charge of, will explain why they do it and I mean look it's
 19 just to raise the apparent revenue connecting, they must,
 20 they'll tell us. But I mean it can – but anyway we'll see
 21 if we can –

22 MS HOBDEN: We will.

23 COMMISSIONER: - identify the person in
 24 charge of journal entries.

25 MS HOBDEN: Yes. We'll do so.

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1 MR MKHAWANE: But perhaps just to assist
 2 in this regard, the cases that we identified, obviously a
 3 specific person did that.

4 COMMISSIONER: Yes.

5 MR MKHAWANE: So what we also picked up
 6 was that there was a practice generally that if there's an
 7 unallocated credit or a credit that is unexplained a letter
 8 will be written to the taxpayer to ask where is this money
 9 coming from, what should we do with it and if there's no
 10 response then an assessment will be raised to clear the
 11 credit. Whether that's justified or not it's a separate
 12 issue, but there, it seems that it's not somebody, anybody
 13 who's saying pass on credits. I'm just speculating but
 14 they do so case specific. So a person who's an auditor or
 15 the person who's dealing with that account may look at what
 16 transactions took place and simply pass a general entry to
 17 clear the credit, depending on the criteria that was
 18 utilised. Whether it's satisfied or not.

19 COMMISSIONER: Yes, I'm just interested,
 20 I would like to know who's instructed the practice too. In
 21 other words you can't just have a whole lot of people doing
 22 this by accident.

23 MR MKHAWANE: Yes, and –

24 COMMISSIONER: There must be someone
 25 who's saying this is what you should do as a matter of

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1 practice and I would like an explanation of why that, why
 2 the instruction has been issued, that that is the practice.
 3 It would help, it would be helpful don't you think?

4 MR MKHAWANE: It would be, it would be
 5 very helpful.

6 PROF KATZ: Particularly bearing in mind
 7 that the amount raised is computer precise –

8 MR MKHAWANE: Precise –

9 PROF KATZ: - to –

10 COMMISSIONER: Ja.

11 PROF KATZ: - expunge there. So it may
 12 even be in the software that this now occurs.

13 COMMISSIONER: Thank you very much, it's
 14 been very helpful. Thank you very much indeed. And I hope
 15 the good work of the Ombud will continue.

16 MR MKHAWANE: Thank you.

17 COMMISSIONER: Thank you.

18 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

19 MS STEINBERG: Judge, I mentioned
 20 yesterday that we had to split the evidence about the large
 21 business centre between yesterday and today. So we have
 22 two witnesses this morning who'll talk about the large
 23 business centre. The first is Mr Makwakwa, The other Mr
 24 Makwakwa.

25 COMMISSIONER: Morning, Mr Makwakwa.

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1 MR MAKWAKWA: Good morning, Judge.
 2 COMMISSIONER: Will you affirm that the
 3 evidence you give will be the truth, the whole truth and
 4 nothing but the truth? If so will you say I do?
 5 NARCIZIO MAKWAKWA: I do.
 6 COMMISSIONER: Thank you.
 7 EVIDENCE OF MR MAKWAKWA
 8 MS STEINBERG: Morning, Mr Makwakwa.
 9 MR MAKWAKWA: Good morning, Carol.
 10 MS STEINBERG: You've been in an acting
 11 position in the last three months. Would you just
 12 elaborate on that?
 13 MR MAKWAKWA: Ja. My position is that of
 14 the executive for SMMEN VAT, the value added tax and small
 15 and micro and medium enterprises. So subsequent to the
 16 suspension of the current Commissioner, Mr Tom Moyane, the
 17 incumbent for a position Mr Kingon was requested to act in
 18 this position as you know and as a result I was requested
 19 to act in his position which is the group executive of
 20 relationship management. So that is the position that I'm
 21 holding now. I've been in this position for about four
 22 month now, ever since the suspension took place.
 23 MS STEINBERG: And does large business
 24 report to you in this capacity?
 25 MR MAKWAKWA: Ja. So large business in

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1 the sense that let's use the common language, let's call
 2 them the key accounts. So I have relations, senior
 3 managers who are relationship managers in respect of
 4 certain big clients. So the aspect that is left there is
 5 the relationship aspect of the LBC but not the other
 6 divisions. So we only manage the relationship with the big
 7 client.
 8 MS STEINBERG: And would you give us a
 9 picture of how effectively you think SARS is managing those
 10 big accounts and clients at the moment?
 11 MR MAKWAKWA: Ja. There has been some
 12 great difficulty in as far as servicing some of the clients
 13 is concerned and I'll tell you why. That is because when
 14 you look at key accounts management which is a relationship
 15 management in this case, you will need to want to service
 16 your client from the beginning to the end. In this
 17 particular case in SARS you have issues where you need to
 18 know about the audits, you need to know about the
 19 transactions that happen. You need to know about the
 20 panels that are made. You need to know about the disputes,
 21 the objections and appeals. You need to know about the
 22 issues that they themselves are not happy about. All the
 23 issues that they are introducing in their environment so
 24 that you can be able to inform the risk profilers on what
 25 they should expect. Now although for example there is

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1 still a division that is focused on let's say the high net
 2 worth individuals and the base erosion and profit shifting.
 3 Those divisions are not necessarily working with
 4 each other and that is because you find that as a division
 5 that says when I want to do an audit of a certain high net
 6 worth individuals or a high net worth individual there is
 7 no one who actually informs the relationship manager in
 8 terms of what is happening in that environment. And in
 9 that circumstances you find that at the end, way down the
 10 line, you have a complaint as an example that we received
 11 from one of the high net worth individuals that they are
 12 unfairly treated. And the only time that we got to know
 13 about it was when they complained to the acting
 14 Commissioner.
 15 Now although there are areas of or divisions that
 16 are responsible for that there are, I think the biggest
 17 issue there is just that they are simply fragmented,
 18 they're not working with each other. So the left doesn't
 19 know what the right is doing and when it comes to key
 20 account management which is your client management it
 21 becomes a problem if the left doesn't know what the right
 22 is doing. And I do have in my three month that I've been
 23 acting here cases which were escalated directly to me which
 24 of the big banks, as an example, that complained about the
 25 matter not being resolved and not knowing where they shall

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1 go to. And in that whole setup I think an issue like that
 2 would've been resolved because you have the people that
 3 will be focused in a coordinated fashion to be able to
 4 resolve these issues. But now because of the frustration
 5 they actually even get escalated to the acting Commissioner
 6 or to myself to try and help to resolve. Bearing in mind
 7 that as a relationship manager I do not have the powers to
 8 instruct what audits shall do, what the legal should do,
 9 what the account managers shall do. But the power that I
 10 have is just to manage the client in the sense that you
 11 have to go to everyone and ask questions about what is
 12 happening in a particular matter and you can only rely on
 13 what they say. But in the previous environment that is
 14 where you had a situation where because it was a one stop
 15 shop you will have the audit, the finance team and everyone
 16 working together in order to apply the service. So that is
 17 the experience that I have now.
 18 MS STEINBERG: You've really crystallised
 19 the evidence that we've heard yesterday. I don't think we
 20 need to dwell on that too much, but in summary what was
 21 said yesterday was that in the large business centre model
 22 you had all those people under one roof with the same KPIs
 23 and one boss who could then align both the strategy but
 24 then the resolution of a problem. Now these people are in
 25 the new operating model. The concept was to put like with

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1 like so the auditors now with auditing and the legals now
 2 with legal and even you as the executive can't ask them to
 3 do what needs to be done to resolve a particular problem.
 4 That's the situation. I think what, you know, when we
 5 consulted beforehand you gave me two quite illustrative
 6 graphic examples and I think it's worth just putting those
 7 on the record. The one was about conflicting legal
 8 opinions, the other one was about a diesel refund and I, if
 9 you would just give those examples to the panel.
 10 MR MAKWAKWA: Ja. So with the
 11 conflicting legal opinions it's a situation where again
 12 because this defragmentation of having legal in head office
 13 and legal in a different environment which is an audit for
 14 that matter advising the auditors. What happened in that
 15 situation was there was an audit that was conducted on this
 16 high net worth individual and a legal opinion was obtained
 17 from one of the guys who is actually advising the auditors.
 18 Now where that legal opinion, when the issue of this high
 19 net worth individual was raised with me I requested because
 20 they came to complain to the acting Commissioner who
 21 requested that me to look into the issue. After reviewing
 22 the issue I was of the view that there could be a different
 23 conclusion legally on the very same specific matter and we
 24 had requested that we get a legal opinion, those are all
 25 within SARS, and a second legal opinion.

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1 So this other person who gave another legal
 2 opinion is in a high net worth individual, the other one is
 3 actually in the legal division. Now because of that
 4 fragmentation what happened to us the second legal opinion
 5 opposed what the first legal opinion had actually said.
 6 And what we had to do was now to take it to the executive
 7 so the boss of this one legal opinion. So the executive
 8 who's responsible for what we call interpretation and
 9 rulings who said here are the two legal opinions. The one
 10 is saying the other, the other is saying the other thing.
 11 Can we take these legal opinions and bring them to you and
 12 give us a conclusive view?
 13 Now that is why I'm saying normally if it was in
 14 that focused environment that we used to operate in, that
 15 consultation would have happened and we wouldn't have
 16 embarrassed ourselves by concluding certain deals which
 17 were to the detriment of the taxpayer because the second
 18 legal opinion came out and said well what, whoever said in
 19 that legal opinion is actually incorrect. And these things
 20 could've been resolved before we even issue a letter of
 21 findings to the taxpayer and those are the contradictions
 22 that –
 23 MS STEINBERG: Right. Your point being
 24 not that there's something wrong with two legal opinions
 25 because we always have conflicting opinions.

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1 MR MAKWAKWA: Ja.
 2 MS STEINBERG: But the letter of finding
 3 was issued to the taxpayer before that division knew that
 4 there was another legal opinion within SARS.
 5 MR MAKWAKWA: And – that is correct. So
 6 the first, the letter of findings was issued but there was
 7 no consultation with other, and what it – so I agree with
 8 the fact that obviously we always have different legal
 9 opinions, that's not the issue. The issue is because we
 10 were not talking to each other in the organisation like we
 11 used to, that is where we ended up with two legal opinions
 12 and the second one which was issued after the letter of
 13 findings was already done and it was there where I think we
 14 had a problem. So legal problems having different legal
 15 opinions definitely we'll always have different legal
 16 opinions.
 17 MS STEINBERG: But it's the silo
 18 structure that's –
 19 MR MAKWAKWA: Its –
 20 MS STEINBERG: - caused the problem.
 21 MR MAKWAKWA: It's the problem that
 22 caused, almost caused an embarrassment. Ja.
 23 MS STEINBERG: The second example, the
 24 diesel refunds.
 25 MR MAKWAKWA: So with the diesel refunds

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1 this is one of the big corporate clients. So once again in
 2 the old LBC because they had a capacity to deal with issues
 3 of excise and diesel refunds and everything in there.
 4 Subsequent to the venue operating model the division that
 5 used to deal with the refunds was actually moved into a
 6 different location in Alberton for that matter. Now there
 7 are refunds of almost about 2 billion that are being owed,
 8 that is the refunds that are being owed to this big client.
 9 Now the issue again there is when it was escalated to me as
 10 in my acting capacity right now is on the basis that they
 11 also did not know where the issue is. They don't
 12 understand where the problem is.
 13 So and me as a relationship manager you will come
 14 and ask me when is my refund being paid, what is the
 15 problem. Now again because I cannot be responsible for the
 16 guys who do the excise audit I cannot tell you here and now
 17 where the issue is. But again in the past that is an
 18 example of where the guys had been sitting together with
 19 the relationship manager, with the excise auditors, with
 20 the account maintenance people, with the people who raise
 21 assessment and this is an issue that will be explained
 22 simply to the taxpayer. But because of that fragmentation
 23 again and the movement of skills from the LB to a different
 24 environment the matter is not finalised and you have a
 25 great difficulty when you have to explain to the taxpayer

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1 why the matter has not been finalised.
 2 MS STEINBERG: So I assume, you know,
 3 based on your diagnosis of the problem that you would be in
 4 favour of reconstituting the LBC in one form or another.
 5 MR MAKWAKWA: Yes, but I think there is
 6 acknowledgement that the LBC has to be reconstituted and
 7 that has been mentioned many times even by the
 8 practitioners and that's purely on the basis that when you
 9 have a one-stop—shop you are able to pick up issues of
 10 service that you can deal with them easily. Now when I
 11 looked at the reason that was given and maybe I can, I can
 12 maybe read it to you because this is from the speech that
 13 was made by the acting Commissioner in the 2016 revenue
 14 results and I'll just read it quickly for you. That says –
 15 MS STEINBERG: Sorry, the acting
 16 Commissioner in 2016?
 17 MR MAKWAKWA: Sorry, the suspended
 18 Commissioner.
 19 MS STEINBERG: Okay.
 20 MR MAKWAKWA: Ja. It says here "A key
 21 component of this implosive is the expansion of our large
 22 business centre under the new operating model.
 23 [10:25] We have decentralised the service and have made
 24 it more accessible to businesses across the country.
 25 Points of service would be located throughout South Africa

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1 and we have devoted more resources across the relationship
 2 management as their management areas." So this is the
 3 speech that the Commissioner made. So I think maybe where
 4 the confusion is coming from if when you talk about, it
 5 appears as to me that decentralisation was intended.
 6 MR KAHLA: Decentralisation.
 7 MR MAKWAKWA: Decentralisation rather was
 8 intended in this case. But as to the benefits of or the
 9 advantages of decentralisation that was not properly
 10 explained. So it doesn't look to me that the fragmentation
 11 was a mistake because from what I can read here the
 12 fragmentation was intended and it appears as if there were
 13 some perceived benefits that will accrue for the taxpayer
 14 from this decentralisation but I'm not sure what those
 15 benefits were going to be because they were not explained
 16 but it appears from what I read here that says points of
 17 service will be located through South Africa, so which
 18 means the intention was to say dismantle the LB
 19 environment, make points of service for all the clients all
 20 across the country without having to have the focus on
 21 large businesses only. That is what I can surmise from
 22 this. But it further goes to say, "to further enhance how
 23 we serve business, additional prominence has been given to
 24 our relationship management portfolio with the function now
 25 elevated to the level of a group executive. This group

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1 executive is tasked with ensuring servicing key
 2 stakeholders to the best of our ability." So now what is
 3 now becoming unclear is decentralising but you at the same
 4 time you want someone to hold this thing together to be
 5 able to service the key clients. Now that is where I got a
 6 bit confused and because it wasn't explained properly, I do
 7 not know what it means but it's on record here in the
 8 Commissioner, in the former Commissioner's speech or the
 9 suspended Commissioner's speech that the intention was to
 10 decentralise but we have a central focus, I'm not too sure
 11 how that was going to work.
 12 MS STEINBERG: Would you make a copy of
 13 that available to us?
 14 MR MAKWAKWA: No, it's available on the
 15 website everywhere.
 16 MS STEINBERG: Please. It's very
 17 valuable because the evidence we heard yesterday was that
 18 when the model, the new operating model was presented the
 19 people within the LBC were always told that the LBC was not
 20 going to be dismantled, that there was never such a plan.
 21 That's what we heard yesterday. This is the first
 22 indication we've had of what actually the thinking was
 23 behind the dismantling of the LBC so it would be useful for
 24 us to see that.
 25 MR MAKWAKWA: Ja, as I'm saying it's

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1 just, it's publically available so I took this from the
 2 website so it's not something that is, I just look at it
 3 from the time that it was written because I had to do a bit
 4 of my own research, nothing to do with the commission to
 5 find out exactly how did we get to where we are. And
 6 looking at this as I'm saying to you it looks like there
 7 was intention to decentralise, it looks like it was not a
 8 mistake but then probably someone will explain what was the
 9 reason behind and what were the benefits that they were
 10 thinking will come out of decentralising this function. Or
 11 maybe it's the wrong wording that was used in the document,
 12 I wouldn't know, but that is what it is in the document
 13 currently.
 14 MS STEINBERG: You know I have an
 15 affidavit here from Mr Dan Zulu and this is looking at the
 16 problem from the point of view of the man who's responsible
 17 for the branches. So it was decentralised to his branches.
 18 In other words a large business client in the business
 19 centre days would have a relationship manager and that
 20 would be that taxpayer's point of contact. Now because of
 21 decentralisation that large business taxpayer often has to
 22 go to a branch to deal with the problem and this is what Mr
 23 Zulu says about that. He says, "The new operating model
 24 has impacted the service channels only because the removal
 25 of relationship managers has meant that large companies

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1 must attend a branch to do certain things like changing
 2 banking details. The branches were never designed to deal
 3 with complex matters. Almost 80% of taxpayers seen by the
 4 branches are individual taxpayers. The branch employees
 5 are not trained to deal with complex company issues. To
 6 this extent the new operating model has created a gap.”
 7 COMMISSIONER: Has what?
 8 MS STEINBERG: Created a gap.
 9 MR MAKWAKWA: Ja. I will agree with
 10 that. As from the beginning when I said the concept of the
 11 relationship manager still remained because that division
 12 as you indicated is the division that I'm heading.
 13 However, it is the functions that have actually been moved
 14 so you're right, if you had to come to me and say you want
 15 me to help you to do a journal entry of whatever, I won't
 16 be able to help you because that function has been moved
 17 over, for example to a branch. So now if you have account
 18 maintenance issue you will have to go to the branch and
 19 that is where the frustration is coming in, I suppose.
 20 MR KAHLA: Could you help me just to
 21 understand this Mr Makwakwa, you could help the client with
 22 that journal entry issue within the LBC as it was then
 23 configured. What makes it difficult, if you still are the
 24 responsible relationship management to do that, I mean I
 25 assume in these days you can pick up a phone, you can send

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1 an email, what is it that makes it difficult in respect of
 2 the location?
 3 MR MAKWAKWA: Ja. So the location in
 4 itself will not pose a great difficulty but it is not a
 5 location that matters the most, it is what actually led to
 6 you having to pass that journal. So it is the
 7 understanding that has to happen before until the end that
 8 you pass the journal. Now like I said previously, it's not
 9 a question of these functions are not happening and that's
 10 why I give an example about the high net worth individuals
 11 and the division that is responsible for base erosion and
 12 profit shifting. Now those divisions do exist.
 13 But let me give an example of another example of
 14 something that would have happened in my three month and 18
 15 year. There is a particular case of a big
 16 telecommunications company. The audit was conducted on
 17 this company and nothing was found to be wrong. Now it
 18 came to a point where we had to refund quite a lot of
 19 money. Now it so happened that just before we had to
 20 refund them someone came and said no, we shouldn't refund
 21 them because there's something that is missing, there's
 22 something that we haven't done. Mind you the guys are
 23 saying we've completed our audit, we've given them a letter
 24 to say we are happy with everything. Now that silo
 25 mentality what happened is that there is a division that is

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1 doing the risk profiling. They had given, they had done a
 2 risk profile that suggested that there is something that
 3 had to be looked at other than the general audit that they
 4 were doing and it had to do with a change in accounting
 5 standard, revenue accounting, they call it in accounting
 6 terms. So now the other auditors concluded the audit and
 7 after they concluded the audit the other gentleman went to
 8 them and said well but I said to you, you must look at the
 9 way they have reported revenue because they have used an
 10 accounting standard which actually reduced the revenue
 11 reporting. And that has happened only after at the end and
 12 that is why we're saying in that old environment that they
 13 used to operate in they will be sitting together and
 14 discussing the things that they have to look at
 15 holistically from a taxpayer point of view. Not only with
 16 the intention of just making them pay more money but with
 17 the intention of providing a better service for them
 18 because now imagine if what will happen if we had to go to
 19 the client and say well sorry, we promised that we're going
 20 to pay you that refund but we're not going to pay you
 21 anymore because we picked up, after we'd done our audit and
 22 given you the letter that you actually didn't do that, some
 23 of the things we haven't look at. Now that is the kind of
 24 silo mentality that it has, for me it created. So it's not
 25 just a question of the location in the particular case.

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1 MS STEINBERG: Mr Makwakwa, I'm not going
 2 to let you go before I ask you a question about the SMMEs
 3 since that's the regular cap that you wear.
 4 COMMISSIONER: If you're moving off LBC,
 5 are you?
 6 MS STEINBERG: Yes, I am, so please, ja.
 7 COMMISSIONER: Can I just ask – you know
 8 I heard, I find it odd, heard people say the LBC has
 9 disappeared and I've heard people say the LBC is still
 10 there. Now it's either there or it's not there. Otherwise
 11 they're talking different language. Those who say the LBC
 12 is still there, what are they referring to? Do you have
 13 any idea?
 14 MR MAKWAKWA: Firstly they are probably
 15 referring to the physical location, I hope they're not only
 16 referring to that because that is in Megawatt Park.
 17 Megawatt Park still exists so that has always been known as
 18 the large business centre so that's still there. When it
 19 comes to the, it exists, I hope they're not talking about
 20 my division because the only people who are in
 21 communicating with big clients, if you can say that is the
 22 division that's left is the relationship management
 23 division which as I said to you and in this document that
 24 I've read for you it is the only division that actually
 25 liaises with –

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1 COMMISSIONER: Well that seems to me the
 2 point is that they're referring to the relationship
 3 managers are still there but they, while they talk to the
 4 clients they can't do very much for them.

5 MR MAKWAKWA: Correct, that's correct.
 6 So the relationship management is still there but it's not
 7 only the relationship management like we said. There's
 8 audit, there's finance, there's legal, there's dispute so
 9 there are many thing in there that were in the large
 10 business centre but if they say it's still there, I suppose
 11 they're only talking about my division which I'm acting and
 12 which is -

13 PROF KATZ: Can I just ask one question.
 14 Counsel actually put it when you introduced Mr Makwakwa, is
 15 it fair to say that the only way to resolve the problems of
 16 fragmentation is to have an organisational structure that
 17 the old LBC represented. Is that a fact?

18 MR MAKWAKWA: And I'll agree with that
 19 and I'm not sure if Mr Kingon or the acting Commissioner
 20 will be here but I know for a fact, and I have been on
 21 record even in the media, with his authority to tell the
 22 people that the LB hub is coming back.

23 PROF KATZ: That organisational
 24 structure?

25 MR MAKWAKWA: That organisational

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1 structure. It may not look exactly the same as it was in
 2 the past but the concept has been approved. Even the
 3 executive committee of SARS, the current executive
 4 committee has actually agreed and do have a project team
 5 that is looking at reinstating the LB hub.

6 MS STEINBERG: It's the only good news
 7 we've had for days, Mr Makwakwa. Advocate Masilo has got a
 8 question.

9 MS MASILO: Mr Makwakwa, on, I mean going
 10 back to the, to your position in relationship management of
 11 the LBC, do you have, I'm just trying to understand the
 12 difficulties that you face in resolving the queries of your
 13 clients. Do you have direct access to the various
 14 officials within SARS who deal with your LBC matters or do
 15 you have to, I mean do they, is there an understanding that
 16 when a relationship manager contacts you, you assist them
 17 immediately with whatever they require so that they can
 18 resolve the issues or do you have to go through the
 19 managers?

20 MR MAKWAKWA: There's no formal structure
 21 of how you have to go to that person to resolve the issues.
 22 I give you an example again, there is an issue with the
 23 bank, just so you understand how it works, with one of the
 24 big banks that I'm currently dealing with right now. So
 25 there's an issue that they need to resolve with their

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1 pension fund. So here they have escalated the matter to
 2 me. Firstly, when I go to someone who is in finance, they
 3 tell me no we cannot make any adjustments because we need
 4 to be guided by someone who works in that. So I go to
 5 someone who works in that and say explain this amount of
 6 money and how are you going to resolve it because this
 7 client is not too happy? They say well I am in debt, by
 8 the way you must understand that I'm not a person who
 9 actually raised, who put the money in the books so now you
 10 need to go and speak to the penalty and interest committee
 11 team and the objections and appeals team. Now you go to
 12 these guys and you say can you resolve this issue? And
 13 they will tell you no, we cannot resolve this issue because
 14 we deal with the legal aspects of the penalties and
 15 interest.

16 Now you go back, now in that environment you will
 17 see that there's no one who wants to take accountability
 18 but I can tell you that in the past, in that environment,
 19 that would have been a matter that the head of the LBC
 20 would have had to deal with and that wouldn't have gone out
 21 and embarrass us like it is right now. So that's a typical
 22 example of how it works now. So there's no way you can go
 23 in one place and say I will go to this place. Although you
 24 can talk to them but they can pass you to the next person
 25 because no one wants to take full responsibility of what is

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1 happening with that particular client. So the answer is
 2 well unfortunately we want to, but it's not as easy as
 3 that. Ja.

4 MS STEINBERG: Our next witness is a
 5 relationship manager and I thought that was an important
 6 gap to fill because those are the people in the eye of the
 7 storm at the moment. Just about SMMEs. SMMEs are quite
 8 big focus of Bain's diagnostic. Bain said there's this
 9 unacceptably large tax gap and one big component of the big
 10 tax is the SMMEs. And they said, Bain said that between
 11 1.5 million and 2.5 million SMMEs are unregistered and
 12 outside the tax net. And there's no, I don't know what the
 13 source of that information is, it's not given. Now you've
 14 been in charge of SMMEs and I'm sure have a comment on that
 15 and I'd like to hear it.

16 MR MAKWAKWA: Okay, ja thanks. So with
 17 the only time that I was consulted by Bain was at the time
 18 when the structure was already there and the numbers that
 19 you have given. So it was sort of we've done the work for
 20 you, all you need to do is to go and deliver because we
 21 know there are people that are not registered. So I do
 22 have a team of researchers in my SMME environment who
 23 actually went out to do the research on the registrations
 24 and everything.

25 MS STEINBERG: Sorry just to pause. Did

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1 your researchers do the work before or after the Bain
 2 diagnostic?
 3 MR MAKWAKWA: After the Bain diagnostic.
 4 MS STEINBERG: Okay.
 5 MR MAKWAKWA: Because the point I was
 6 taking was well I assume they are right but let me go test
 7 because I also don't have any kind, I don't know which
 8 source they used to come to that conclusion, that was never
 9 advanced to any one of us. But in doing the job it was
 10 fair for me to go and have to look and research and see if
 11 it makes a lot of sense.
 12 Now in my research I can tell you that almost
 13 about 60 to 70% of the SMMEs that we visited were actually
 14 registered for VAT, I mean for income tax, they were
 15 registered. So primarily maybe the point that was not
 16 given to them was that when you register for a company at
 17 CIPC you immediately get a tax number. So a registration
 18 with income tax for that matter would not have been an
 19 issue. The issue that was raised a number of times which I
 20 actually from my research with my guys when we did the
 21 research is that there is a big issue with outstanding
 22 returns. So these people are registered but they are not
 23 submitting returns, so that is different from a
 24 registration. And the important aspect of that is that you
 25 have to deal with them differently.

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1 [10:45] So if people are not submitting their returns it
 2 is not an indication of the fact that they are not
 3 registered. They are registered and the focus areas should
 4 not necessarily have been go out and get more registrations
 5 because data and statistics which I think you may have been
 6 privy to his, I think less than 70% are actually submitting
 7 their returns. That is publically available. So it is not
 8 a question of registration in my view and in my research I
 9 tried to stay away from just doing the registration but to
 10 advancing the course that how is it that we have so many
 11 people registered, they are my client base but why are they
 12 are not submitting their returns. That is where I tried to
 13 take the focus to. But the registration as indicated in,
 14 the gap will always be there. Not everyone will be
 15 registered and I think the public is aware more especially
 16 when it comes to the issue of foreign traders who claim
 17 they did, they don't know anything so, about the tax
 18 requirements. So you will have an element of the people
 19 that are not registered for income tax that's a fact. But
 20 to just say heavily, to heavily say everything is about the
 21 gap, it's about the fact that people are not registered I
 22 find it a bit hard to believe. But in terms of submitting
 23 the returns 100% I agree we have a huge problem.
 24 MS STEINBERG: Okay.
 25 MR MAKWAKWA: With the taxpayers not

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1 submitting their returns but they are registered.
 2 MS STEINBERG: But what I come to
 3 understand, just to join some dots Dr Malovhele gave us a
 4 very interesting presentation and he showed that when it
 5 comes to compliance you've got to start looking from
 6 registration and then many stages including tax return
 7 until you get to the money in SARS's bank account and that
 8 it's critical for SARS to understand where the non-
 9 compliance is happening because then you focus your
 10 resources on that particular gap. So there's a huge
 11 difference between saying companies, SMMEs are unregistered
 12 as opposed to they're not filing their returns because that
 13 would focus SARS's strategies and resources.
 14 MR MAKWAKWA: That is correct and so the
 15 strategies of the forecast on, in my view the fact that
 16 they're not submitting, the fact that they're submitting
 17 zero returns. If they do submit because, and that will be
 18 driven purely because if you, even if you were to submit
 19 annual return if you want your clearance certificate you
 20 will get it because you are compliant and that's because
 21 the law only looks at whether you submitted your return,
 22 whether there's any debt outstanding. So if you submit a
 23 nil return there won't be any debt outstanding and there
 24 won't be any return outstanding and you can continue
 25 trading without having to declare the correct amount of

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1 tax. So the forecast really for me should, I'm not saying
 2 we shouldn't focus on registration but it should be heavily
 3 focused on looking at the declarations and looking at the
 4 fact that we collect those outstanding returns because
 5 that's where the money comes in.
 6 MS STEINBERG: And the numbers we got
 7 from data analytics actually show that in the last few
 8 years there's a nice climb in revenue from SSMEs.
 9 MR MAKWAKWA: That's correct.
 10 MS STEINBERG: I think that's a feather
 11 in your cap.
 12 MR MAKWAKWA: Ja. I've been trying to
 13 encourage them to do the right thing over my two and a half
 14 years that I've been there. So but, and that is where I
 15 was saying this group that we have, it will focus your
 16 efforts on the right areas of trying to force them and say
 17 forget about, not forget about registration per se but put
 18 more effort on making sure that whoever is actually
 19 registered for income tax actually submits and they submit
 20 the correct amount. So that is the line that we have
 21 subsequent to the Bain, the approach that we have taken.
 22 So again it's not a factor of we saying we are not going to
 23 go out and register more people because that's where the
 24 source comes in. But currently the problem that we're have
 25 in SARS is more people not submitting their returns and

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1 specifically if you look at VAT people submitting their VAT
 2 returns and they are telling you that they're supposed to
 3 be paying you let's say 20 million and they pay you zero,
 4 while they have submitted a return. That is where the
 5 focus have been shown.
 6 PROF KATZ: Can I ask you, you made a
 7 very important statement as I understood when you started
 8 this bit on the SSMEs. You said you weren't consulted by
 9 Bain but the Bain person came to you and said we've done
 10 the work for you. Now go and implement. Now that seems to
 11 answer two questions that's been puzzling us. That was the
 12 final operating model they came to you with that and said
 13 we've done the work for you.
 14 MR MAKWAKWA: So, how can I put, I would
 15 say that was done after even operating model was
 16 implemented. So, so the, I was appointed to be the
 17 executive for SSME and VAT before I can meet Bain. So
 18 after the appointment, the first time I came across Bain
 19 was after my appointment.
 20 PROF KATZ: Yes.
 21 MR MAKWAKWA: When they said we have this
 22 diagnostic report, these are the issues that we have
 23 discovered and these are the things that you need to go and
 24 implement. So yes it was, it was an instruction that came
 25 from Bain with the report that was given to me and say you

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1 go and implement and hence I said while it's an instruction
 2 but I cannot be careless and just go and execute. I had to
 3 test the veracity of what they were bringing for me to be
 4 able to do their job because Bain will be gone after.
 5 PROF KATZ: I'm focusing on two other
 6 issues. Whether Bain indicated that the report they were
 7 saying you should implement, not that you have to, was when
 8 they say we've done it, that was the final operating model
 9 they were referring to?
 10 MR MAKWAKWA: Ja.
 11 PROF KATZ: Secondly they're talking to
 12 you in the implementation phase that they're part of the
 13 implementation phase.
 14 MR MAKWAKWA: Correct.
 15 MR KAHLA: Just a follow up. You've only
 16 been consulted or engaged with at the implementation phase
 17 in relation to the SSME findings on the diagnostic, do you
 18 know whether there's any other person other than yourself
 19 who had been consulted on the SSME space?
 20 MR MAKWAKWA: I wouldn't know but I
 21 suspect that then chief office of BAIT, Mr Jonas Makwakwa
 22 would have been consulted for sure. But other than him I'm
 23 not aware of any other person who would have been
 24 consulted. Like I'm saying I took it because I was
 25 appointed in that position, that's the reason why they came

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1 to me. As to whether there were other people I wouldn't be
 2 aware of that.
 3 MS STEINBERG: The other aspect of Bain's
 4 diagnostic that you may be in a position to comment on is
 5 about high net worth individuals. Again they located,
 6 identified that as part of the tax gap, that they said that
 7 only a fraction of high net worth individuals had been
 8 identified by SARS. Are you in a position to comment on
 9 that?
 10 MR MAKWAKWA: Ja, I wouldn't know why
 11 they say only a fraction because the high net worth
 12 individuals component has always, always been part of the
 13 LB. So it's been there, it's not a new thing but as to how
 14 they come to that conclusion that only a fraction, I
 15 wouldn't know whether they're trying to say instead of
 16 having ten that we have now we should be having 200.
 17 MS STEINBERG: Ja.
 18 MR MAKWAKWA: As an example. If that is
 19 what they mean I wouldn't know how they got to that but to
 20 say there was no focus on the high net worth individuals
 21 will be incorrect because it had already been in the old LB
 22 set up.
 23 COMMISSIONER: I suppose it depends on
 24 your definition of what is a high worth individual.
 25 MR MAKWAKWA: Well I -

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1 COMMISSIONER: They, as you say they said
 2 they are a thousand high net individuals, you say there's
 3 only 10, well then it's only a fraction you're looking at.
 4 MR MAKWAKWA: Correct and I wouldn't know
 5 what definitions they used because at the time there was a
 6 definition, a policy definition of high net worth
 7 individual in SARS which was I think 75 million in net
 8 assets. So whether they use that definition or they came
 9 up with their own I wouldn't know how they got to the -
 10 MS STEINBERG: Well we can ask them.
 11 MR MAKWAKWA: Ja, ja.
 12 MS STEINBERG: Nothing else from me.
 13 Anything else you'd like to say Mr Makwakwa?
 14 MR MAKWAKWA: No, I think we covered
 15 everything I would like to say.
 16 COMMISSIONER: Thank you very much
 17 indeed, it is very useful, very helpful.
 18 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 19 MS STEINBERG: Thank you.
 20 COMMISSIONER: Can we break now for a
 21 tea?
 22 MS STEINBERG: That would be great.
 23 Should we say 15 minutes, so we come back at 10 past 11?
 24 COMMISSIONER: Thank you.
 25 [INQUIRY ADJOURNS INQUIRY RESUMES]

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1 [11:16] COMMISSIONER: Good morning. Thank you
 2 very much for being here. Will you affirm that the
 3 evidence you give will be the truth, the whole truth and
 4 nothing but the truth? If so will you say I do?
 5 ANTHONY COHEN: I do.
 6 EVIDENCE OF MR COHEN
 7 MS STEINBERG: Mr Cohen, you're a
 8 relationship manager, is that correct?
 9 MR COHEN: I'm a senior manager in the
 10 relationship management space in the large business at
 11 Megawatt Park, yes.
 12 MS STEINBERG: When did you join and when
 13 did you join SARS and when did you join the LBC.
 14 MR COHEN: I joined SARS in 2003, what
 15 was then the corporate tax centre and was part of the
 16 process in essentially scoping out what then became the
 17 large business centre. I started off as a senior auditor.
 18 Then I was a team leader in audit and I became one of the
 19 first what we call taxpayer relationship managers when we
 20 created the position. And then since 2010 I was a senior
 21 manager in that same space.
 22 MS STEINBERG: And did you specialise in
 23 a particular sector in the economy as a relationship
 24 manager?
 25 MR COHEN: Yes, I'm a mining tax expert.

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1 I lecture mining tax and I have been in mining tax through
 2 my advisory years as well as when I was at the corporate
 3 tax centre in the large business centre and then recently I
 4 have been transferred into the financial services sector.
 5 MS STEINBERG: Now in the good old days
 6 of the LBC, I believe you actually went to other country or
 7 countries to establish LBCs there. Tell us about that.
 8 MR COHEN: I was part of the ATAF
 9 delegation that went to Zimbabwe seven years ago to advise
 10 them on setting up a large business environment in their
 11 revenue authority.
 12 MS STEINBERG: And did they do so?
 13 MR COHEN: I understand they did but I
 14 was only involved in the visit to explain to them how we
 15 operate and the benefits that we found. There were a
 16 number of other people from large business who were part of
 17 that delegation as well as international relations and
 18 various other people as well. And we were essentially
 19 there as guests of ATAF and I presume they would've
 20 followed the process through.
 21 MS STEINBERG: What is ATAF?
 22 MR COHEN: African Tax Administrators
 23 Forum.
 24 MS STEINBERG: Your evidence today is
 25 largely about what it was like being a relationship manager

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1 in the LBC and what it was like under the new operating
 2 model. And perhaps you can just start telling us about
 3 that, about the old days.
 4 MR COHEN: Okay. Well in the large
 5 business environment or large business centre it was
 6 actually an evolution from the corporate tax centre days
 7 when we still only dealt with corporate income tax. Then
 8 we moved into the large business environment where we had
 9 essentially a sectoral model. So we had the mining sector,
 10 the financial services sector and we had an entire one stop
 11 shop within each sector. So we had a relationship person,
 12 we had an accounts person or persons, we had assurance, we
 13 had everybody and we operated together to solve the
 14 problems that our taxpayers experience. Over time we were
 15 reorganised again to a functional model where we grouped
 16 all the relationship people together and called ourselves
 17 taxpayer interface office. We put all the auditors that
 18 were assurance people together, all the accounts people,
 19 etcetera. So we mirrored more the bigger workings of SARS
 20 but we still operated as one team with one person in charge
 21 and we were all working towards a common goal. We
 22 obviously never, didn't always agree on how best to
 23 allocated resources and things but we had an Exco team and
 24 ultimately a group executive which would make the call and
 25 would tell us to operate together so that we would always

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1 be working with each other to try and resolve a taxpayer's
 2 issue.
 3 The main role that I fulfil in my team and it's
 4 not just me, I've got a team of people and there are four
 5 other senior managers, two in Johannesburg and two in the
 6 regions who have teams of people who do exactly the same
 7 thing, is essentially to facilitate the taxpayer's
 8 engagement with SARS so that we can try our best to ensure
 9 that they comply with all the legislative requirements so
 10 that they can fulfil their obligations easy as possible and
 11 that the money would therefore flow because they would
 12 submit their returns on time. They would pay on time,
 13 etcetera. And it's not as easy as one would think to be
 14 compliant. There are a lot of different things you have to
 15 be weary of and there are lots of things that do change and
 16 it's a complicated process and we're there to assist
 17 taxpayers.
 18 So in a large business centre I would be able to,
 19 within 100 metres of my desk be able to access anybody and
 20 everybody if you could do anything to assist the taxpayer.
 21 I could not in my role or my team could not actually do
 22 anything on the system. We could facilitate taking the
 23 problem the taxpayer has, going to the right person and
 24 asking them to address it and then taking it to the next
 25 person responsible in the chain and so on and making sure

1 all the right people sign off and do whatever it is.
 2 Obviously the people involved will make the decisions based
 3 on their own terms of reference and standard operating
 4 procedures. We couldn't influence whether something was
 5 allowed or disallowed or whatever. We could just get it
 6 done. What happened with the introduction of the new
 7 operating model is it took that centralised situation and
 8 decentralised it. So we now have a situation where no
 9 longer is everybody in the same building. They're in
 10 different parts of the greater Johannesburg, Pretoria area.
 11 Sometimes, in some instances also some of the functions
 12 have been split out and are dealt with by different people
 13 and sometimes the staff move with the functions sometimes
 14 they didn't. Sometimes we have staff sitting in Megawatt
 15 Park and their managers are sitting in Alberton and my, me
 16 and my team now have to try and engage with everybody
 17 around the greater Johannesburg area effectively to try and
 18 get something sorted out that in the past I would be able
 19 to walk down the passage and talk to somebody.
 20 Also because of the decentralisation these people
 21 now report to different people. So they report to their
 22 executive who reports to the group executive who reports to
 23 the chief officer and they have different priorities,
 24 different KPIs, they have different focuses and they are
 25 evaluated on different things. So my main role is to try

1 and help a taxpayer to resolve a query and maybe I should
 2 just briefly explain what a query is. Essentially it's
 3 anything the taxpayer needs assistance with. So it could
 4 be something as simple as where do I find this form on your
 5 website, down to something as complicated as a very
 6 detailed reallocation of funds between accounts or an
 7 objection on legal, you know very complicated legal
 8 grounds. So my role, my team's role is to route that to
 9 the right place within SARS to be dealt with. As I said,
 10 in the past I was surrounded by those people, I knew who to
 11 talk to, I could walk to that person and we could engage.
 12 Now it's been dealt with in a whole lot of different silos
 13 and they, in some instances, are trying to focus on
 14 resolving volumes of issues. Sometimes they look at
 15 values, sometimes they say this is not in my specific area
 16 because X, Y and Z has not been done. Not as okay I will
 17 then go to whoever has to do whatever, whereas in the past
 18 we worked together and if something hadn't been done we
 19 walked across to them and say you need to do this so that
 20 we can do X. Now it's just this is not complete so it gets
 21 parked. And I'm not in the room and my staff are not there
 22 so nobody tells us this is now the problem, get this done.
 23 Get this sorted out.
 24 And it's made my and my team's job incredibly
 25 frustrating and much more difficult and we are also

1 relatively unique in the rest of SARS is that we actually
 2 engage with taxpayers. So we get to hear first-hand from
 3 the taxpayer and they tell us it like it is. They don't
 4 mince their words and it's a very uncomfortable position to
 5 be in when you know that you actually physically can't do
 6 it. You have to go back and beg other people to do what is
 7 necessary to, not to satisfy the taxpayer but just to
 8 provide a service that our taxpayers should be able to
 9 expect from us.
 10 MS STEINBERG: And what is the impact on
 11 the taxpayer?
 12 MR COHEN: The taxpayer has become
 13 incredibly frustrated and we are experiencing now that
 14 taxpayers are less keen to share information with us
 15 especially when it comes to revenue estimates and things
 16 like that which is becoming much more of our job. We even
 17 have taxpayers who say well once you've paid us that refund
 18 that you owe us or that diesel rebate then we'll talk.
 19 Until then we're not interested. We also have seen a huge
 20 increase in litigation and essentially controversial
 21 approach instead of let's sit down around the table and see
 22 what we can sort out and then we've got to go through all
 23 the right governance processes which we used to do but it's
 24 now let's throw the law at the problem instead of trying to
 25 resolve it. We've also seen in major advisory firms tax

1 controversy units or tax dispute specialists emerging where
 2 in the past they could simply pick up a phone and say
 3 what's happening with this, where is this. Now it goes to
 4 the tax dispute or tax controversy unit which we had never
 5 seen in the past. So we've actually got a much more
 6 difficult job from a relationship management point of view
 7 now.
 8 PROF KATZ: May I ask one question?
 9 Counsel asked on the impact, now just drill down a little
 10 bit. Throughout this inquiry we saw how effective LBC was,
 11 yielded, the figures, we had 30% of total tax. Now it's
 12 dismantled and we also see that the revenue shortfalls. So
 13 one's starting to try and connect parts. To what extent
 14 was the dismantling of LBC causally related to the
 15 significant loss of revenue? Now if I can just take that
 16 then further. The law is the law. Mining company X has to
 17 pay so much. How precisely would the dismantling of this
 18 wonderful organisational structure result in a reduction of
 19 what that taxpayer, the collection of what that taxpayer
 20 has to pay in terms of the law?
 21 MR COHEN: Through my experience with
 22 large corporates it would not have a major impact. From a
 23 point of view of income tax, pay as you earn and VAT which
 24 is what we mainly focus on, our taxpayers are normally
 25 compliant. They do try very hard to be compliant. They do

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1 engage in trying to minimise their tax from a lawful point
 2 of view and they often end up in litigation and court about
 3 it. But I do not for one moment think because of the
 4 current status of the large business environment a large
 5 corporate is now are not going to pay the VAT it owes.
 6 There is a, from an income tax point of view, a process
 7 that we go through called paragraph 19.3 where we have a
 8 team of auditors who scrutinise what the taxpayer submits
 9 and often ends up raising additional amounts and it's
 10 essentially an every six monthly event. So from an income
 11 tax point of view and also a VAT and a pay as you earn
 12 point of view, I don't think taxpayers are now deliberately
 13 not paying as a result of the new operating model.
 14 COMMISSIONER: Well then apart from
 15 frustration of the, you and your teams, and frustration of
 16 the taxpayers and annoyance, does it make any difference to
 17 revenue collection?
 18 MR COHEN: Probably not.
 19 COMMISSIONER: Whether you have an LBC or
 20 don't have an LBC.
 21 MR COHEN: I don't think it will and at
 22 the moment maybe if the frustration continues and taxpayers
 23 continue to be frustrated and think there is no hope, but
 24 the type of taxpayer we are dealing with is not your type
 25 of taxpayer who will deliberately not pay. We may not get

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1 the money in as quickly because we may not have as
 2 efficient a 19.3 process, the audit process might not be as
 3 efficient, they might throw more legal obstacles in our way
 4 if they don't believe they are being given a refund but I
 5 don't believe there will be deliberate non-compliance.
 6 COMMISSIONER: But you point out that it
 7 can lead to delay and delayed revenue collection.
 8 MR COHEN: Very definitely, if they start
 9 playing every legal card available on stalling the process
 10 very definitely.
 11 PROF KATZ: Sorry, the real question,
 12 forgive me, is directed to everyone, all the evidence we've
 13 had, including what an efficient unit the old LBC is and
 14 we're told that there's now moves afoot in SARS to
 15 reinstate it. The only think I'm trying to find out is it
 16 was a wonderful producer of revenue, 30%, prior to its
 17 being dismantled. To what extent did this dismantling
 18 impact on revenue collection to the total revenue of the
 19 country, of SARS?
 20 MR COHEN: I think it's, it's very
 21 difficult to say that because we monitor revenue from a
 22 relationship management point of view and we engage with
 23 our taxpayers extensively to try and understand what
 24 they're going to pay and when they do pay why they paid
 25 what they pay. And it's a very difficult situation

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1 especially the current economic situation we find ourselves
 2 in. The last quarter was the most volatile that I've
 3 experienced in my 10 or so years in doing this. But at no
 4 stage, you know, do I believe that because the large
 5 business centre is not there, taxpayers are deliberately
 6 not paying. We are not maybe aware of the reasons, we're
 7 not as on top of things, we are not as dynamic and able to
 8 report a global picture, but I don't, do not believe we're
 9 at the stage where large corporate South Africa is
 10 deliberately withholding their tax that is due and payable
 11 just because the large business centre in its old form is
 12 not there.
 13 COMMISSIONER: May I ask you this as well
 14 then, when it comes, you say that they're not, you don't
 15 think that they are deliberately not paying. Fair enough
 16 but are your auditors sufficiently skilled in a particular
 17 industry to know whether they are paying or not? For
 18 example you had, would've had before auditors who were
 19 skilled in the mining industry. Now it goes to the general
 20 group of auditors I presume?
 21 MR COHEN: No there are still a dedicated
 22 team of mining auditors –
 23 COMMISSIONER: - and –
 24 MR COHEN: - financial services.
 25 COMMISSIONER: So it still goes to those

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1 teams?
 2 MR COHEN: There are – ja, there are – I
 3 know definitely there's a mining team and a financial
 4 services team. Those are the two teams I'm aware of. I
 5 understand that the rest goes to the general team but there
 6 is a dedicated enforcement arm which services large
 7 business clients.
 8 COMMISSIONER: Ja, but now as far as the
 9 other large businesses outside the financial sector and the
 10 mining sector, those are auditors that audit grocery stores
 11 as well as major corporations?
 12 MR COHEN: Well no, they audit large
 13 business clients. They're based in Megawatt Park and also
 14 we have an audit team in KZN, but they don't report through
 15 to me and I'm not directly engaging with them. But from
 16 what I've seen in my experience in talking to their
 17 managers the thing is there has not been a significant
 18 change in staff. There might have been a change in
 19 approach and direction which I'm not aware of but the same
 20 people –
 21 COMMISSIONER: Ja.
 22 MR COHEN: - are doing the job.
 23 COMMISSIONER: I didn't quite understand
 24 in the beginning, I think I've got a better understanding
 25 of that people talk of the large business centre having

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1 brought in a 30% of the revenue. What that really just
 2 means is that 30% of the revenue passed through their
 3 hands. It's not as if it's lost.
 4 MR COHEN: Ja, the 30% of the revenue is
 5 contributed by large –
 6 COMMISSIONER: Yes.
 7 MR COHEN: - taxpayers that qualify to be
 8 at the large business centre is not necessarily aside from
 9 audit interventions and things like that which specifically
 10 bring it in, most of it is walk in the door –
 11 COMMISSIONER: Yes.
 12 MR COHEN: - revenue.
 13 MS STEINBERG: Although I think we must
 14 offset this against what we have from Data Analytics which
 15 is twofold. The one is that that 30% should've been
 16 climbing and instead it's falling, number 1. And number 2,
 17 the compliance figures are not good. So as I understand,
 18 Mr Cohen, you know the overall compliance for corporate
 19 income tax is only 13% but within large business it's
 20 higher than that. As I remember it's more around 50% but
 21 it's been falling in the last few years nevertheless.
 22 MR COHEN: Ja.
 23 MS STEINBERG: So I think Mr Cohen has
 24 experience with some clients but that must be offset
 25 against the overall data picture.

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1 PROF KATZ: That's right.
 2 COMMISSIONER: Do you want to say
 3 anything in response to that?
 4 MR COHEN: Well I mean I'm not aware of
 5 those figures but to go back to what I was saying earlier,
 6 in the large business centre environment we would've been
 7 presented with this information, we would've worked as a
 8 team to figure out what was going on. Now as part of
 9 relationship management only –
 10 COMMISSIONER: Yes.
 11 [11:36] MR COHEN: Now as part of relationship
 12 management only I am not involved in outstanding returns or
 13 debt or anything like that so I have no idea, I am not
 14 involved in the loop, I am not included, I am not asked for
 15 assistance to trace taxpayers down who don't pay except
 16 obviously over the last couple of years. We've been trying
 17 to build up those relationships so that we can get more
 18 involved because it's in our interest and our taxpayers
 19 interest to try and facilitate that but we were much more
 20 integrated and we looked at the whole compliance picture.
 21 Now we just focus on one -
 22 COMMISSIONER: So you're not really in a
 23 position to say what has been happening.
 24 MR COHEN: Ja.
 25 COMMISSIONER: You see that model that

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1 was devised by Mr Gordhan, etcetera which I'm not allowed
 2 to speak about, is the, it's got the three legs. If you
 3 want compliance give good service and so whatever the
 4 revenue position is you must give good service and you say
 5 that was the better way of giving good service, whatever
 6 its implications were?
 7 MR COHEN: Ja. Definitely that was
 8 essentially the sole purpose for our being there was to
 9 facilitate voluntary compliance.
 10 COMMISSIONER: Ja.
 11 MR COHEN: And that was difficult four or
 12 five years ago, it's increasingly more difficult now as a
 13 result of the new operating model but also as a result of
 14 the technological developments.
 15 COMMISSIONER: Yes.
 16 MR COHEN: And the fact that everything
 17 is system based or a lot of it is system based. So I just
 18 -
 19 COMMISSIONER: Compliance and service go
 20 together.
 21 MR COHEN: Ja.
 22 COMMISSIONER: Yes.
 23 MS STEINBERG: You mentioned when we
 24 consulted an example of a taxpayer who couldn't generate a
 25 tax clearance certificate because, I think, do you remember

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1 what you told me?
 2 MR COHEN: Not specifically but there is
 3 a, most of our complaints or queries revolve around tax
 4 clearance certificates and the main issue with that is that
 5 it's a live system. So if anything happens then the
 6 taxpayer is seen as non-compliant, should they submit a
 7 tender and the person has (inaudible) looks on the system
 8 it says non-compliant. It doesn't say why. It just says
 9 non-compliant and therefore they lose the tender and one of
 10 the major areas there that causes that is pay and you earn
 11 accounts and you heard from the Ombud earlier that there is
 12 a major issue around the pay as you earn accounts and I'd
 13 like to, if I could take this opportunity just to maybe
 14 clarify that.
 15 There are two specific issues around pay as you
 16 earn accounts. The one which is mentioned by the ombud was
 17 where a journal is passed to offset a credit where the
 18 taxpayer has been contacted and they have not supplied a
 19 reason for the credit. There's another issue that is a
 20 systematic process is that when taxpayers makes pay as you
 21 earn payments they are supposed to use a specific PRN or
 22 payment reference number to indicate the amount they are
 23 paying so that they can be correctly allocated. Taxpayers
 24 don't always do that. They use what we call a generic pin
 25 which, PRN which essentially then just says, the system

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1 says take this amount and allocate it to the oldest
 2 outstanding debt.
 3 So there can be many old outstanding periods that
 4 are owed for. Then the taxpayer five years later pays one
 5 of those old outstanding periods thinking that they still
 6 owe it, with a specific reference number. Then the system
 7 goes and un-allocates all those allocations, allocates that
 8 amount and then reallocates everything to the last, latest
 9 outstanding, longest, sorry longest outstanding debt which
 10 is what is the cause of a lot if not all of those
 11 adjustments to the pay as you earn account which creates a
 12 significant amount of confusion for ourselves and the
 13 taxpayer and unfortunately believe it or not that process
 14 is called in the best interest of the taxpayer and it's
 15 obviously proven not to be and I do understand that it is
 16 being looked at and, to be rectified.
 17 So there are those two issues but if that happens
 18 then the account is out of balance and the taxpayer shows
 19 as being non-compliant, the system is supposed to issue a
 20 notification to the taxpayer that you are now non-
 21 compliant. We believe that it doesn't always happen or the
 22 taxpayer doesn't update their details or then the taxpayer
 23 doesn't get that then they get told by the person that's
 24 submitting the tender to their non-compliant and they've
 25 lost the tender and then they phone us up and there's a

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1 whole big issue about it. We then have to try and
 2 investigate the problem. We have to try and resolve it, it
 3 often involves a taxpayer resubmitting and correcting
 4 things and essentially we often end up in a situation,
 5 taxpayer says I'll just pay it so that I can get my TCS and
 6 we'll sort it out later and in the past we had a much
 7 better handle on that because we were together, we were
 8 consolidating, we were also had a manual TCC system so we
 9 had much more scope to be able to evaluate the situation
 10 and proceed on that basis.
 11 COMMISSIONER: There was a suggestion
 12 though of cancelling out credits in order to raise the, I
 13 don't see actually how that could happen. It's a cash
 14 system, isn't it? So I mean at the end of the year you
 15 look at how much money's in the bank. So is that correct
 16 to suggest that if you cancel the credit you're going to
 17 raise your, appear to raise your revenue.
 18 MR COHEN: Not in my view. It would
 19 definitely remove the credit from the book so the taxpayer
 20 then would never receive that credit unless they queried it
 21 and we had to raise the credit again and that is a
 22 significant issue that we have encountered. I actually had
 23 a taxpayer phone me and chew my head off about it and I
 24 then got hold of Mark Kingon, he was still my boss and we
 25 resolved the issue and we stopped the process because it

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1 also has a knock on effect internally in that it causes the
 2 MP501 recon which is your annual reconciliation that you do
 3 to then be out, kicked out and therefore you're non-
 4 compliant because of that even though you haven't done
 5 anything wrong. We've just raised assessment to set off a
 6 credit. So that is definitely an issue that -
 7 COMMISSIONER: Ja, I'm not concerned so
 8 much for the taxpayer at the moment but if you wanted to
 9 manipulate your revenue collection figures that would not
 10 be a method of doing so because it's got nothing to do with
 11 cash?
 12 MR COHEN: No. It would, the only effect
 13 it would have is that that credit would then have no chance
 14 of being paid out because it would not exist.
 15 COMMISSIONER: Ja, that's a different
 16 thing but you could manipulate your year-end figures?
 17 MR COHEN: No.
 18 PROF KATZ: Is that right, sorry -
 19 COMMISSIONER: Sorry are you an
 20 accountant by the way?
 21 MR COHEN: Yes. My understanding is that
 22 we only account for revenue physically received.
 23 PROF KATZ: Yes.
 24 MR COHEN: I'm not a revenue accountant
 25 and I don't do the revenue accounts. But when we collect

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1 pay as you earn, provisional tax, income tax from the
 2 taxpayer when it sits in the bank that's when we believe we
 3 account for it.
 4 PROF KATZ: Sorry, if I may. Assume that
 5 two months before the end of the fiscal year a massive
 6 assessment is issued. Let's say that all properly issued,
 7 etcetera but not yet paid, may even be under dispute, how
 8 is it going to be accounted for in SARS's books or in the
 9 SARS's reporting its performance that year. So it will be
 10 -
 11 MR COHEN: So as I understand -
 12 PROF KATZ: Expand the book.
 13 MR COHEN: As I understand it, and I'm
 14 not involved in that side of things, it would be in the
 15 debt book. We would be trying to collect it and we may as
 16 you say be in dispute which is a significant portion of
 17 large business debt is in dispute. But my understanding is
 18 that we would only record it as revenue when it actually
 19 gets paid. So if there is a part payment that would come
 20 into revenue but until then it would sit in the debt book.
 21 PROF KATZ: I think without disagreeing
 22 on a thing, when we talk to revenue or treasury we should
 23 raise this issue.
 24 MR COHEN: Ja.
 25 PROF KATZ: Because it does go to that

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1 point that was raised earlier this morning.
 2 COMMISSIONER: Ja, well I've always
 3 understood, am I interrupting too much?
 4 MS STEINBERG: No.
 5 COMMISSIONER: I've always understood
 6 that you're on a, you report on a cash base not on a pool
 7 basis and therefore if it's not in the bank it's not in the
 8 bank.
 9 MR COHEN: Ja, that is my understanding
 10 but please you should verify it -
 11 COMMISSIONER: Yes.
 12 MR COHEN: With the relevant people.
 13 COMMISSIONER: I'll do that, thank you.
 14 MS STEINBERG: Mr Kahla, are you -
 15 MR KAHLA: I'm fine.
 16 MS STEINBERG: You're fine. Something
 17 I'd like you to clear up. In the new structure, the new
 18 operating model, a client still goes to you as its first
 19 point of call. Why then do we hear about clients having to
 20 go to the branches?
 21 MR COHEN: Ja, in the new structure the
 22 relationship management department, division still exists,
 23 we still carry out as many of the original functions as we
 24 can, and taxpayers should, if they are registered at large
 25 business and that is in Johannesburg, in Durban and in Port

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1 Elizabeth and Cape Town where we have offices they should
 2 engage with us first and foremost. The intention was as I
 3 understand it to enable our taxpayers to visit a branch if
 4 they should so choose and the reason behind that was for
 5 example if you're in a mining company in Phalaborwa it's
 6 rather a long way to go to, to drive all the way to
 7 Johannesburg to validate your bank details. The problem
 8 with that suggestion is that it's not as easy to implement
 9 as we would think because we have area restrictions on
 10 large business clients and as a result branches are not
 11 able to service our clients and should a large business
 12 registered company walk into a branch and request service
 13 they will be turned away and told you're not on register.
 14 But saying that our large businesses acquire
 15 companies all the time and sell companies all the time. So
 16 there are a lot of files, we call them pay as you earn IT
 17 or VAT numbers that should be on register at large business
 18 but are not. They're at the branches and we regularly go
 19 through a process of trying to get those files transferred
 20 to us so that we can assist taxpayers. So there could well
 21 be instances where a group is trying to get assistance but
 22 that particular company is on register at a branch and
 23 therefore while we would try and assist them they still
 24 would physically have to present themselves in a branch to
 25 do certain functions. But if they are registered with us

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1 then the branch should refer them to us because it will
 2 come up on their screen saying, and they will not be able
 3 to access the client, to say registered at large business.
 4 MS STEINBERG: Now large business is also
 5 complaining about not getting their refunds on time. Can
 6 you comment on that?
 7 MR COHEN: Ja, I think as the Ombud said
 8 we pay out a lot of refunds on time but that doesn't help
 9 if you're the one person who doesn't get their refund on
 10 time. Then it doesn't matter to you what our success rate
 11 is, your refund is out of time and we as the relationship
 12 management team and I'm part of, our deliverable is go out
 13 and educate taxpayers and the advisory firms and everybody
 14 as to how they should be engaging with us and what we
 15 actually are saying to them is let us babysit your refund
 16 for you. You contact us, you tell us, give us the case
 17 number, we will go and follow up and take it through every
 18 single step to try and get it to you as quickly as we
 19 possibly can and we've been doing that for a number of
 20 years now and yes we do pay out a lot of refunds on time.
 21 But there are the ones that are problematic and
 22 we do struggle to get them resolved, not because we are
 23 deliberately not paying them out. We have a very involved
 24 and complicated process which involves a lot of different
 25 people to authorise things and with the decentralised

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1 structure that we now have it's very difficult to find
 2 those people and to figure out what is going on and to get
 3 the right people to do what they need to do. In the past,
 4 in the large business environment we had one person
 5 responsible for the refund value chain from beginning to
 6 end and if we had any issue we would go straight to them,
 7 we'd figure out where it was, we figured out what needed to
 8 do what and we would get it done. But we spend a
 9 significant amount of our time in trying to figure out
 10 who's doing what and often we have to try and phone them
 11 and email them because they are not physically present in
 12 the building anymore and get them to do what needs to be
 13 done so that we can then go to the next person to get it
 14 done. So we've also engaged a lot with the refund team and
 15 we have seen some significant changes happen there so I do
 16 believe it should be better going forward but it definitely
 17 has been an area of concern.
 18 COMMISSIONER: Why do you say that it's
 19 not been done deliberately? Are you able to say that, if
 20 you don't have knowledge of all -
 21 MR COHEN: I say from my perspective I've
 22 not come across any situation -
 23 COMMISSIONER: Yes.
 24 MR COHEN: Where I believe it has been
 25 done deliberately. It -

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1 COMMISSIONER: Are you able to exclude
 2 the possibility that it's been done deliberately somewhere
 3 or other?
 4 MR COHEN: I do not deal directly with
 5 the refunds so I cannot preclude that. I would be very
 6 surprised, you don't, you want evidence, you don't want my
 7 speculation.
 8 COMMISSIONER: Yes.
 9 MR COHEN: I've never come across a
 10 situation where I can say that something was deliberately
 11 withheld. The problem that we have and we have experienced
 12 most of the time is that the person responsible for doing
 13 something does their job but then there's no automatic
 14 handover to the next person so the next person doesn't know
 15 that the previous person has done it and the previous
 16 person doesn't know that they need to pass it on to that
 17 person. So you could say that we should have implemented a
 18 more detailed and comprehensive computer system to do that
 19 and I'm sure there are people working on that as we speak
 20 because we have heard what the Ombud has to say and there
 21 is a lot of work going on to see what we can do to
 22 facilitate the refund process. But I'm not privy so any of
 23 that.
 24 MS STEINBERG: Finally we've heard again
 25 and again that in the days of the LBC it was a very

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1 attractive place to work. It drew high calibre people. We
 2 saw one of the witnesses yesterday. But that there's been
 3 now a loss of skilled people and that it's difficult to
 4 recruit the type of people you would want to, is that the
 5 case in your area?
 6 MR COHEN: From a personal point of view
 7 I would not recommend to someone to come and join the team.
 8 I would not go out and try and headhunt someone to come and
 9 join the team because it is a very different environment to
 10 what it was previously. In our specific space we haven't
 11 necessarily lost people to the outside environment. We
 12 have had a couple of people who got promoted and moved up
 13 into different areas within SARS as a result of the new
 14 operating model. I do believe that there are other areas
 15 that, you know have lost staff. I certainly know that
 16 there are some people that we used to work fairly closely
 17 with who are now on the advisory firms. But it is
 18 definitely a very different less exciting and less positive
 19 place to work, for sure.
 20 COMMISSIONER: What are your
 21 qualifications as a matter of interest?
 22 MR COHEN: I'm a chartered accountant.
 23 I've done an HDIB Tax Law and a Mining Tax Certificate and
 24 I also lecture in mining tax.
 25 COMMISSIONER: Well do you think your

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1 skills are being used optimally if all you're really able
 2 to do is meet with the taxpayer but then run around and
 3 expect everyone else to do it and try and chivvy them on,
 4 that seems to be what is entailed in the job whereas
 5 beforehand no doubt you would have participated more
 6 directly in getting the job done.
 7 MR COHEN: I don't believe that my skills
 8 are used to the best advantage. I believe from a strategic
 9 point of view which I was involved a lot more beforehand I
 10 really do just about nothing now. I'm literally a
 11 glorified ops manager who does exactly what you say, runs
 12 around trying to get things resolved. I suppose you could
 13 also say I'm a more an escalations coordinator because
 14 there are a lot more escalations and complaints that we
 15 have to deal with now. So I really find myself being
 16 operationally involved as opposed to strategically involved
 17 which is what I would like to do.
 18 COMMISSIONER: Yes. Thank you very much.
 19 MS STEINBERG: Thanks Mr Cohen.
 20 COMMISSIONER: Thank you very much for
 21 coming. Yes.
 22 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 23 MS STEINBERG: Our final witness for
 24 today is Mr Fred Salimane.
 25 COMMISSIONER: Good morning, Mr Salimane.

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1 MR SALIMANE: Good morning, Judge, how
 2 are you?
 3 COMMISSIONER: Very well. I hope I will
 4 be very well when I hear your evidence as well.
 5 MR SALIMANE: I hope so too.
 6 COMMISSIONER: Will you affirm that you
 7 will tell, your evidence will be the truth, the whole truth
 8 and nothing but the truth. If so will you say I do.
 9 MR SALIMANE: I do.
 10 COMMISSIONER: Thank you.
 11 EVIDENCE OF MR SALIMANE
 12 [11:56] MS STEINBERG: Mr Salimane as I
 13 understand you were quite intimately involved in the, well
 14 the conceptualisation and implementation of the new
 15 operating model because you were appointed as a change
 16 manager, is that correct?
 17 MR SALIMANE: That's correct.
 18 MS STEINBERG: And that was in January
 19 2015.
 20 MR SALIMANE: That's correct.
 21 MS STEINBERG: Who appointed you?
 22 MR SALIMANE: I was appointed by the
 23 project sponsor at the time, Mr Jonas Makwakwa.
 24 MS STEINBERG: And at that time what was
 25 your role in SARS, before you were appointed the change

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1 manager?

2 MR SALIMANE: My role in SARS at the time

3 was as a senior manager in audit, the audit division. So

4 if I can expand the focus there's two types of audits in

5 SARS. You've got audits which focus on conducting the

6 verifications and validations in terms of taxpayer

7 declarations and compliance and that's specific to

8 taxpayers and that's different to an internal audit

9 function for the organisation.

10 MS STEINBERG: Why, if you can answer

11 this, why were you asked to be the change manager as

12 opposed to someone from HR?

13 MR SALIMANE: That's a question that

14 often gets asked and ideally that should be a response

15 source to obtain from the project sponsor. However, in

16 terms of our, my engagement with the project sponsor I

17 believe the view at the time was that there was a need for

18 a stream lead or project lead to drive change that had

19 someone who had sound business knowledge but also had

20 attributes which are applicable in a change management

21 environment in terms of someone who's highly skilled from

22 an emotional intelligence perspective, can articulate

23 themselves quite well, has the ability to acknowledge

24 people's emotions and psychological levels at a point in

25 time. And that's based on work that I had conducted within

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1 my role as a senior manager and regional manager within the

2 audit environment. That being said I think it's a common

3 misconception in terms of the ideal way to drive change to

4 indicate that it should be led from a human resource

5 perspective. From my experience, research and engagement

6 with my colleagues and experts on the matter, it is ideal

7 to, for change management to be driven by business in other

8 words by line management with support from various

9 stakeholders within the organisation and largely from the

10 human resource environment, but I'll articulate that later

11 in terms of our team and who we had on board.

12 MS STEINBERG: In fact perhaps you should

13 do that now. Explain to us what a change manager is and

14 what you were appointed to do and who your team was?

15 MR SALIMANE: So ultimately as a change

16 manager we, in terms of the stream, it was a combination of

17 change, looking at change management, looking at the

18 communications aspect, engagement aspect most importantly

19 and how does the transformation of the organisation get

20 cascaded to the organisation to all levels of staff, be it

21 at senior level and down below. And to monitor the

22 perceptions at the time, the emotions of staff, how do we

23 support them and throughout this process to contextualise

24 what the change is all about? So that was the role to say

25 how do we, how do I drive change management strategies?

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1 In terms of the team I looked at saying we need

2 to have someone from human resources because ultimately

3 they are our business partners in terms of dealing with our

4 colleagues, our staff. We had someone or people on board

5 from the wellness unit, which obviously where if someone is

6 struggling psychologically or emotionally with certain

7 aspects of the business, or at home, they would either

8 encourage or motivate that they engage with such people so

9 that they can get the appropriate psychological support.

10 We also had personnel from our integrity division

11 and the reason why was that they drive building or

12 embedding organisational values and our view at the time

13 was that if we are going to drive transformation it needs

14 to be embedded on sound organisational values and therefore

15 the culture needs to change as well. We also had on board

16 change experts, so these are qualified industrial

17 psychologists within SARS who have worked with change, not

18 only within SARS but also outside in corporate or in public

19 entities as well.

20 And last but not least we also had colleagues

21 from the communications division. So one key aspect that

22 we ensured we did was that inasmuch as we've got a changed

23 team we do not be perceived to be usurping the powers and

24 responsibilities of people who conduct this function on a

25 daily basis. Therefore it was important for us to say

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1 whoever's responsible for communications, change

2 management, HR, values and culture within the organisation,

3 they are brought on board and they form part of the

4 process. And the value that I would add is my experience

5 in various facets of the organisation in terms of having

6 worked in the taxpayer service environment and largely in

7 the enforcement environment, in the audit space as well.

8 So if you look at something the Judge alluded to a bit

9 earlier this morning was if you look at SARS' compliance

10 model it's premised on three levers, that is service,

11 education and enforcement. So most critically for any tax

12 revenue authority you need to be able to drive appropriate

13 education so that your taxpayers are aware of their

14 obligations, but also provide a quality service so that you

15 improve compliance. And ultimately if they default on that

16 then then you need to ensure that you apply enforcement

17 initiatives. So having been engaged or rather experienced

18 in those three spheres I could provide that added, let's

19 say operational business knowledge to the team.

20 MS STEINBERG: So am I understanding that

21 change management has two major components? The one is to

22 actually place people in their new changed role and the

23 other is to help them to buy in and to settle in that role?

24 MR SALIMANE: That's absolutely correct.

25 I would even add a third element, other than helping them

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1 move, is to provide context to the change and the rationale
 2 of it.
 3 MS STEINBERG: In other words you have a
 4 new model that presumably is driven by a new philosophy or
 5 strategy.
 6 MR SALIMANE: That's correct.
 7 MS STEINBERG: So it's to buy into that.
 8 Is that the context?
 9 MR SALIMANE: Yes.
 10 MS STEINBERG: Now the process happened
 11 in three phases, is that correct?
 12 MR SALIMANE: That's correct. In terms
 13 of the three phases, so inasmuch as I was a stream lead for
 14 change management and communications there was a stream
 15 lead for the actual organisational design and overall
 16 project and also a stream lead for another important aspect
 17 at the time was a review of the efficiency and
 18 effectiveness in terms of our modernisation agenda, so that
 19 was looking at our technology aspect. And –
 20 MR KAHLA: And all these stream leads
 21 were internal?
 22 MR SALIMANE: All these stream leads were
 23 –
 24 MR KAHLA: Were SARS employees?
 25 MR SALIMANE: Correct. Those were SARS

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1 employees. The stream lead for the organisational design
 2 then worked very closely with the Bain Consulting firm as
 3 they would have had the capacity to conduct the research
 4 and diagnostic. Having said that the three phases, the
 5 first one was a high level diagnostic that was conducted so
 6 this took a period of approximately about six weeks from
 7 February to March 2015 to just look at the organisation in
 8 terms of the journey that has been travelled, what has been
 9 the successes in terms of what has been done well, and
 10 where are the gaps, taking into consideration where tax
 11 revenue authorities are and where they ought to be and
 12 looking at ourselves in comparison to peers. So that was
 13 the high level diagnostic that was done. Subsequent to
 14 that the second phase would have been the more in depth
 15 diagnostic which spanned a period of from say April 2015 up
 16 to say end of September, give or take, 2015.
 17 So in this instance was basically to look a
 18 little bit more deeper in the organisation to say if the
 19 high level diagnostic would give the leadership of the
 20 organisation at a time a diagnostic of what's going well,
 21 what's not, and also make recommendations in terms of the
 22 N1 and N2 structure. When I say N1 it's basically the
 23 direct reports of the Commissioner and N2 is a level below
 24 that. So if that was what was to be conducted in the first
 25 phase, the second phase was meant to look at the levels

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1 below and basically look at aligning the functional areas
 2 to the various divisions and business units. And the
 3 intention for, from the first phase, or not the intention
 4 at least what was shared with us was that in the first
 5 phase engagements would have taken place with certain
 6 subject matter experts internally in terms of conducting
 7 interviews. Unfortunately I was not part of those
 8 interviews and therefore I cannot attest to how or when
 9 they transpired, but secondly would have been the request
 10 from subject matter experts in terms of providing business
 11 proposals or position papers as to where they see the gaps
 12 and opportunities being within the organisation.
 13 MS STEINBERG: Sorry you left out the
 14 third phase. Is the third phase implementation?
 15 MR SALIMANE: Yes the third phase, I was
 16 coming to that one. The third phase is basically
 17 transitioning the organisation and implementation of the
 18 model.
 19 MS STEINBERG: Now what was your role in
 20 the first phase, that first more superficial diagnostic?
 21 MR SALIMANE: That was quite a bit of a
 22 challenge in terms of what we needed to do, except to say
 23 that we basically took an approach to say we're going to
 24 segment our themes or major milestone activities into four
 25 phases. The first phase was about creating awareness in

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1 the organisation. So in creating awareness was to provide
 2 a context to the senior leadership of the organisation to
 3 say we are going to undergo a transformation. What might a
 4 transformation look like? What are the things that we
 5 should be cautious of as the transformation transpires? In
 6 other words what does it mean for them? How may it impact
 7 them? How may it impact their staff? And remember this
 8 was being undertaken in the last quarter of the financial
 9 year which meant that if you look at the risk assessment
 10 that we conducted we said if we do not manage this process
 11 efficiently, it poses a risk in terms of tax revenue
 12 collections which is basically the achievement of our major
 13 key performance indicators and organisation. That being
 14 said was to say what support did we require from them?
 15 What leadership did we require from seniors within the
 16 organisation? So we embarked on a process to engage grade
 17 7s and above in the organisation, after having engaged the
 18 group executives and the members of Exco at the time. That
 19 engagement with members of Exco and group executives took
 20 place in February 2015 where we outlined our approach, who
 21 we planned to engage, to contextualise the transition and
 22 what was going to transpire, and basically what support we
 23 required from them. So that took place during March, where
 24 engagements took place here at head office as well as major
 25 centres, be it Durban, PE, Cape Town, Bloemfontein,

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1 Polokwane, around the country.
 2 MR KAHLA: So my clarity so that I don't
 3 lose you.
 4 MR SALIMANE: Yes.
 5 MR KAHLA: This first phase, for want of
 6 a better word of creating the awareness, it precedes the
 7 first or high level diagnostic?
 8 MR SALIMANE: No. So as the high level
 9 diagnostic is being conducted, we saw that if we do not go
 10 out and engage staff, it's going to create a gap, it's
 11 going to create a lot of noise in the system as they would
 12 not be getting any form of information or contextualisation
 13 of the transition. So it happened simultaneously.
 14 MS STEINBERG: In your view, did they get
 15 that engagement, did they get the information as to why
 16 change was needed and what was coming?
 17 MR SALIMANE: My answer would be yes and
 18 no. Yes in the sense that those engagements took place,
 19 but no in terms of perhaps what they would have expected.
 20 I think if you go back to our last transformations in the
 21 organisation which was in 2010 and prior to that, 2007/2008
 22 which was a modernisation agenda, what happened then is
 23 that upfront the diagnostic work had been conducted and an
 24 announcement of a new model was done upfront, so people had
 25 a view in terms of what is this new model that we are going

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1 to and who's going to be responsible in the different
 2 divisions and business areas? Whereas in this sense it was
 3 announced that a review would be done of the model and that
 4 hadn't been done so the work still needed to be conducted.
 5 So when we engaged people on the ground they felt
 6 a bit – that's at least my perception and observation –
 7 they felt a bit disappointed to say we were not coming with
 8 the final structure to them. So there was a lot of
 9 anxiety, a lot of anger and hostility towards the team.
 10 But I cannot confine it simply based on what has happened
 11 in the past transitions. My, or our view as a team at the
 12 time was that a lot of other peripheral matters were taking
 13 place within the organisation, namely being if this project
 14 was announced in January and we started, preceding that,
 15 let's say the departure of senior executives in the
 16 organisation had just recently taken place. And those were
 17 members of Exco.
 18 That created a very dangerous and toxic
 19 environment in the organisation. It created anxiety,
 20 resistance, fear amongst staff to say if this is what's
 21 happening at an Exco level what is this going to mean for
 22 us? So while you're coming to engage us and we appreciate
 23 the fact that you are here, it makes it difficult for us to
 24 buy in in terms of what you're telling us if on the
 25 peripheral side our senior leadership is actually departing

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1 the organisation.
 2 MS STEINBERG: I just want to unpack this
 3 a bit. As I see from the people that Bain tells us they
 4 consulted, they consulted COs but they didn't consult GEs.
 5 Why? The GEs actually are in the engine, they drive the
 6 engine, so if you want buy in why was there a decision made
 7 not to consult them?
 8 MR SALIMANE: Unfortunately I can't speak
 9 to that. I'm not sure what, why they would have not gone
 10 further. Hence I indicated, although I can speak to some
 11 of the design aspects, I think the design lead and perhaps
 12 Bain will be better positioned to respond as to what led
 13 them to that decision, because I think it's something that
 14 we also picked up. We said as we are engaging staff – and
 15 we relayed this back to the project sponsor, we relayed
 16 this back to members of Exco at the time to say your
 17 biggest risk is the alignment of the N2 level being the
 18 group executives at the time. If there is no proper or
 19 perceived collaboration and alignment between Exco and
 20 group executives there is high probability of failure of
 21 the project, and the reason being is that group executives
 22 drive the business functions. And if you look at staff
 23 below they look up, these are their leaders. And if you
 24 missed the opportunity to align them then you pose a risk
 25 for the rest of the project.

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1 PROF KATZ: Sorry, may I ask on that?
 2 Isn't it more basic than that? It's not only that you want
 3 to achieve the alignment but isn't their input fundamental
 4 to designing the right end model?
 5 MR SALIMANE: That's absolutely correct.
 6 So from our perspective in engaging the design team our
 7 understanding at the time was that while a high level
 8 diagnostic will be conducted by the Bain team potentially
 9 options would arise as to whatever gaps have been
 10 identified, what recommendations do they propose? So what
 11 type of structure would best position SARS in being able to
 12 address those gaps? And we were of the view that those
 13 options would then be shared with the group executives as a
 14 collective manner to say these are the potential options,
 15 can you assist us with input to say does this resonate
 16 that?
 17 PROF KATZ: Sorry even to get to the
 18 potential options, don't you need widespread consultation?
 19 COMMISSIONER: In other words isn't that
 20 part of the exercise of diagnosing the problem?
 21 MR SALIMANE: That's correct. That's
 22 correct. And as I said when we asked for input from the
 23 design team we were informed that interviews were conducted
 24 with senior people, not only the chief officers.
 25 Unfortunately we had no way of validating or verifying

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1 that, but also that the position papers were then requested
 2 from the relevant people. I can confirm that I did have
 3 line of sight of some of the position papers, not
 4 necessarily all so I'm aware that certain input was
 5 requested, either from people who were at group executive
 6 or executive level. But I concur with your sentiments to
 7 indicate that to create proper buy in you need to ensure
 8 that you are open and transparent in engaging with your
 9 most senior executives.

10 COMMISSIONER: But it goes beyond buy in.
 11 You know buy in it signifies I've decided on this now I've
 12 got to get everyone to accept it. I think what we're
 13 interested in is how do you identify problems without
 14 speaking to the, you know how do you know why the train's
 15 not moving unless you speak to the engine driver?

16 MR SALIMANE: Yes.

17 COMMISSIONER: And that seems to not have
 18 happened, is that correct?

19 MR SALIMANE: That's why I say –

20 COMMISSIONER: I mean the buy in, I
 21 understand the buy in once you've made the decision. We're
 22 interested in how you make the decision without asking
 23 people.

24 MR SALIMANE: Yes, so hence I was saying
 25 to you our understanding was that not just creating buy in,

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1 getting input in terms of what's working and what's not
 2 working well in the organisation.

3 [12:16] In our view that would have taken place during
 4 the interview phase as well as obtaining position papers.

5 COMMISSIONER: But you weren't involved
 6 in that process.

7 MR SALIMANE: I was not involved in that
 8 process.

9 MS STEINBERG: Then the dominant
 10 perception of senior leadership that have made submissions
 11 is that – to the extent they were asked their opinions or
 12 given position papers, they weren't taken into account
 13 anyway. But they express the view that before that cursory
 14 inadequate consultation happened, it felt like there had
 15 already been a decision and that the consultation was
 16 merely formal in order to tick that box. So there was an
 17 initial enormous anger created by the people who conducted
 18 the consultations, not really wanting to hear or respond to
 19 what was being said.

20 MR SALIMANE: I think those sentiments
 21 were shared when we had engagements whether it was one on
 22 one, I'm saying as a change management project team, either
 23 one on one with some of the group executives and executives
 24 in the organisation or at a senior level. When I say
 25 senior level where engagements were held with their senior

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1 managers as well as executives as a team, hence I indicated
 2 that we were of the view at the time that obviously there
 3 should be engagement with senior people and were under the
 4 impression that those interviews position papers should
 5 have covered that aspect in terms of soliciting input. And
 6 even before confirming what the structure is or taking it
 7 forward whatever outcomes that come from the diagnostic
 8 analysis, as well as any potential recommendations, would
 9 have infused their input into that and those should have
 10 been taken back to engage those senior people within the
 11 organisation to say here are potential options, how do we
 12 further refine this.

13 MS STEINBERG: But then why was the
 14 diagnostic and what followed not shared with anyone? There
 15 was a level of secrecy around it. Do you know that every
 16 senior person that I consulted with told me the first time
 17 they ever saw the diagnostic and ever saw the design
 18 principles and ever saw the four models and the final model
 19 was when I gave it to them? Now how do you consult, how do
 20 you get information and how in heaven's name do you get buy
 21 in when you keep everything to yourself and say it's
 22 confidential? What is the rationale there?

23 COMMISSIONER: Would you know the answers
 24 to that by the way? I'm not sure what role you entirely
 25 play, if you don't know the answers, you know let's not

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1 have a debate on it.

2 MS STEINBERG: Ja.

3 MR SALIMANE: No it's not to - we're not
 4 going to have a debate, it's to say I don't have the answer
 5 to that. And I think it's a frustration which I had shared
 6 previously even with the project sponsor to say it
 7 disempowered us as a change management team to the extent
 8 that the diagnostic findings the first time we saw them was
 9 when the model was being unveiled.

10 MS STEINBERG: Sorry, you as the change
 11 manager, the first time you saw that limited aspect of the
 12 diagnostic –

13 MR SALIMANE: Yes.

14 MS STEINBERG: - was at that presentation

15 –

16 MR SALIMANE: Correct.

17 MS STEINBERG: - of the unveiling.

18 MR SALIMANE: Correct, so to the point to
 19 say even the four recommendations that I've been referred
 20 to, the first time I saw those was when I had an engagement
 21 with yourself.

22 PROF KATZ: Sorry I didn't hear that.

23 MR SALIMANE: The first time I had sight
 24 of those was when I had an engagement with the Commission.

25 MS STEINBERG: When I gave them to you.

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1 MR SALIMANE: Yes.

2 COMMISSIONER: May I just ask you another

3 question if I may?

4 MS STEINBERG: Please.

5 COMMISSIONER: When were you appointed to

6 the position of change management for this project?

7 MR SALIMANE: That would have been around

8 January 2015.

9 COMMISSIONER: I mean it may be a bit

10 silly, but I'm asking myself why are you appointing a

11 change manager before you've decided whether to change? Do

12 you understand, am I being silly?

13 MR SALIMANE: I suppose –

14 COMMISSIONER: I mean I can understand

15 you saying look we're getting people in to diagnose we've

16 got a problem and see if we're going to change anything –

17 MR SALIMANE: Yes.

18 COMMISSIONER: And if we do then we'll

19 get change managers to come and help us do the change.

20 MR SALIMANE: Yes.

21 COMMISSIONER: But here we've got the

22 change manager before we even know there's a problem. Am I

23 being stupid?

24 MR SALIMANE: No not necessarily.

25 COMMISSIONER: Not necessarily.

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1 MR SALIMANE: No not at all and I'll

2 mention why. I think to put it into context, I think let

3 me put it as not an independent feedback, but my own

4 subjective view based on my observation to say I believe

5 SARS had already, to some extent, made up its mind that

6 there would be certain changes that need to take place.

7 The question would be what are they and what changes would

8 or ideally should place SARS in a better position to

9 perform against its deliverables. The reason why I say

10 that is that, if I may, I've read a bit and heard a bit

11 whether it's in the media or with staff regarding when was

12 the decision taken to actually review the operating model

13 of SARS. If I take it from a factual perspective I can

14 only refer to the SARS official documents being the

15 strategic plan of 2014 up to 2019 as well as the annual

16 performance plan of 2014, 15. It stays in my mind, it's

17 page 27, paragraph 3.

18 COMMISSIONER: At the bottom of the page.

19 MR SALIMANE: At the bottom of the page -

20 COMMISSIONER: I know, I know the

21 paragraph.

22 MR SALIMANE: - which alludes to the fact

23 that SARS will conduct a review of its model and ultimately

24 by March 2015 should have concluded its review. And

25 obviously there could be lots of debate seeing that that

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1 decision was taken at a time during the previous Exco and

2 the coming in of the new leadership of the organisation

3 then that continued. So hence I'm saying in my view, if I

4 look at that document it seems SARS was aware that there

5 could be areas where improvements need to take place. The

6 debate perhaps would be how was that realised.

7 COMMISSIONER: Huh?

8 MR SALIMANE: How was that realised, in

9 other words where are the areas where those changes need to

10 take place and how should that unfold.

11 COMMISSIONER: But I think that annual

12 performance, what do you call it?

13 MR SALIMANE: Annual performance plan.

14 COMMISSIONER: Plan. The reference there

15 was to an internal process of reviewing, as one has in any

16 organisation I imagine.

17 MR SALIMANE: Yes.

18 COMMISSIONER: But not this major brining

19 in the big guns from outside and saying okay let's do this

20 thing. So I don't think one can necessarily align those

21 two. In other words they're not necessarily the same

22 thing. There would be a review, I don't know if this

23 correct, but I understand that this review that was talked

24 about in that document was an internal review to tweak

25 things.

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1 PROF KATZ: I'm a bit afraid to ask you

2 what you're going to think of me. But with respect I was

3 going to make the same point as the Judge. Almost every

4 witness has said to us that you had the modernisation

5 program and you had Mr Magashula then you had Mr Pillay –

6 MR SALIMANE: Yes.

7 PROF KATZ: - and there was an

8 incremental change to take cognisance of normal changes

9 because of normal environmental, but no one has said to us

10 that there was a fundamental deficiency that needed a

11 fundamental re-organisation. So with respect and a lot of

12 the evidence has been it ain't broke, why fix it. So

13 against that what was your view, what were you coming as a

14 change manager to do?

15 MR SALIMANE: It was, I suppose, to

16 manage some of those expectations and perceptions because

17 when one conducts change either you have a perception that

18 something is broken and needs to be fixed or you have the

19 perception that inasmuch as if I take a normal corporate

20 firm, inasmuch as I'm ahead of my competitors within the

21 market that I'm dominant in, there are gaps which I have

22 identified. And in order for me to stay ahead of my

23 competitors I need to tweak certain things. Or it could be

24 a combination of both. Be that as it may, hence my comment

25 earlier was to say I don't think that and that's my

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1 personal observation, I don't think that we are debating
 2 whether SARS is an organisation that continuously learns
 3 and seeks to develop itself. And hence even stemming from
 4 the modernisation program that was to ensure that we stay
 5 ahead from a technological perspective. But the question
 6 was how do we continuously stay ahead and ensure that our
 7 staff form part of that. So in other words while we
 8 modernise our business let's ensure that we do not diminish
 9 the capability that we have within. So it doesn't – some
 10 of the functions do not become merely administrative
 11 functions, but we have highly skilled people internally.
 12 So I'm saying that in light of the debate in mind became
 13 what is the best approach to make these changes, is it a
 14 whole change of the organisation, or is it an incremental
 15 change. Because if you had to look at the diagnostic
 16 findings I don't think you can necessarily say it's
 17 something that the organisation was unaware of. And that's
 18 reflective of an organisation that knows itself very well.
 19 MR KAHLA: I'm trying to understand,
 20 you've got this process to create awareness with the
 21 leadership.
 22 MR SALIMANE: Yes.
 23 MR KAHLA: It's happening at about the
 24 same time that you are doing the first high level
 25 diagnostic and it's happening too just after some upheaval

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1 in relation to a turnover at certain high top management
 2 level.
 3 MR SALIMANE: Yes.
 4 MR KAHLA: And you are picking up the
 5 anxiety within the organisation. Is there anybody who
 6 comes out and provides better clarity as to what the case
 7 for change is that you probably want to look more deeper
 8 into so that you can at least draw the people to have a
 9 sense of all right it's worth looking into what this
 10 transformation is going to be about? From all what you've
 11 said I've not gotten a sense that that was at least
 12 clarified, that we do believe we've got – we do perceive at
 13 least certain shortcomings in A, B and C and we would want
 14 to look into them. And I want to understand whether that
 15 happened, 1 and 2, did the leaders get a better
 16 understanding of that?
 17 MR SALIMANE: Okay. So part of the
 18 reason why we embarked on doing that while the diagnostic
 19 was taking place is because we foresaw the challenges of,
 20 like you put it, aptly put, the upheaval in terms of the
 21 departure of certain senior execs. But it was also part of
 22 our process to actually conduct our own diagnostic in terms
 23 of where are staff. With all of this happening in the
 24 background does staff believe themselves because remember
 25 Bain and the design team would have been doing the

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1 diagnostic. But it was for us to get a view from the
 2 staff, do they believe there is a case for change. So it
 3 was to understand from an emotional and a psychological
 4 perspective are we of a similar mind that we need to
 5 change.
 6 So what did we present to them at the time? We
 7 said, we presented some of the successes that SARS has had
 8 in terms of its journey since its inception from 1999 as
 9 SARS, as an organisation, the modernisation journey, some
 10 of the benefits that we have attained from modernisation,
 11 simple things for instance like the assessment of a return
 12 within 6 seconds. From the 30 pages that you had to
 13 complete as an individual that was phenomenal and the fact
 14 that we had a better view digitally of you as a taxpayer at
 15 that point in time and to identify other ways to better
 16 service you.
 17 But some of the – we couldn't necessarily say its
 18 challenges because the diagnostic had not been done. We
 19 positioned it as imperatives for SARS and the country.
 20 What are those imperatives that we could think of? So this
 21 is not anything new to them to say when it comes to large
 22 businesses or high net worth individuals there is a
 23 tendency for them to utilise complicated or sophisticated
 24 tax arrangements which become a threat to the taxpayers to
 25 some extent. Those manifest themselves in base erosion and

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1 profit shifting that we would see and have been written
 2 about by various people both from a transfer price and an
 3 international tax perspective. Also it was to address the
 4 fact that globally we have a challenge when it comes to
 5 illicit financial flows and to money laundering that we
 6 needed to curb.
 7 But as a country at that point in time the
 8 national development plan had been recently confirmed, if I
 9 can say that and what's front and centre in terms of what
 10 government needed to do. If you juxtapose some of those
 11 matters with regard to SARS's ability at the time to be
 12 able to collect (inaudible), some of the things that would
 13 pose a risk was whether we were collecting revenue in line
 14 with other tax authorities who are our peers. And what we
 15 were doing with respect to compliance levels. So –
 16 MS STEINBERG: Can I stop you? I think
 17 that there is consensus –
 18 MR SALIMANE: Yes.
 19 MS STEINBERG: - that SARS has its
 20 challenges. The areas you mention you see them in SARS's
 21 internal documents, they're all over the annual performance
 22 plan. Everyone agreed that SARS was not a perfect
 23 organisation and these areas among others were challenges
 24 that SARS had to meet. But the question that was being
 25 asked which no one has yet answered for us is this, Mr

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1 Pillay said these are the challenges and they can best be
 2 addressed by continuing along the path of evolution that
 3 SARS has been on since '99. Change here, change there, add
 4 this segment, add that segment, deal with staff morale,
 5 etcetera. Bain came along and said no, off the basis of
 6 those very same challenges they said you can't just change
 7 this organisation around the edges if you want to meet
 8 these challenges. You have to have a radical restructure,
 9 right. So the question is why, what was the business case
 10 for the radical change rather than the incremental change
 11 if we all accept the challenges? No one argues about the
 12 challenges, the question is what was the business case for
 13 radical change?
 14 COMMISSIONER: Ms Steinberg, is he the
 15 right person to answer that?
 16 MS STEINBERG: Well he was supposed to
 17 tell –
 18 COMMISSIONER: Listen to me please. Is
 19 he the right person to answer that in that he was not part
 20 of the steering committee or whatever it is, he wasn't part
 21 of the group that decided and made these decisions. He was
 22 given a task to do. Now he may well have speculated as to
 23 you know, why it all occurred and so forth, but shouldn't
 24 we ask these questions of people who actually made the
 25 decisions?

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1 MS STEINBERG: Well I want to understand
 2 at this stage is this is the man who had to help –
 3 COMMISSIONER: No can you just tell me is
 4 it not better to ask it of the people that made the
 5 decisions or do you say no?
 6 MS STEINBERG: I say we should ask both
 7 and I want to understand this –
 8 COMMISSIONER: Ja.
 9 MS STEINBERG: - Mr Salimane surely did
 10 not make the decision –
 11 COMMISSIONER: Yes.
 12 MS STEINBERG: - that there should be
 13 radical restructuring, but he was the man who had to
 14 persuade everyone else –
 15 COMMISSIONER: Yes.
 16 MS STEINBERG: - that that was the right
 17 decision.
 18 COMMISSIONER: Yes.
 19 MS STEINBERG: Now what I'm trying to
 20 probe is, was he told why that was the right decision.
 21 COMMISSIONER: Okay no that's fine. Then
 22 I understand.
 23 MS STEINBERG: Was that shared with him
 24 so that he could then help the organisation adjust.
 25 COMMISSIONER: I understand, thank you.

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1 MS STEINBERG: That's the question.
 2 MR SALIMANE: So I think it goes back to
 3 concern that I raised earlier. In the absence of, line of
 4 sight of the in depth diagnostic, at the point in time when
 5 we started our engagement sessions definitely I wouldn't be
 6 in a position to respond to that. As I said, the
 7 diagnostic and not the full diagnostic, a summary of that
 8 diagnostic was provided when the model was then shared with
 9 the organisation of senior leadership and that was in
 10 August. That's when we had line of sight of some of the
 11 reasons in terms of the gaps identified. Only at that time
 12 could we be somehow empowered to be able to engage with
 13 staff.
 14 PROF KATZ: The phrase – I was going to
 15 put the same question with your permission in a slightly
 16 different way. When you started this evidence you said a
 17 change manager must understand the philosophy of the model,
 18 the new model.
 19 MR SALIMANE: Yes.
 20 PROF KATZ: What did you understand the
 21 philosophy of the new model to be?
 22 MR SALIMANE: My understanding of the –
 23 COMMISSIONER: Sorry. May I just
 24 rephrase?
 25 MR SALIMANE: Yes.

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1 COMMISSIONER: What were you told, were
 2 you told what the philosophy of the new model was?
 3 MR SALIMANE: Well I –
 4 COMMISSIONER: I don't want speculation
 5 of what you thought was going elsewhere. Did anyone tell
 6 you what the philosophy was?
 7 MR SALIMANE: I referred to the documents
 8 that were provided to me in terms of the diagnostic and I
 9 engaged the org design stream lead at the time to
 10 understand that.
 11 COMMISSIONER: But the diagnostic – sorry.
 12 MR SALIMANE: So at the beginning I
 13 wouldn't have line of sight in terms of what are these
 14 findings, what is the rationale for change. My
 15 understanding of it as I went through the documents that
 16 were provided to me was that we want to become a more
 17 efficient and effective organisation and part of that was
 18 eliminating duplication.
 19 [12:36] Streamlining governance processes, ensuring that
 20 there are single, it's a (inaudible) but points of
 21 accountability. And with that how do we ensure that we
 22 build better, better capability within the organisation and
 23 at the same do not depart from the modernisation journey
 24 that we had embarked on. In summary that was my
 25 understanding of it.

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1 MR KAHLA: Could I just, thank you,
 2 (inaudible) in understanding you had the challenge of the
 3 anxiety of the people within SARS relating to the change
 4 that was coming about. Were you assisted in this change
 5 management process by any of the top executive leaders in
 6 some communication, for example, I mean we know there was
 7 the big, I think it must be Birchwood Hotel announcement.
 8 MR SALIMANE: Yes.
 9 MR KAHLA: Prior to that Birchwood Hotel
 10 announcement, had there been some communication, maybe at
 11 town hall by the Commissioner and members of the executive
 12 team to rally people around and give them a sense of
 13 comfort around what is sought to be done, a process that's
 14 been followed and how will it all unfold.
 15 MR SALIMANE: So prior to the
 16 announcement at the Birchwood Hotel there wasn't some form
 17 of town hall engagements on a large scale with staff, the,
 18 in terms of executive leadership including the
 19 Commissioner. So engagements by the Commissioner and his
 20 executive team at the time would've been with their direct
 21 reports mostly. So there would be sessions that would be
 22 held here in this room and other boardrooms that would be
 23 accommodative of those personnel. To indicate basically in
 24 summary he had wanted or this is what he shared during
 25 those sessions to say he wants to take SARS to a higher

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1 level, to a better trajectory and for that to happen we
 2 need, there are certain areas or gaps that are potentially
 3 evident to him upon his arrival but he needed a view from
 4 the team conducting the diagnostic to either confirm that.
 5 So there was very minimal engagement on the large scale,
 6 it's only the engagements we had from let's say the grade
 7 7s and up.
 8 MR KAHLA: And any written communication,
 9 forget about –
 10 MR SALIMANE: Yes.
 11 MR KAHLA: - town halls from the
 12 Commissioner, from the executive leadership?
 13 MR SALIMANE: That's correct. There
 14 would be communication coming from the Commissioner
 15 directly, I can't recall how many up until the time of
 16 announcement. So I can recall the period say from March
 17 2015 to March 2016, at least to a set of about 20 internal
 18 communications were sent out to staff.
 19 MR KAHLA: Any mechanism put in place to
 20 receive feedback from the organisation around, for example
 21 if the people had read something out of a communication, a
 22 written communication –
 23 MR SALIMANE: Yes.
 24 MR KAHLA: - they had questions on and
 25 wanted to have those questions answered?

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1 MR SALIMANE: Correct. So over and above
 2 that there is a webpage that we had developed for staff
 3 where you had forwards from the Commissioner, the project
 4 sponsor, an outline of some of the activities that would
 5 take place, a calendar for some of the confirmed activities
 6 and basically the different role-players, stream leads,
 7 what their focus was and what their roles would be. In
 8 addition to that there was an email avenue to indicate the
 9 fact that those that have particular concerns that want to,
 10 I wouldn't put it as report, but rather engage in a
 11 confidential manner, they have a specific email address and
 12 that email address it was myself and two or three other
 13 colleagues that had access to and we would manage what was
 14 incoming and ensure that all of the questions or queries
 15 concerns or even messages of support that were being
 16 provided were responded to –
 17 MR KAHLA: So –
 18 MR SALIMANE: - at that time.
 19 MR KAHLA: And what would – sorry, I've
 20 just – I want to really understand the communication plan.
 21 MR SALIMANE: Yes.
 22 MR KAHLA: And what were the frequently
 23 asked questions? If you could just summarise for us those
 24 and how were they responded to.
 25 MR SALIMANE: The most prevalent one was

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1 the case for change.
 2 COMMISSIONER: Sorry, were people asking
 3 what was the case for change?
 4 MR SALIMANE: I'm saying prior to the
 5 unfolding of the model what is the case for change, why do
 6 we need to change. In our view certain things are not
 7 broken so why are we embarking on this exercise. The
 8 second – okay, that's one of them. So I'll try and put
 9 them in themes. The other one was mostly around reporting
 10 lines. So it was quite interesting in the sense that when
 11 you observed senior leaders in the organisation there was
 12 angst and anxiety and concern from their side and naturally
 13 so in a change process because in any change process roles
 14 and responsibilities that are mostly affected are people
 15 that are senior. So we can understand where that was
 16 coming from. And if you go lower down the level I don't
 17 know if ironic is the correct word to use but there was a
 18 bit of irony in the sense that some had this sense of
 19 optimism about it and that's why I link it to reporting
 20 lines to say that some people, if you look at grade 6 and
 21 below which will have your ops managers, ops specialists
 22 and really your functional members, were of, or some had
 23 concerns to say they would actually typically write to us I
 24 do not want to report to this individual. So whatever you
 25 guys do please ensure that I do not report to that

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1 individual which we had no power to do. A standard
 2 principle process needed to be followed.
 3 The other one was about well I have got a view in
 4 terms of my area, my functional area and I believe we can
 5 make changes in this way or the other. That information
 6 was also then fed to the org design team to say here's some
 7 valuable input coming from staff can you take it into
 8 consideration in terms of finalising this structure.
 9 MS STEINBERG: But whether it was taken
 10 into consideration or not was not within your power?
 11 MR SALIMANE: That's correct. So the
 12 unfortunate part is being blindsided as to the other
 13 options that were on the table. The other one, well issues
 14 around remuneration, will the change impact my level in
 15 terms of grade, will it impact what I'm currently earning.
 16 Will I be demoted, will there be wide-scale retrenchments
 17 taking place, are there retrenchment packages that are
 18 available, will I need to relocate as part of this
 19 transition as well. So a variety of questions arose. Some
 20 of them we were able to clear upfront to say part of the
 21 design principles was that there would be no downsizing in
 22 the structure. What that meant is that you keep your grade
 23 but I'll explain the challenge with that. You keep your
 24 grade, you keep your remuneration irrespective of what is
 25 happening.

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1 COMMISSIONER: And that's why when you
 2 became a specialist, the specialists were at different
 3 grades.
 4 MR SALIMANE: Yes.
 5 COMMISSIONER: Because then you kept your
 6 grade and your salary.
 7 MR SALIMANE: You kept your grade, you
 8 kept your salary, however when it comes to the recruitment
 9 process, because if your role was impacted you needed to go
 10 through a recruitment process. If you were successful you
 11 were appointed in that role. If you were unsuccessful
 12 then, and if of the other roles that you applied for you
 13 were not successful ultimately a decision had to be made to
 14 say you still need to add value to the organisation. Then
 15 your naming convention would be changed to a specialist
 16 whether a domain principle specialist or senior specialist,
 17 depending on your grade.
 18 MR KAHLA: But of course you got caught
 19 up in a situation where you had people change titles, also
 20 having no job to do.
 21 MR SALIMANE: That would be quite
 22 challenging because especially if such individuals on board
 23 and you've got someone who does a particular function, the
 24 question is how do you utilise this capacity in a
 25 meaningful way. So some could have been in a situation

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1 where they were not being allocated sufficient work or
 2 their managers didn't know how to best utilise their
 3 skills.
 4 MS STEINBERG: The question about
 5 reporting lines, now we heard yesterday, it was an
 6 affidavit in the, from the large business centre space. A
 7 witness said it took a year for people to be allocated new
 8 reporting lines. I have an affidavit here from someone in
 9 revenue management who said that there was so much
 10 confusion with the implementation of the new operating
 11 model and most difficult of all was that for almost two
 12 years revenue management staff had to cope with dual
 13 reporting lines where administratively they reported to the
 14 new revenue voices but operationally they reported to the
 15 old revenue voices. And this led to a decrease in trust
 16 efficiency and strategic alignment. She says the once
 17 mighty revenue management value chain was weakened and cut
 18 down to size trying to figure out how to manage critical
 19 interdependencies across divisional lines.
 20 MR SALIMANE: Okay.
 21 MS STEINBERG: Why do think this
 22 happened?
 23 MR SALIMANE: So I can start by
 24 indicating, so how did the transition actually unfold as
 25 there are certain milestones that I've already indicated to

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1 you. So by March 2015 the high level diagnostic needed to
 2 be completed. By August 2015 the in depth diagnostic was
 3 then completed and a model was announced. From that period
 4 I suppose from September going forward, a recruitment
 5 process needed to be undertaken and how it unfolded is that
 6 at the time we were operating with minimal permanent
 7 appointed chief officers at the time. So our Exco had
 8 quite a number of people in acting roles or acting in chief
 9 officer positions. So those needed to be filled.
 10 The group executives all of the group executive
 11 roles were actually impacted which means they needed to all
 12 apply for that, for their new roles. In terms of executive
 13 managers, at least about let's say 20 to 25% of that
 14 component was impacted and senior managers about 10 to 15%
 15 were impacted. That recruitment process then would unfold
 16 in the sense that ideally you were meant to have the chief
 17 officers on board who would then recruit for the GEs,
 18 recruit, the GEs would recruit for the executives and so on
 19 and so forth. So people continued in their roles at that
 20 point in time. So if you were an auditor reporting to
 21 whoever at that point in time that, your reporting line
 22 stayed until the point where the business unit
 23 transitioned. The transition then began from February in
 24 2016 and spanned until July in 2016 and the reason for that
 25 is that there are multiple business unit functions, not to

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1 tamper with the revenue drive of March. So a few
 2 divisions, our business, I'm going to call it, yes, our
 3 business support functions, HR, finance were the ones that
 4 were transitioned first. Thereafter legal, the corporate
 5 services environment as well as then operational teams. So
 6 the transition I would say took four month and at that
 7 point there should've been, or in my view there was clarity
 8 to say you continued to report to the manager you report to
 9 until the time you are transitioned.

10 The example that she uses, an interesting one and
 11 a unique one in the sense that I might not be close to all
 12 the information that took place there but my understanding
 13 was that there was a debate as to, in the new model, the
 14 revenue analysis, research function, not research, the
 15 revenue analysis function fell under finance whereas
 16 previously held a realistic revenue analysis functionality.
 17 Now the challenge would be if the group executive at the
 18 time who was responsible for revenue analysis was required
 19 to try monitoring of revenue performance. I would imagine
 20 that those components that enabled the GE to function
 21 ideally should've resided with him. And yet in the new
 22 structure one or two of those components needed to move out
 23 and therefore that was a debate between the group
 24 executives in finance and a revenue analysis as to where
 25 ideally those functions should be and when do they

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1 transition. So I, that I can understand and I think those
 2 are some of the concerns that were, that we would've
 3 received through our email channel from staff in that –

4 MS STEINBERG: I accept that explanation
 5 but not that it was unique because in fact we hear this
 6 from practically every corner of the organisation that
 7 there was a long period of instability where people didn't
 8 know what their reporting lines were. Are you saying that
 9 is a function of the fact that the posts weren't filled?

10 MR SALIMANE: No, in some instances yes.
 11 You're correct to say certain posts were not filled and
 12 perhaps that would've created some level of uncertainty in
 13 that environment as to who really takes ownership of those
 14 functions. In some instances I think it was an issue of
 15 the new managers now taking accountability and wanting or
 16 not wanting to take accountability for their new functions
 17 or the old managers not wanting or wanting to release. So
 18 what do I mean by that? You could find a situation where
 19 the new manager indicates that, let's say the new group
 20 executive says I'm not quite in agreement with these
 21 functions that have been brought to this business unit.
 22 Perhaps we need to have a discussion with the org design
 23 team and there would be a debate that would've ensued.
 24 That would've prolonged the appropriate migration of the
 25 staff into that business unit. Whereas you had certain

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1 group executives or executives in their environment who
 2 would've said well I'm now on this notion that I want to
 3 take over my new function. I've got nothing to do with
 4 what I used to do in the past. I'm not going to take
 5 accountability for my old functions so to speak. So it was
 6 about, how do we ensure that we still support staff but
 7 ensure that the new leaders, the group executives and
 8 executives have an engagement with the org design team and
 9 the org transition team so that we address those issues.

10 In some instances I concede there was a delay in getting
 11 alignment in that regard. So it would've affected the
 12 staff.

13 COMMISSIONER: There was, as I
 14 understand, about 160 people that were affected, is that
 15 right? That's the figure I've seen cast around. Don't
 16 give me an exact figure but in that region.

17 MR SALIMANE: It was approximately 200.
 18 COMMISSIONER: 200?
 19 MR SALIMANE: Ja.
 20 COMMISSIONER: So 200 people were put in
 21 a state of uncertainty for that time. You were told you
 22 were affected, you didn't know what was going to happen to
 23 you and 200 people are affected and are uncertain. Would
 24 that be fair?
 25 MR SALIMANE: So what would –

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1 COMMISSIONER: I'm sorry, would that be
 2 fair to say that?

3 MR SALIMANE: Not 100% fair in terms of
 4 not knowing what's going to happen with them.

5 COMMISSIONER: Yes.
 6 MR SALIMANE: And the reason why I say
 7 that is that when the model was announced in August the
 8 next stage was to unpack the diagnostic and the new model
 9 to executive senior managers because when a national
 10 management forum took place at the time it was only group
 11 executives and the acting COs at the time. So it was then
 12 over the next two to three days immediately thereafter
 13 unpacked to the senior leadership. Shortly thereafter
 14 there was communication to the individuals who were
 15 specifically impacted to say your role is now impacted in
 16 the new structure. It no longer exists in its old format
 17 and there's a new role or there are new roles that you can
 18 consider. Those staff then had, we had specific
 19 engagements with them to unpack what the new or at least
 20 for the org design team to unpack what was the, what did
 21 the new roles actually mean, in which unit do they form
 22 part of.

23 COMMISSIONER: Well they all had to
 24 reapply for jobs, 200 people. They weren't sure they'd get
 25 jobs, they didn't know which ones they would get if any.

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1 MR SALIMANE: Yes.

2 COMMISSIONER: Would that be correct?

3 MR SALIMANE: That's correct.

4 MR KAHLA: Please help me understand.

5 You've said all the group executive positions were, all the

6 group executives were in an affected universe.

7 MR SALIMANE: Yes.

8 MR KAHLA: But of course we've heard

9 testimony here for example from Ms Makungu Mathebula who

10 indicated that in respect of corporate legal services

11 nothing had changed in their role. And so could you help

12 us understand why was it, why would that role for example

13 have been considered affected?

14 MR SALIMANE: There was one very

15 contentious and one of multiple robust discussions we had

16 with the org design team because as a change management

17 team we were also not convinced and understood why certain

18 roles were affected. When we looked at the specification

19 in terms of what, if I go to that role specifically, to the

20 GE for corporate legal services, we looked at the previous

21 job function and job profile. We looked at what was being

22 proposed in the new model and without making ourselves

23 experts in terms of job profiles, we couldn't see at face

24 value what the major difference was. So those, that was

25 one of our concerns to say, how do we appropriately

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1 articulate to these individuals why are their roles

2 impacted. In some instances it was easier to explain in

3 the sense that certain functions were collapsed into one

4 function or certain functions were then moved away from

5 that function and now resided somewhere else. But in some

6 we couldn't necessarily see a specific –

7 MR KAHLA: But how was that resolved? I

8 mean it seems to have taken quite a lot of time –

9 MR SALIMANE: Yes.

10 MR KAHLA: - addressing that. Was there

11 anybody having the responsibility to make that call at a

12 time when you come in and say it's not fitting in terms of

13 the definitions and the principles that you've worked out.

14 Who was to make that call that well let's exclude this job,

15 let's exclude the other?

16 MR SALIMANE: That is something that we

17 flagged with the org design team as well as the org

18 transition team because the transition team would then be

19 responsible for transitioning the organisation, running of

20 providing oversight in terms of the HR recruitment process.

21 [12:56] So we flagged it with them to the stream needs to

22 say can they please address it because honestly as a change

23 management we couldn't do that, we were not in the best

24 position to do so.

25 MS STEINBERG: Judge, I must just clear

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1 up that my question was not about the 200 affected people.

2 COMMISSIONER: Oh.

3 MS STEINBERG: It was about the people

4 who had, whose roles had not been affected but they had

5 been replaced in somewhere else and these affidavits speak

6 to people who were not affected but often in middle

7 management, then didn't know who they were reporting to and

8 who their team was reporting to. And that could go on for

9 a year or two years in these affidavits. So that's over

10 and above the 200 who didn't even have a role yet and

11 that's what I was engaging Mr Salimane on.

12 MR SALIMANE: May I add to that?

13 MS STEINBERG: Ja.

14 MR SALIMANE: So I think it's also

15 important that we specifically articulate that part. The

16 one is that while one might say that 200 roles were

17 impacted, those were not the only people impacted in the

18 organisation, and I think it's something that we should be

19 of the same mind about. When you transform an organisation

20 you impact everybody in the organisation. However, in

21 terms of roles and people needed to reapply it would have

22 been those 200 people. And like you rightfully said in

23 instances where recruitment was either slow or there was,

24 positions were not being filled fast enough or a vacancy

25 still existed, it would create that gap, as people were

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1 trying to grasp the new operating model.

2 MS STEINBERG: We've discussed, we said

3 there were the two aspects to change management and we've

4 looked at the more objective side, the new reporting lines,

5 the new organogram. The other side is the buy in. How was

6 the buy in from your perspective?

7 MR SALIMANE: Well what we embarked on –

8 maybe before I even get there, to answer the question

9 simply, as I said we observed different sets of emotions

10 being displayed by our colleagues, namely of denial to say

11 they can't see why we need to change, of resistance to say

12 they don't agree with the approach, of fear to some extent

13 to say but does it mean for me, and also depression. So it

14 brought about all those forms of emotions.

15 In terms of what was done, going back to the work

16 that we conducted until March 2015 in creating awareness,

17 so that served as a form of diagnosis for us as well to

18 understand what emotional levels the staff are at. Hence

19 we then decided to craft certain engagement interventions.

20 And we did that on the basis of particular units that we

21 perceived as being the most highly impacted, based on the

22 interaction we were having with them. That was namely the

23 operations environment at the time including modernisation

24 and technology and the reason for that, as I indicated,

25 with the departure of the senior leadership, at the time

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1 the chief operating officer had departed in December 2014
 2 and he had been quite instrumental in terms of driving the
 3 modernisation programme and agenda and as such it created a
 4 lot of anxiety amongst the modernisation and technology
 5 team to say do we still, or the circumstances under which
 6 our leader has left, does it mean we still have a future in
 7 this organisation? So we needed to have a lot of
 8 engagement and discussion with their teams.
 9 COMMISSIONER: May I just interrupt.
 10 It's not the circumstances under which our leader had left,
 11 it was that modernisation, we are told, was stopped. An
 12 order was given, we stopped the program. So I would have
 13 thought the people who were running the program would be
 14 rather anxious. But it wasn't the –
 15 MR SALIMANE: Yes, -
 16 COMMISSIONER: No but it wasn't the
 17 circumstances under which he left that caused the anxiety,
 18 it was that it was stopped.
 19 MR SALIMANE: I'm talking from a
 20 perspective when we conducted the engagements in March, at
 21 that point in time.
 22 COMMISSIONER: But were they telling you
 23 that the anxiety is the circumstances in which the leader
 24 departed or were they telling you that because the
 25 modernisation program had stopped that they were anxious?

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1 MR SALIMANE: Hence I'm saying at that
 2 point in time, in terms of stopping the modernisation
 3 agenda, people had banded around different dates, whether
 4 it was January 2015 or later down in 2015. So at that
 5 point in time it was not highly evident in terms of the
 6 direction that modernisation would undertake. Hence the
 7 bulk of the feedback that we were receiving from staff was
 8 that our leader has left, we are not sure whether we are
 9 still going to drive modernisation at the same pace that
 10 we're used to because also the other part was the fact that
 11 there was a distinct review of modernisation and technology
 12 effectiveness and efficiency, as indeed there was a
 13 different stream. So people began to question what is it,
 14 why are you looking at modernisation and technology
 15 specifically? What is it that's going to come out of that?
 16 So those were part of the anxieties that the staff shared
 17 with us.
 18 COMMISSIONER: And that firm was called,
 19 I can't remember its name?
 20 MR SALIMANE: Gartner.
 21 COMMISSIONER: No, no, there was another
 22 one that came in as well. Gartner, Gartner came in but
 23 there was another forensic investigation that was called -
 24 I've seen the report – which was now looking back into the
 25 modernisation people, seeing if there had been corruption

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1 there and so forth. Do you recall that?
 2 MR SALIMANE: I recall that. I don't
 3 know the exact service provider.
 4 MR KAHLA: Grant Thornton.
 5 COMMISSIONER: Sorry? Grant Thornton, so
 6 now they were looking back into what these people had done,
 7 who their contacts were, where there had been corruption,
 8 etcetera. I would imagine that creates anxiety as well.
 9 MR SALIMANE: Yes. So that was later
 10 down in 2015. Upfront the service provider that was
 11 brought on board was the Gartner team. And I'm saying at
 12 that stage already that created a certain level of anxiety
 13 amongst the team.
 14 COMMISSIONER: Gartner came on and all
 15 the contractors that had been used before, I presume had
 16 been, they were terminated, weren't they?
 17 MR SALIMANE: Not necessarily. There are
 18 some that are still conducting work for SARS. But my
 19 understanding was that that work diminished significantly.
 20 COMMISSIONER: Ja, anyway.
 21 MS STEINBERG: Who was responsible for
 22 the organisational design stream? Was that Ronald?
 23 MR SALIMANE: That's Ronald Makomba, yes.
 24 MS STEINBERG: Okay. Two things you
 25 mentioned in the beginning that I'd just like to swing back

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1 to. You mentioned that you had specifically integrated the
 2 integrity unit into your process because it is about the
 3 organisation's value ultimately when you're changing. As I
 4 understand by the end of the process in the new operating
 5 model there was no integrity unit left on the organogram,
 6 is that right?
 7 MR SALIMANE: That's not correct.
 8 MS STEINBERG: No?
 9 MR SALIMANE: There's still an integrity
 10 unit. It used, the person that was most senior heading up
 11 the integrity unit was an executive. However in the new
 12 operating model the person that was most senior was merely
 13 a senior manager.
 14 MS STEINBERG: Ah.
 15 MR SALIMANE: So the executive role was
 16 done away with, if I can put it bluntly.
 17 MS STEINBERG: Okay.
 18 MR SALIMANE: Yes.
 19 MS STEINBERG: And then I think finally
 20 from my side – and this is certainly not to lay blame at
 21 your door, Mr Salimane – but it's something I'd like to
 22 just read into the record. You know I asked you why HR
 23 weren't the change management drivers in this organisation
 24 and what I would like to share with the panel is what the
 25 chief officer of human resources had to say about the

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1 process. On the 26th August 2015 she wrote a memorandum to
 2 the SARS Commissioner and she says, "I have previously
 3 expressed my disquiet regarding the process being followed
 4 with regard to the operating model review. Now that the
 5 outcome of phase 1 and the high level structure have been
 6 announced, I'm even more concerned. Firstly there's been
 7 limited interrogation of the phase 1 diagnostic, if any at
 8 all. I expected that the diagnostic would be discussed by
 9 at least Exco and possibly the group executive function.
 10 It was not done so at all.
 11 Secondly, apart from the exclusion of senior
 12 leadership in this process HR has been excluded. Several
 13 attempts were made to have HR leadership given the phase 1
 14 diagnostic. This was for the purpose of aligning the HR
 15 strategy to where the organisation wants to go. The
 16 consequence of this exclusion is that as the head of HR I
 17 am seeing the proposed human capital and development
 18 structure for the first time now. I should say that I'm
 19 still trying to understand the rationale and design
 20 principles that informed the proposed structure. With my
 21 extensive experience in HR leadership I am struggling to
 22 understand the proposed human capital and development
 23 structure." There's a fourthly and now the fifthly – "I am
 24 concerned that even at this late stage the involvement of
 25 HR is still on a need to know basis. HR needs to be part

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1 of the journey supporting line managers and their staff.
 2 However HR cannot play its role if it is uninformed of what
 3 is going on. If HR is not playing its role during this
 4 process it disempowers it in the eyes of the organisation
 5 and creates a culture where HR input is ignored. Lastly, I
 6 want to highly the fact that the organisational culture is
 7 shaped by how we behave as senior management. If we want
 8 to create a culture of care and concern, fairness and
 9 respect, it is important that we are careful about how we
 10 proceed with this process henceforth. My appeal is that we
 11 find a way to redeem the process from the shortcomings I've
 12 highlighted above. Alternatively we can continue to run
 13 roughshod over everyone and there may or may not be
 14 grievances. However the negative impact of this approach
 15 will overshadow the benefits in the long term. Change is
 16 more the art, the how, than the science, the what." And
 17 I'm sure you would agree with that. What interesting is
 18 how the Commissioner responded, if I may. This memo was
 19 sent to the Commissioner and a couple of senior people were
 20 copied in. Jonas Makwakwa and Matsobane Matlwa. And the
 21 Commissioner writes, "Dear Colleagues, I acknowledge
 22 receipt. However I am extremely amazed by the email and
 23 its attachment. No comment." I've got no more questions.
 24 MR KAHLA: Mr Salimane, clearly you found
 25 yourself thrust in a perfect storm by all accounts of what

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1 we've heard today. But what I'm more interested in is what
 2 you understood to be the new operating model. One of the
 3 persons who, staff members who came before you spoke of
 4 seemingly confusion within SARS between the new operating
 5 model and the structure, the organograms set up to support
 6 or drive the new operating model. What was presented in
 7 the Birchwood Hotel meeting?
 8 MR SALIMANE: Maybe I must start at the
 9 end. In terms of what was presented at Birchwood was
 10 basically a key note address by the Commissioner taking us
 11 through a summary of what he had received as work done by
 12 the org design team, more importantly Bain Consulting.
 13 That was basically a summary of the diagnostic findings in
 14 terms of gaps or opportunities which had been identified,
 15 and basically putting forward an ambition to say if we are
 16 to continuously stay ahead of the curve in terms of whether
 17 it's technology or be more efficient and effective in terms
 18 of collecting revenue, these are some of the areas that he
 19 would like the organisation to pay more attention to, and I
 20 mentioned some of them in terms of governance,
 21 accountability, people development and really continuous
 22 improvement. The model was then unveiled to say ultimately
 23 this is the model that he would like to go with, with the
 24 two main operational business areas being business and
 25 individual tax bate as well as customs and excise enabled

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1 by DIST which is our information technology arm as well as
 2 enforcement and then the rest of the corporate support
 3 functions, finance, HR, strategy. That's what was
 4 unveiled. And to indicate then he has an expectation that
 5 the leadership who was invited being the chief officers or
 6 acting chief officers plus group executives drive this
 7 process going forward with their teams to say this is the
 8 direction we are taking and they should facilitate its
 9 implementation, if I can summarise it, that part. There
 10 was something that you asked a bit earlier on your
 11 question?
 12 MR KAHLA: Well you've addressed me on
 13 the operating model.
 14 MR SALIMANE: You wanted my understanding
 15 of –
 16 COMMISSIONER: No I think –
 17 MR SALIMANE: Okay, are you covered
 18 there?
 19 MR KAHLA: Ja, okay.
 20 COMMISSIONER: Thank you very much.
 21 Thank you very much for assisting us and showing us how you
 22 saw things. Thank you very much.
 23 MR SALIMANE: Thank you for the time. I
 24 appreciate it.
 25 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

1 MS STEINBERG: Thanks.
2 COMMISSIONER: Is that all, Ms Steinberg?
3 MS STEINBERG: That's all and we
4 reconvene on Wednesday morning at 9 o'clock.
5 PROF KATZ: Wednesday?
6 COMMISSIONER: We were trying to get the
7 Ministers here and there's cabinet meetings and so we had
8 to abandon Tuesday.
9 PROF KATZ: So there's no Monday or
10 Tuesday?
11 COMMISSIONER: No.
12 MR KAHLA: We're not complaining. We're
13 not complaining.
14 [INQUIRY ADJOURNED]
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