

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 11

30 AUGUST 2018

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1 [PROCEEDINGS ON 30 AUGUST 2018]
 2 [09:07] MS STEINBERG: Morning Judge. Our
 3 witness this morning is Mr Massone from Bain & Company.
 4 COMMISSIONER: Good morning Mr Massone.
 5 MR MASSONE: Good morning. Good morning.
 6 Good morning.
 7 COMMISSIONER: Will you affirm that the
 8 evidence you give will be the truth, the whole truth and
 9 nothing but the truth? If so will you say I do?
 10 EVIDENCE OF MR MASSONE
 11 MR MASSONE: I do.
 12 MS STEINBERG: Judge and panel, Bain & Co
 13 are going to start with a presentation and after which
 14 we'll ask questions.
 15 COMMISSIONER: I gather that it will be
 16 done in portions, is that right?
 17 MS STEINBERG: I think we should see how,
 18 if you wouldn't mind –
 19 COMMISSIONER: Okay.
 20 MS STEINBERG: Just see how it goes.
 21 MR MASSONE: Thank you and I promise you
 22 I will use slides only where necessary. You will see me
 23 turning pages but I will try to speak up.
 24 COMMISSIONER: Ja, bear in mind that
 25 we've got a big pack from you of your submissions with all

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1 the slides on it.
 2 MR MASSONE: Yes.
 3 COMMISSIONER: So don't think that the
 4 only ones we will look at are the ones you use here, but
 5 it's probably a lot more convenient that we don't go
 6 through too many and we listen to what you say.
 7 MR MASSONE: Thank you. I would like to
 8 make an opening statement if that's appropriate. So first
 9 of all I would like to thank you, the Commission for
 10 allowing me and allowing Bain to be here today to represent
 11 the facts that we saw at SARS and our interpretation of
 12 what happened there, so thank you for that. I want to say
 13 –
 14 COMMISSIONER: Sorry is that microphone
 15 on?
 16 MR KAGAN: It's on.
 17 COMMISSIONER: Yes okay thank you.
 18 MR MASSONE: I'd like to say we started
 19 working at SARS in 2015 with a lot of pride and excitement.
 20 We were convinced it was going to be a success story for us
 21 in South Africa like others we had and so we started with
 22 all the best intention. Duly (inaudible) we found a case
 23 for change and I think we will spend time today on that.
 24 It wasn't a case for a radical change like it was said, it
 25 is a case for improvement and I will elaborate on that. So

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1 everything that we say on the case for change shouldn't
 2 take anything away from the work that's done in the
 3 previous 20 years at SARS from its leaders. Still there
 4 was a case to make SARS even better, and again I will
 5 elaborate on that. So we designed the four structure that
 6 was one of the areas of improvement, the structure. A
 7 fifth one was then implemented like the thing was presented
 8 in the previous testimonies. And we still accepted it –
 9 and I think we're going to spend time on that as well – we
 10 accepted it because it was still at that stage within the
 11 boundaries of the principles we had designed and seen an
 12 improvement compared to the previous one.
 13 What I believe reading the transcripts is that
 14 some other changes happened afterwards. So reading the
 15 testimonies I, and this is my opinion but I think that all
 16 the bad things that happened there are not to be, the root
 17 cause of all the things that happened there is not the
 18 organisation structure that we redesigned, but I can point
 19 to three factors.
 20 The first one is the change in leadership that
 21 was too wide, to broad and too deep and probably also too
 22 fast. The second is the change management communication
 23 plan that wasn't properly done right so there was no buy-
 24 in. And the third one is what we call the software
 25 elements so if the structure is the hardware, all the other

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1 things that need to complement the structure and need to be
 2 redesigned if you change the structure. The processes, the
 3 ways of working, the communication lines, the culture and
 4 the leadership style has to be redesigned. And the
 5 compounding of too many people changing the buy-in is not
 6 there and the software elements in our design, in my
 7 opinion, created what happened there and I think we will
 8 have time on that. And then lastly I think reading the
 9 transcript was really a painful exercise for me, what
 10 happened there, and so I think that there are a lot of
 11 lessons learned for us as well. I think for many people.
 12 Thank you.
 13 MS STEINBERG: Do you want to begin your
 14 presentation?
 15 MR MASSONE: Yes. So the context of our
 16 intervention, so Bain was appointed in around January 2015
 17 to do a diagnostic on the operating model. The appointment
 18 follow-up of course then the process run by SARS around
 19 September, November, December 2014. This initial
 20 diagnostic was around I think five, six weeks, I think we
 21 eventually work a little bit longer, it was probably
 22 eventually six, eight weeks and it was quite short and I
 23 say in terms of what a normal diagnostic will be. And aim
 24 at pointing to areas of improvement for SARS, and this was
 25 the initial mandate and that's what we did.

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1 The, we then stopped the work there and we were
 2 brought back in June 15 to work on some of these areas that
 3 were identified and one is organisation structure in two
 4 areas of performance improvement at a very operational
 5 level on customs and tax. And this occupied 2015 until May
 6 2016 and there was a short tail at the end of 2016 and
 7 beginning 2017 there was specifically a pilot on customs.
 8 Again between June 16 and October 16 we were not at SARS so
 9 our presence was around two years for us, sort of 18, 20
 10 months of work.

11 During the diagnostic, which is what we do
 12 typically we conduct a series of face to face interviews
 13 with the management. The list of the people to have been
 14 interviewed was given us by the Commissioner. We
 15 interviewed a few external stakeholders to hear what they
 16 had to say about SARS. We did benchmarks with that revenue
 17 service, I think it was seven, the big ones, both in
 18 emerging markets and in developed markets. We then
 19 developed a set of operating model principles. That was
 20 the starting point and then the design structure and this
 21 was then presented to the advisory board, I think it was
 22 the Kroon Commission at that time and was presented to
 23 them. The organisational structure that was then
 24 implemented was different and we're going to go through
 25 that.

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1 There was a question around the fees I think as
 2 we speak about the mandate I would like to clarify that.
 3 So we gave SARS, we applied a normal fees that we applied
 4 to our private and public sector clients. There was a
 5 discount that we applied to them and the fees were directly
 6 proportional to the manpower they were employing, so one of
 7 the questions was about the success fees so there wasn't a
 8 success fees like normal process that are deliverables. I
 9 think every other month there would be a reconciliation
 10 between our deliverables and the mandate and that would
 11 trigger the payments. Just as a notation given the
 12 structure of the works or once we have defined the types
 13 and I think the discount was 12% at the beginning, during
 14 the course of time as our fees were increasing because of
 15 inflation, so 15, 16 and then 17 the fees we applied to
 16 SARS couldn't change. So that initial 12% discount became
 17 19 and 16 in 2016, 2017. So we can certainly say that the
 18 level of fees be applied at SARS where actually probably
 19 the best we, best, the lowest that we have applied in this
 20 market. As a general notation that fees in South Africa
 21 are much lower than in other European or American markets.
 22 If there is any question on this I can speak about the
 23 structure.

24 COMMISSIONER: Up to you, Ms Steinberg.
 25 MS STEINBERG: I have a question both

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1 about your mandate and about your fees. With regard to
 2 your mandate, it is important to clear up what you were
 3 asked to do and what you didn't do. However, the question
 4 I'd like to ask you, you know let me in fact say all the
 5 questions I'm asking today, I more than anything see myself
 6 as a conduit for the 20 witnesses we heard last week and
 7 the 40 odd affidavits spoke to this directly and the
 8 countless other people we've seen. And I'm going to be
 9 putting to you their concerns and questions and criticisms.
 10 When it comes to your mandate your second submission to us
 11 that you made on the 31st July this year, you say that, "the
 12 core of our work on the operating model focused on
 13 adjusting the structure, that is reshaping the operational
 14 units and reporting lines between them. Bain was not asked
 15 to address other components of the new operating model, for
 16 example governance, decision rights," what you call the
 17 soft issues.

18 Now I have here, it's a paper written by two of
 19 your partners, Marcia Blencoe and James Roods written on,
 20 these are Bain partners, written on April 8th, 2015. And
 21 it's called Design Principles for a Robust Operating Model.
 22 And they say that too often companies make one of two
 23 missteps. Some fail to evolve their organisation quickly
 24 enough to match a shift in strategy, and they give an
 25 example. The second mistake is to move full steam ahead

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1 with a new organisation design that does not match how the
 2 business will actually create value. Consider the
 3 financial services company that moved from multiple
 4 independent divisions to a more integrated model in order
 5 to encourage cross-selling. Gearing the organisation
 6 around this relatively small opportunity, added complexity,
 7 slow decision making and distracted the divisions from
 8 realising major growth opportunities in their individual
 9 businesses. So how can companies avoid these mistakes and
 10 ensure that they forge that link between strategy and
 11 organisation? They need to go beyond structure to define
 12 their entire operating model, the blueprint for how
 13 resources are organised and operated to deliver the
 14 strategy. All elements of the operating model, structure,
 15 accountabilities, governance, essential behaviours as well
 16 as the way people, processes and technology get integrated
 17 to deliver key capabilities must be explicitly designed to
 18 support the strategy. With this high level blueprint
 19 defined, more detailed organisational design can follow. I
 20 think in a nutshell that probably sums up what went wrong
 21 in SARS. There was a new structure but there wasn't a
 22 philosophy, a strategy, a culture, that was sitting
 23 underneath it. And the question I have for you is given
 24 that Bain understands that all too well, why did you accept
 25 a brief that limited you to structure?

<p style="text-align: right;">Page 1706</p> <p>1 MR MASSONE: This is a great question. I 2 would separate the strategy that drives the, or the 3 philosophy that drives the structure and then all the, what 4 we call the software, you mention the culture we have, the 5 behaviours, the soft elements because strategy precedes 6 structure and all the software has to be adjusted to the 7 structure. There was nothing pointing in our diagnostic 8 that SARS had to review their strategy or their philosophy. 9 That's why I said there wasn't really a radical change. 10 Also one could argue that while a bank could migrate could 11 migrate into a new business SARS has a very specific 12 mandate that is defined by the law and customers as well. 13 So there was no need to change the strategy. That more or 14 less stayed the same, actually stayed the same and I think 15 that is absolutely great and I subscribe to everything you 16 read and the point is that in the real world clients decide 17 and you cannot dictate to the clients what they do. You 18 can easily see how an initial mandate on structure can then 19 bring to a one on redesigning all the soft elements and the 20 cultural change. It is very normal that our client hire us 21 on for example on strategy and then afterwards on structure 22 and then there is the cultural change, because for example 23 you need to have all the leadership team in place to 24 redefine the structure because they need to own it, they 25 need to represent it. So working on culture in, I don't</p>	<p style="text-align: right;">Page 1708</p> <p>1 collection and on customs. Mostly on the tax collection 2 actually. And so that's when our mandate finished and we 3 agreed not to continue on that side, in fact the 4 implementation of the structure continued for another few 5 months after we left. That's why I think something has 6 happened there. So that's when we left. 7 Now with the benefit of hindsight we might not 8 have done that last piece on customs which I think it is 9 great work and it was done in extremely, in a great 10 collaboration with the customs people on the project. 11 Still it wasn't implemented because at that time I think 12 things were not going absolutely in a direction, so I also 13 think, I don't know, I'm not a lawyer, I don't think you 14 can interrupt a contract, especially with SARS with any 15 client during it unless you really have something that 16 makes you, that allows you to do that. So when we had the 17 chance we actually leave the place. 18 MS STEINBERG: The other question that 19 I'm going to return to is this, when you present to us 20 today you say what we started with at SARS was actually a 21 winning organisation. It was probably at that stage our 22 best public organisation in this country. It had world 23 accolades, the South African public respect it and you 24 acknowledge that in your submissions to us. But my 25 question is this, I have read through your, the</p>
<p style="text-align: right;">Page 1707</p> <p>1 know June 15 where leadership team wasn't there, wasn't 2 possible, so it was perfectly plausible that you start 3 working with the structure. During the course of the 4 project we represented in many occasions to the leadership 5 team at SARS. The need to work on the soft elements was 6 necessary as well as the change management and the buy-in 7 from the people was absolutely necessary. And there was an 8 offer to help them on that side as well and there would 9 have been in parallel or subsequent but they decided not to 10 use us on that. 11 MS STEINBERG: Now this is a question I'm 12 going to return to a different point, but it's really as a 13 consulting company at what point do you walk away? At what 14 point do you say we can't make an impact here. This is 15 going to cost SARS and at the end we'll go through that, 16 just shy of R200 million for the South African taxpayer. 17 At what point do we say well given the mandate and the 18 limits we'll walk away and we certainly won't put Bain & 19 Company's name on almost authentication of quality on what 20 comes out. 21 MR MASSONE: So we realised what, and 22 actually a very, very small part, probably the tip of the 23 iceberg was happening at SARS around April, May 2015 when 24 the people were changing and a lot of the recommendations 25 that we had made were not happening. I mean on the tax</p>	<p style="text-align: right;">Page 1709</p> <p>1 contemporaneous documents, your diagnostic, your 2 principles, etcetera, very carefully. Nowhere and not once 3 do you acknowledge that you start with an organisation 4 that's working, that of course can be improved as any 5 organisation can, but what you're starting with is a solid 6 organisation. When I read your diagnostic and onwards 7 frankly it sounds like you're starting with a failing 8 organisation. But right from the word go you're making a 9 case for radical change which is in fact what happened 10 without the acknowledgement that you have a winning 11 organisation that can be improved. Why? 12 MR MASSONE: I remember a document where 13 we were saying that, I don't remember, where we used a, I 14 wouldn't use winning but it was an organisation that was 15 okay. Still when you look at the structure and I think 16 we're going to the case for change, the organisational 17 structure didn't make any sense, and I will try to 18 elaborate that in more professional terms. From a 19 balancing perspective, the extreme concentration, the lack 20 of checks and balances and, it might have worked from 21 certain parameters but when you look at an organisation and 22 you're professional and that's your work you do, you see 23 well this is not how it should be organised. 24 [09:27] Actually I may argue, I think we are going to go 25 there, I think later. I think if they hadn't changed and I</p>

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1 think the radical word comes from number of people that
 2 changed during that period, more than the other changes but
 3 they hadn't changed the key leadership. With the new
 4 structure we would be sitting here talking about a stronger
 5 SARS, with the structure we designed.
 6 COMMISSIONER: Ms Steinberg I think it's
 7 going to be more convenient for us -
 8 MS STEINBERG: Yes.
 9 COMMISSIONER: If we allow the witness to
 10 go through the whole presentation so that we can see what
 11 we're talking about before we come to that.
 12 MS STEINBERG: I'm, I agree with that
 13 judge. I'm happy with that.
 14 COMMISSIONER: Just as far as you've gone
 15 though, I've got a few questions I'd like to just clarify
 16 and then perhaps we'll allow him to carry on.
 17 MS STEINBERG: That's fine.
 18 COMMISSIONER: Can I just talk about the
 19 time that was taken for this lot.
 20 MS STEINBERG: We, can I suggest we adopt
 21 what you're doing because I'll lead all that evidence -
 22 COMMISSIONER: Okay.
 23 MS STEINBERG: In time.
 24 COMMISSIONER: Okay.
 25 MS STEINBERG: I think your suggestion is

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1 right, we should let Bain finish, please carry on Mr
 2 Massone.
 3 MR MASSONE: So I'm going to go through
 4 the case for change.
 5 COMMISSIONER: I think let you take us
 6 through your whole presentation, whatever you wish to say
 7 and then counsel will pose her questions to you.
 8 MR MASSONE: Thank you.
 9 COMMISSIONER: I think, is that
 10 convenient to you?
 11 MR MASSONE: Thank you. But feel free
 12 just to stop me if something that I say is not, so
 13 basically when I speak about is the outcome of the
 14 diagnostic. Just as, remember we interviewed 33 senior
 15 executives. It was an online survey that is anonymous so
 16 we rely a lot on that. Clearly it's one of the many data
 17 point that we have and it was administer, well the
 18 responses came from a 184 people. The external
 19 shareholding engagement and then the benchmarks from other
 20 people.
 21 I will start reading some quotes and clearly,
 22 quotes for us are, when we interview people a summarised
 23 version of what that person has been telling us and so it's
 24 not a sentence just taken out of context and so I would
 25 read, I will read some of that. Excise collection is in

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1 real trouble and we are missing out on revenues. Since the
 2 separation of excise specialists the custom frontline staff
 3 don't think it's their responsibility. In general our
 4 current structure is ineffective. There is not enough
 5 attention to customs. It is not a separate division with
 6 sufficient senior accountability that is a GE or a CO
 7 responsible for customs. The risk engine rules are not
 8 sufficiently robust for customs. People can declare
 9 something different to what they actually carry and since
 10 we don't, we don't do adequate post clearance audits we
 11 would never know what, who is cheating, who has cheated the
 12 system. No link between the TAU system and enforcement and
 13 the border post managed operations. So if they're
 14 investigating company X and company X is caught smuggling
 15 at the border the enforcement function has no way of
 16 finding out and generally the customs system register is in
 17 the need of a clean-up. Enforcement audit is, in customs
 18 is not happening. The skill set for this is very different
 19 and employees in the current enforcement teams do not have
 20 the skill. So it is neglected leaving people to get away
 21 with a lot of violation. Customs requires a very different
 22 skill set and culture to be effective. I'm not sure we've
 23 given the space for that to be developed and maintained.
 24 Custom and excise are not the primary authority
 25 at ports and don't have control of goods at ports. So I'm

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1 selecting some enforcement as a function does not exist
 2 within customs at the moment. Enforcement should urgently
 3 be reviewed and improved as it impacts revenue collection,
 4 should sit directly under customs. The risk engine cannot
 5 handle customs, state warehouses are poorly managed. This
 6 was in custom on, for example on collection enforcement.
 7 When we stopped too many refunds for investigation and they
 8 sit in backlog for a long periods we have really negative
 9 impact on the economy. That management KPI, that emergence
 10 KPI is not focused on cash collection but on debt reduction
 11 which include write-offs. The rules used to allocate debt
 12 to the debt book are sometimes wrong. Enforcement is
 13 currently split across different parts of the business with
 14 no single individual accountable for enforcements so many
 15 cases of non-compliance are not dealt with. There's a
 16 conflict of interest between KPI and governance policies
 17 committees. There is poor data in the data book. There
 18 are gaps across different tax payers segments. Enforcement
 19 doesn't differ between civil and criminal and often cases,
 20 and often OPS audit goes for a criminal cases first.
 21 On governance we have lots on paper. Committees,
 22 clear rules of engagement but not enough enforcement of
 23 this principle. We need a stronger compliance audit
 24 function in a board. The compliance risk committee is an
 25 excellent example of something that looked good on paper

1 but is really not functioning. It is a shame, this is such
 2 an important committee. There are too many handovers, to
 3 many divisions that do similar functions. Generally the
 4 organisation is working in silos. There are too many
 5 layers and too much red tape that stands in the way of
 6 effective decision making. SARS should review the decision
 7 making levels and red tape, require resolution because it
 8 creates inefficiency, inefficiencies in the SARS operating
 9 model. Policies exist but have not been implemented and
 10 there is no delegation authority to do this. The integrity
 11 of reports issued is questionable. There are a lot of
 12 processes that are in place, the problem is that in reality
 13 they do not function. I have 32 pages of that.

14 So what I'm saying is that we heading, and maybe
 15 it was a selected group of people, like I said the list,
 16 many people had already left before we arrived in SARS.
 17 But this is what we were listening. Now we take this as a
 18 data point because people have opinions, sometimes they
 19 inflate the opinions and they are convinced about that.
 20 What we do is then check with the facts and typically in a
 21 slide is where it will be presented, this is what people
 22 are saying without mentioning who is saying that and it is
 23 in fact a corroborates or not. So a lot of the things that
 24 were said we actually didn't find any evidence in the
 25 limited amount of time and we disregard that some actually

1 were proven but then some of the numbers and we, we then
 2 represented to the team.

3 In terms of the numbers. So we started with the
 4 tax gap, I know there's been a lot of discussion so we
 5 didn't calculate any tax gap. It was a calculation that
 6 SARS had done earlier, years before and I think it took 11
 7 months for them to do that. We're not economists so that's
 8 not what we do. We just check from the moment it was
 9 calculated until now if there was evidence of a reduction
 10 of the tax gap and the evidence was that no it wasn't being
 11 reduced and there were two different ways of calculating,
 12 in other way there wasn't and this is one of the things,
 13 like there is an opportunity to do better and again it
 14 doesn't require radical transformation. It's there are
 15 ways to do better and we saw where the areas in the tax
 16 collections and customs indeed this could have happened.
 17 So there was a question of the unregistered business. So
 18 between 1.5 and 2.5 we said probably half of the 1.5 should
 19 be of attention to SARS. I know there's been a discussion
 20 now about the people that don't file their returns but are
 21 registered. What is an additional problem. There are
 22 three problems. People that do file but under declare, the
 23 people that are registered but don't file and then the
 24 people that are total evaders because they are not even
 25 registered and there were many in our analysis. There was

1 the analysis on the high net worth individuals where SARS
 2 were focusing their attention on the top 400 in this
 3 country while with the same definition just using public
 4 available data we saw there are around 5 300 individuals in
 5 South Africa that are in that bracket.

6 We also said there's probable another 40 000 that
 7 we would call affluent. They actually are potentially of
 8 interest of SARS in terms of audits and in terms of
 9 understanding if they are declaring. There was the idea of
 10 creating a web of assets because some of this individual
 11 have very complex wealth structures. So clearly there was
 12 a need to step up the game there.

13 There was a question on the debt book which was
 14 being slightly reduced in percentage to the revenues but it
 15 was still quite huge. It was 90 billion in it, it was
 16 highlighted by many people as an area of potential
 17 improvement. One of the things we found out is that there
 18 are collection teams, they work in teams, if you took the
 19 best quartile and the lower quartile there was a 14 to 1
 20 difference in productivity. Clearly we didn't know at that
 21 time why but clearly this is something that was in the need
 22 for, so what I'm alluding to here, Advocate is all these in
 23 consulting mind are little things that you want to work on
 24 and you want to change, you want to improve and I know that
 25 when you read the slide and say okay these people are

1 really offending SARS there's nothing, this is probably
 2 true in most of the organisation we go through, there's
 3 nothing offensive and maybe the slide alludes to something
 4 really wrong going on but for us it's just an area of
 5 improvement in a very septic way. So that's why even if I
 6 am not speaking about all these things and reports again I
 7 think it wasn't about a radical change and I can say again
 8 if the people that were in SARS in 2014 were still there
 9 now with the new structure and all these operation
 10 improvement I think we would have a stronger SARS now. I'm
 11 convinced about that.

12 If I continue there was the question of the debt
 13 equalisation. So well this is a concept that they
 14 explained to us, it's not that we invented it. An
 15 individual has a number of legal entities, one of these
 16 legal entities is asking for endorsement from SARS but on
 17 the other one he owes money to SARS, you can do the
 18 equalisation. So then you basically reduce the debt by
 19 just taking the money back from the people that are asking
 20 for endorsement. There was a whole point on customs and a
 21 lot of the quotes were on customs. I was puzzled about
 22 hearing someone said I was the head of customs, there
 23 wasn't a head of customs in SARS at the time. There were a
 24 number of people with a custom hat with different roles.
 25 The new structure introduced, and I'm going to show that,

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1 introduce a head of customs. In many countries custom is
 2 actually a completely separate agency from the tax
 3 collection and so it's a very, very important and very
 4 different activity. So and here I think I go back to one
 5 of the testimonies, I think Mrs Vivier said that the number
 6 61 for the World Bank was wrong. Actually it was the World
 7 Economic Forum ranked SARS 60, SARS customs 60 first in the
 8 ranking. So apologises for that mistake in the slide.
 9 It's the World Economic Forum not the World Bank. But the
 10 number 61 is absolutely right. I, we went to see also the
 11 World Bank report. The World Bank report there, would have
 12 been available at the time showed SARS 42nd with a score of
 13 3.11 out of 7 in the same topic of customs. The number 18
 14 she, I think she refers to is for 2016 reports. So they
 15 were being one year and a half later. So in any case
 16 whatever report you use there was evidence to say that
 17 there was a lot of area of improvement and this was matched
 18 by all the interviews and all the meetings we had with the
 19 people from customs that were actually showing us certain
 20 degree of frustration. The biggest area was about, and I
 21 know there was a point on the opportunity to increase
 22 revenue from customs, I think customs for us was more a
 23 question of national security then a question of revenue
 24 collection and which I think is the difference between
 25 having a pure risk management approach, where you calculate

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1 risk to an approach that says I want to have physical
 2 control of the goods because you need to have physical
 3 control, you want to avoid is the import of illicit goods
 4 and all that, that can go through a port and in particular
 5 we focused our attention on Durban and then subsequently in
 6 Olivier Tambo and both issues were there.
 7 If I can elaborate on the second, just to say the
 8 degree of, in South Africa (inaudible) number of containers
 9 that she contested number of containers that are without a
 10 declaration was absolutely right. In South Africa you can
 11 land a container and have 28 days to submit a manifest.
 12 That's how the policy works. So they're not offending the
 13 system by doing that. We thought only that it was a bit
 14 not right. Also because that ship has probably been loaded
 15 weeks, you know months earlier. So the manifest is well
 16 known to a number of entities and in particular we found
 17 out that when a container lands and SARS doesn't know it
 18 has landed, he cannot control it. So for 28 days in this
 19 case it could have been even higher in certain months. 20%
 20 of the containers we're talking about tens of thousands of
 21 containers every month were not in SARS control. This
 22 should, they can stay three days in the port and then they
 23 have to be sent to the national depot which clearly becomes
 24 immediately full and they are moved to the depots and no
 25 one is able to able control, was able at the time to

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1 control what was happening there. Custom hadn't put any
 2 seal on that.
 3 So one of the things we suggested is we plug into
 4 Transnet systems because they have access to the data
 5 because they are the ones that need to download the ships
 6 so they know what is arriving and even a declaration is not
 7 there, in fact we were insisting to change the rule of the
 8 28 days, I mean people should do the declaration on
 9 arrival, but that's a separate matter. To send them to the
 10 scanner so that at least SARS known there is a container,
 11 Transnet told us it's on the land we send it to the scanner
 12 where we have the manifest we can reconcile it. So I'm
 13 going down a, down a very detailed thing, but to say these
 14 are things we were working on, again not suggesting any
 15 radical, although these are very important things for I
 16 think any citizen. But these are the things we were
 17 working on and we were kind of happy to work on because
 18 it's very, very important. Also I don't agree on the point
 19 that you, define a risk engine asked on the number of
 20 people you have on the ground. I think it's probably the
 21 other way around. You decide the level of risk you want to
 22 have as a country and then you decide how many people you
 23 need. If you need 10 000 people more well be it, if that
 24 is a national security matter. It would be like the police
 25 stopping to receive phone calls when all the cars are busy,

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1 all the officers are busy. So customs was a big part of
 2 that, both on an organisation structure and on the
 3 operation and improvement.
 4 There was a point on the service channels, I
 5 think it came up in some of the transcripts about the
 6 queues and the seasonality of the work. There was also a
 7 question that we raised about the efficiency of that
 8 channel because it was very expensive, the physical
 9 building, the number of people especially because then you
 10 work in certain part of the year. We never really worked
 11 there but it was one of the areas we highlighted.
 12 Including digitalisation now allows you to have a much
 13 capillary, much more capillary reach with a lower, lower
 14 cost and that would have been in an ideal world a
 15 subsequent area of work, not a priority but certainly
 16 something important in the long term. There was also the
 17 point about the disengagement of the people in the branches
 18 which was quite high, it's all in the material. On the
 19 organisation structure so clearly the one thing that it
 20 clearly, it's evident is the, there are nine reports but
 21 then one of the reports represents 70% of the people and a
 22 congregation of different activities and functions, they
 23 don't allow the separation, the checks and balances in the
 24 way that we saw in other countries and I think this was,
 25 this was also said by others.

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1 There was a, the point around customs which also
 2 was spread, enforcement wasn't a separate activity. There
 3 was a governance issue. There was a point on decision
 4 effectiveness. So one of the things we asked and I think
 5 it's probably in the same, in the same article you
 6 mentioned out of the paper would be that simple tool which
 7 is we asked the clients to rate themselves around a centre
 8 parameters in terms of effecting so do you have clarity,
 9 what drives value, do you make decision effectively, are
 10 you working collaboratory and so on and they were quite
 11 negative on themselves.

12 One of the question was also do you think that
 13 SARS should change to address the challenges of the next
 14 five years and the score was very high. I think it was 3.2
 15 out of 4, I think we have a slide on that. There was the
 16 point around the performance management and normally in an
 17 organisation where the performance management works we see
 18 a (inaudible) so only 5% of the people get the higher
 19 scores. In SARS it was 30% so that alludes to a little bit
 20 of lack of meritocracy. Again not something extraordinary
 21 new, we find it very often but that's one of the things you
 22 want to put in work and then one important point for us was
 23 the, there is something we call the employee advocacy. We
 24 asked, and these are the 184 and these are the top of the
 25 organisation. We ask them a very simple question which is

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1 on a score, on a scale from zero to 10 how likely you are
 2 to recommend SARS as a place of work to a friend or family.
 3 If they say 9 out of 10 they are promoters and this
 4 typically are the people that drive the organisation, the
 5 ones who are totally committed. If you say 6 to zero you
 6 are detractor and these are people that are not happy for
 7 many, many reasons. In the middle you are neutral. You're
 8 just waiting for Sunday to happen and the score was minus
 9 23 which is very low of course like anything. We have a
 10 database where we sort of say a thousand companies we say
 11 where are the others and is 23 high or low, 23 I think is
 12 low in any standard. So I think what I can say is that
 13 there were a number of, within the same strategic framework
 14 and again we probably the same leadership team there were a
 15 number of areas, the structure and on the operational
 16 process that could have been improved. So this was our
 17 case for change. I hope I represented it in sufficient
 18 detail. Every sentence I used required weeks of work or
 19 hours of work to put together the numbers and numbers were
 20 given to us by SARS and we have no doubt in that they were
 21 the right ones. So I think that on the structure in
 22 particular and on those, call them activities or processes
 23 custom and tax collection the case for change were very
 24 strong.

25 COMMISSIONER: Yes. I think you could,

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1 you should finish the whole presentation. You've made,
 2 told us about the case for change and I think you probably
 3 now going to turn to what change was made.

4 MR MASSONE: What change was made, yes.
 5 [09:47] Structure, employer here will need, sorry for
 6 this. So this is the old structure unless there is any
 7 question then I will jump to the structure we proposed, I
 8 think I'll spend time on that. So I wouldn't go the same
 9 principle, we can go back later. So this is the structure
 10 we, well before we recommended, you will see that the four
 11 are very similar I think one of the – witnesses said that
 12 and which we stipulated a slight adjustment typically
 13 looking for a smaller or bigger span of number of reports
 14 and of control. So when we benchmarked the international
 15 organisation there were mainly two axis around which
 16 organised a tax collection and customs.

17 One is the taxpayer source of revenues and the
 18 other one is the face of the business. Registration,
 19 audit, enforcement etcetera. Many of them, most of them
 20 have a hybrid so they actually mix the two and their
 21 guarantee is both the focus on the taxpayer that you need
 22 to know, educate, so those are the folks on the separation
 23 of functions. And this concept of fragmentation I think
 24 we're going to discuss it a little bit because it was part
 25 of some of the witnesses, is important to maintain the

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1 checks and balances.

2 So in very simple terms what we suggested is you
 3 have an individual, it's a PIT, Personal Income Taxes, you
 4 have a business which include SME and large, we would have
 5 moved, by the way our net worth individuals with a specific
 6 focus outside the corporate and within the personal because
 7 they are individuals, as sophisticated as they are they are
 8 still individuals. And then you have customs which
 9 deserves to be separate, a separate unit. In this case you
 10 see one of the issues we found in the structure is that
 11 large business centre which we wanted to strengthen, I know
 12 it went the other way around, there was a GE running the
 13 organisation as opposed to a chief officer which gave more
 14 seniority, more autonomy, more power. So we wanted to
 15 bring the organisation up. So after these three then there
 16 are three functions that cut across. One is enforcement
 17 which is important to keep it separate from service and
 18 education from audit and enforcement. The service channel
 19 that could cut across and be a service not only to privates
 20 which was the case at the time, but also to businesses.

21 So one example I remember we made is in
 22 Rustenburg, you have a lot of companies, a lot of mining
 23 companies, but a lot of companies in general, so it would
 24 be good to use the branches also for them. And then you
 25 have IT which creates a classical function that cuts across

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1 and you want to have one single IT, etcetera. And then the
 2 staff at the centre which represent the rest of the
 3 governance or finance strategy, governance HR and legal.
 4 This is the structure we recommended. I don't know if
 5 there are any questions on that.

6 COMMISSIONER: I think there will be
 7 questions, let's hear the whole -

8 MR MASSONE: So the other structure very
 9 similar and play with the idea of a deputy Commissioner was
 10 there before, can be a head of customs again to have even
 11 further focus on customs, even further importance of
 12 customs. There was a lot around people in customs feeling
 13 pride about being part of customs. The second one is again
 14 span of control, you can aggregate some of the staff, you
 15 create a chief of staff and for legal a chair of finance.
 16 You can put together individuals in businesses, again big
 17 job, basically it becomes a little SARS, if you want SARS
 18 on tax side. And this is basically the variation on the
 19 team that we recommended. What then was implemented is the
 20 structure. So we changed the way, so we used the same way
 21 I recommended to explain the changes.

22 So there were two major deviations between what
 23 we recommended then was we were told was approved, well
 24 decided by the Commissioner and we were told, approved by
 25 Treasury later on in August, one is the concentration of

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1 business individual and in the same structure also the
 2 branches and the service channel. That was the first one
 3 and the second one, possibly less important is a few of the
 4 officers reporting to the Commissioner would be put in a
 5 strategy and communication doctorate.

6 These are the two changes that – and so the
 7 question – so why did you accept that because still this
 8 is, in our opinion, much better than the structure they
 9 had. So there is customs, you still guarantee enforcement
 10 as a separate function and yes there is concentration of
 11 people. People don't necessarily drive power, branches
 12 don't have power because it's a service function, certainly
 13 people sort of equates to power to a certain extent, but it
 14 is 4 500 I believe compared to the 9 000 there was before.
 15 But in particular is the separation of the function that we
 16 were looking for. And there's much more order and lack of
 17 duplication than what they had before, so finance was
 18 spread around, the SARS legal was around SARS. May I just,
 19 as to give a flavour, I know legal was one of the things
 20 that came up. I think, I understand that if your, a lawyer
 21 by your side and all the time it's easy to dialogue with
 22 him or her and have the service you want and the way of
 23 working is easier. All the companies we know have a
 24 centralised legal office. There are so many reasons to do
 25 that and then if you take six months for you to have the

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1 help of a lawyer or approve a budget for a lawyer I think
 2 there is something else. This has nothing to do with the
 3 structure, someone not doing his work or the processes or
 4 the budgeting not clear. And there were many of these
 5 phenomena of no I need to have my accountant here, I need
 6 to have my lawyer here. I could actually argue the
 7 opposite. If they had a central legal office and we had
 8 said to disperse it a lot of the people would be, or
 9 fragmented sorry, would have been happy because now I have
 10 my own lawyer. I'm sure that the chief of the legal office
 11 would have been very upset and a lot of other people. So
 12 what I say is there's always a trade-off.

13 In this case we thought that centralising legal
 14 office and finance was giving more efficiency,
 15 consolidation of certain functions allows you to point on
 16 the best people. In the legal office is also how you have
 17 one single point of view for a firm which is incredibly
 18 important, you can't have different lawyers saying
 19 different things within the firm. You could still have the
 20 specialisation you want in a central office, you can have
 21 the one that specialises on contracts, the one that
 22 specialises on litigation, the one who specialises on
 23 customs. So you can still maintain a specialisation, it's
 24 in the processes you create. And I'm saying that here
 25 because I think that's one of the areas that I would like

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1 to cover in how this structure could not have caused, in my
 2 opinion of course, all the turmoil I painfully read in the
 3 transcript. I don't know if you have any questions on this
 4 structure.

5 MS STEINBERG: I think carry on and
 6 complete your –

7 MR MASSONE: So I think the next point is
 8 our implementation of the structure. And again I say I
 9 believe there were further changes down the line that
 10 happened and I cannot comment on those because I would just
 11 – heard via the grapevine, I think you call it and so I
 12 cannot comment. But I believe that from what I read there
 13 were further changes. So this structure we were told was
 14 approved in August 2016, around October, November 2016 the
 15 chief officers, remember that many of the senior people had
 16 already left by then, start to arrive. It was actually
 17 comforting for us because on paper they were actually very,
 18 very reputable and very, very strong individuals from the
 19 central bank, from an audit firm and so from other parts of
 20 government so it was actually comforting. And clearly we
 21 felt at the time there was some leadership missing because
 22 physically the people weren't there and they eventually
 23 arrived. And it's not unusual that it takes a few months
 24 to complete the ranks. It's just people have a need to
 25 leave the job they have and so it takes time. So October

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1 arrive. So between end of '16, '15 and January '16 the
 2 implementation starts. Our role was PMO if that makes so
 3 we were tracking what was happening. What had to happen
 4 was provided as a script by a law firm and I want to
 5 explain what that was. And we recognised that because we
 6 saw that happening in other companies where we'd done
 7 similar projects.

8 The people applied for jobs, they can apply to a
 9 certain amount of jobs, there's some rules of the game you
 10 need to write, you can apply for three to ten. People are
 11 interviewed and then you're given feedback, you had the job
 12 or you didn't have the job. The Commissioner appoints the
 13 first line and every chief officers appoint a second line,
 14 the GEs typically and so on and so on and so on. So it is
 15 done in waves. As you do that people can suggest changes
 16 to the structure which is if you want a consultation
 17 process. I know that's not what you were alluding earlier,
 18 but that is a consultation process and the recollection is
 19 that there were 370 change requests done at different
 20 levels. Some directed by the chief officers, some other by
 21 more junior people.

22 150 were immediately accepted, 50 were
 23 immediately rejected and a number of them parked for future
 24 review which is not unusual that you say okay let's start
 25 with these and then as we learn there will be some other

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1 changes, some other small tweaks here and there that we
 2 need to do. During that period our role again was just to
 3 make sure that these activities happen in a timely fashion
 4 and we had no say and we never have any say on who gets
 5 what job or in the interviews or on anything that relates
 6 to choosing people. And of course not even on the
 7 communication to these people that I also read that went
 8 horribly wrong.

9 So this is the implementation of the structure,
 10 this implementation lasted because it was a lengthy process
 11 and probably was slowed down at one point. I believe it
 12 lasted until October '16 and we left in May '16. So this
 13 is the implementation. I have summarised specific points
 14 that were asked about the LBC, etcetera, but maybe if you
 15 want to start with the questions.

16 MS STEINBERG: No -
 17 MR MASSONE: Okay. So I will start with
 18 the LBC, I think this is the order you gave us. And I will
 19 repeat some of the things that we said, but please allow
 20 me. So one of the points was the point of accountability
 21 in LBC was a GE. Not the chief officers, we were
 22 suggesting to have it at a high level. Very important is
 23 the separation of activities between the taxpayer service,
 24 the strategy, the service and the education and the audit
 25 and enforcement which is a model that we find works

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1 extremely well. That's why the breakdown is not
 2 necessarily the problem. In all the banks where you have a
 3 front end and then you have a risk management, the people
 4 who actually make a decision about giving a loan for
 5 example, but many, many other ways and they work in a
 6 collaborative way. That positive tension creates the best
 7 outcome. So the commercial development in this case the
 8 tax collection, but also the risk management. And that was
 9 a very important point for us.

10 There was a fragmented accountability of the tax
 11 register, it was spread around, it was then re-compacted
 12 under the CFO. There was the point about a channel
 13 integration so the branches were only working for the
 14 privates, not for the corporates. We thought it might have
 15 been, this came out in the interviews, we didn't have a lot
 16 of evidence of that, but there was a strong allusion to
 17 that that there might have been a lot of emphasis on the
 18 service and less on the enforcement. There was the
 19 question about the debt that was disputed. 80%, actually
 20 84 I think disputed, that is a high number however you want
 21 to look at it. So there was – which also compounded with
 22 the rest of the debt. And ja including with the
 23 settlements that came afterwards.

24 And there was the – it came up in interviews that
 25 when it came to BEPS Base Erosion and Profit Shifting they

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1 themselves told us that they had to step up the game and
 2 that. So again the idea was to strengthen both components
 3 of the large corporate, so the service and the strategy
 4 around them and the enforcement, the intent was absolutely
 5 not to damage LBC at all. It was actually to make it
 6 stronger and more relevant in the organisation. Yes and I
 7 spoke about finance and the other function that were legal,
 8 they were fragmented and were then recomposed. There's
 9 also the point that this is in line with the OECD
 10 recommendation for the collecting agencies. There was also
 11 the question about the debt collection, pre-final demand,
 12 post-final demand and there was discussion of that. So let
 13 me elaborate on that. So that was very big, but also what
 14 we found out is that it's very different what you do and
 15 who should do it. The activity you do before you get the
 16 payment so the pre-final demand where you need a lot of
 17 information of the customers. There are a lot of people,
 18 the numbers are huge, so actually you want to industrialise
 19 it. For example with SMSs, this concept of collectability
 20 or something we then worked on afterwards. So this is the
 21 area here on a pre-final demand is making sure that the
 22 information is there, it's timely and not expensive for
 23 SARS to provide it. From the post-final demand where it's
 24 happening that the client, the taxpayer is not paying, so
 25 then the toll has to change, numbers are much smaller and

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1 every case is different. So there was rationale of
 2 splitting the pre and post-final demand. Also when you
 3 have 90 billion and you starting making it kind of in
 4 smaller pieces is actually easier for people to run it.
 5 And there was a secondary consideration, the primary was
 6 these are two different activities and would have more
 7 focus. So this was in the LBC.
 8 There was a question on the special (inaudible).
 9 We certainly never made any comments on the lack of
 10 effectiveness. We said at one point and we alluded to
 11 other countries which have military forces, dedicated
 12 military forces to do enforcement with thousands and
 13 thousands of people, the best infrastructure and the best
 14 analytics in this world. And we alluded to the
 15 Commissioner in another situation where in the future with
 16 the right lodgement in the right security cluster I think
 17 that would have been something that would help SARS in the
 18 long term. And in the new structure old boxes are exactly
 19 in the same place and the idea was to create a stronger
 20 enforcement because now you are putting all the
 21 enforcements in one single unit. So absolutely we had
 22 nothing to do with any dismantling that happened there or
 23 might happen there, absolutely, absolutely.
 24 There was a point about audit enforcement, if
 25 audit should be in the taxpayer service or should be in

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1 enforcement. Like I said there's no (inaudible) that says
 2 well if this is the input this is the outcome, so it's a
 3 judgement call. What we thought, which also is what we
 4 find in many agencies is that audit is not an education or
 5 a service function and should belong more to an enforcement
 6 environment where you're actually controlling your customer
 7 because – your taxpayer because something in the risk
 8 engine has said that something is wrong. And so having it
 9 in the audit I know – sorry in the taxpayer service creates
 10 some advantages, absolutely. Still what we had in our
 11 structure was one single point of accountability in the
 12 relationship management and there were numbers of them
 13 divided by segments. So if properly reconnected you could
 14 still have one single point of accountability that speaks
 15 with the client and provides information and keeps them
 16 updated, that they know what's going on, but also the
 17 separation of function between who is servicing the
 18 customer and who is auditing the customer because they need
 19 to be kept separated. Which alludes again to the kind of
 20 processes and ways of working and people knowing each other
 21 and knowing the job more than a structure. There was a
 22 point around the customs, so I think I touched on that, so
 23 161, the number is absolutely correct, apologies, it's not
 24 the World Bank, it's the World Economic Forum. We went to
 25 see the World Bank report, it says the LPI, in 2014 the

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1 score was 3.11 out of seven and the rank for South Africa
 2 was 42, I used 2014 because that would have been the one
 3 available. We didn't use it at the time, we just went now
 4 to see it okay, what happened there. The number of 18 as a
 5 rank alludes to the year 2016 and that was later. I think
 6 in 2018 the number is 34 and dropped down again.
 7 We confirmed the number on corruption, so the
 8 question in transparency international global corruption
 9 barometer for 2013 that was available at the time in 2015.
 10 Question number 7 have you paid a bribe to any of eight
 11 services listed in the past 12 months. The data for tax
 12 revenue and customs South Africa is 16% says yes. Mexico
 13 is 16, Nigeria is 22 and Australia is one. So we confirmed
 14 that the data we presented and used at the time are
 15 correct. There was the point around the success rate for
 16 the scanner and utilisation rate for the scanner. We
 17 confirmed utilisation rate of the scanner, there was not
 18 self-reported, it was coming out of the numbers. There is
 19 a certain number of scans so you can do every day and the
 20 number of scans you actually have done. So it's pretty
 21 easy.
 22 [10:07] We asked the operator to self-report to give us
 23 the estimation is the success rate. I don't know if the
 24 number is right. That's - that was the best date available
 25 at the time. Typically the people that do the job know

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1 more than the people sitting at the corporate on certain
 2 topics because that's what they do. It might have been
 3 mistaken but I think the number is accurate as we could get
 4 at the time. There was the point on implementation in
 5 customs, so in reality what we did at customs also in the
 6 third piece was a pilot, was not implementation. It was
 7 done in the operations so it was done directly with the
 8 officer at customs in Durban and then Oliver Tambo and it
 9 was very operational in that sense but it wasn't yet
 10 implementation, so we were still doing a pilot, sort of
 11 laboratory, working with real elements of customs but still
 12 not interfering with what's happening at customs. And
 13 actually I want to say that when you read the transcript it
 14 seems that Bain was all over the place. Consultants
 15 typically work on 5% of what's happening in the company,
 16 10, depending on what they're doing. There is the rest,
 17 90, 95% which is the business as usual. Life goes on as
 18 the consultants do their own analysis and slides and
 19 meetings life goes on. And we were not involved in any way
 20 on that. So the line, the chief officers and going down
 21 have to take accountability for the business as usual at
 22 SARS in all ways, including the structure in the way that
 23 was implemented.
 24 I am a bit puzzled about the question on the,
 25 what we recommended on custom was right, was implemented,

1 was broken. If you see in all the structure, our
 2 structures and the one that was implemented at customs,
 3 never changed. So I don't know, maybe she's referring to
 4 the tax part, I don't know. There was no change in custom
 5 as far as I'm concerned so I don't know what she could be
 6 referring to. Certainly we never worked with that witness
 7 because she was not part of the project so I don't know
 8 where she's taking information on our work, in this case.
 9 The manual selection, there were two people. I have the
 10 names, it's interesting for you, I went back to some
 11 research. They were doing manual selection. What we gave
 12 them is more information to the property. So we gave them
 13 the information but we, I'm actually overstepping here.
 14 There was a team that was led by customs of which we were
 15 part. They gave this information to the two people that
 16 were doing manual selection.

17 One point – and I couldn't find the slide – this
 18 is things happened long time ago. I remember as an
 19 experiment we did a test, there was the hit rate of the
 20 risk engine. It has no validity statistically of course
 21 because it was a small amount of time and it was just a
 22 test. Risk engine, what is the hit rate? Officers
 23 choosing which containers to control and then a Monte Carlo
 24 simulation on the number of containers. So the hit rate of
 25 the Monte Carlo assimilation was higher than the officers,

1 higher than the risk engine. So that wasn't our concern.
 2 We never had any chance to look at the risk engine because
 3 it was secret, but the officers raised - and I read that in
 4 the courts by the way – raised the issue. One of the
 5 things we tried to change, I don't know if it eventually
 6 happened, is the fines and the escalation of them.

7 And I go back to X-ray. If the risk engine
 8 determined that a certain truck had to go through an X-ray
 9 machine, and there was a point about how big the Durban is,
 10 I think 6 kilometres between the port and where the X-ray
 11 machine is, so no one can control and block you and force
 12 you to go there. And if the truck didn't show up at the X-
 13 ray machine, the fine was R10 000 and we thought it wasn't
 14 enough as a method to make sure the people actually showed
 15 up.

16 Second, we saw that there were no data on who
 17 were offenders. If there was a repeat there was a pattern
 18 there for the same so we actually aggregated the data and
 19 it came out in a number of shipping lines. For many
 20 reasons, I'm not suggesting anyone was doing anything
 21 illicit but certainly were repeated offenders to not
 22 showing up at ex-ray. Maybe there can be many other
 23 reasons. So this is so many things that happened at
 24 customs, I'm not sure that it would be nice to have a
 25 discussion with Ms Vivier so we confirm the problem on the

1 number of containers. Like I said before, 20 days, 6% of
 2 that – actually this is important. I was forgetting it.
 3 After 28 days where the number of undeclared containers can
 4 be, in that case it was 20, it can be even higher, there
 5 were 6% of containers that could not be reconciled between
 6 Transnet and SARS. 6% is a huge number. And it's
 7 complicated by the fact that some of the containers are not
 8 staying in Durban, are actually moved to City Deep. Some
 9 of them are on a train, some of them are on a truck.
 10 Customs doesn't seal them because like I said they don't
 11 even know they are in the country and so anything can
 12 happen. That's what we were told and it didn't make really
 13 sense. One other important notation on all these things
 14 that we found out in customs is that I think Mr Vivier
 15 speaks about the trans-shipment, which are import
 16 (inaudible) and it's going to Zimbabwe, that doesn't get
 17 controlled, well that was a big problem because no one at
 18 the border Beit Bridge would control that container
 19 (inaudible) content would actually be going out of the
 20 country, at least at the time. I'm talking about things
 21 happening in 2016 so it might have changed now. There was
 22 a point about stopping organisational data, we didn't stop
 23 anything, the modernisation programme sorry, we didn't stop
 24 anything. Like I said we were working on our separate
 25 pilot and so if they stopped, I don't know, we were taking

1 into account the fact that the new customer was coming to
 2 be implemented. You actually have to, in those days the
 3 law was signed and we were taking into account what was
 4 happening, so the pilot was consistent and it would have
 5 been a good improvement.

6 Oh, on the tax collection initiatives we, so
 7 nothing to do with structure. We were trying to help on
 8 the collection. We launched a number of initiatives, one
 9 was the debt, that was the things that actually frustrated
 10 us a lot because it wasn't happening – I'm talking about
 11 April 16 at this point and as well as with the fines and
 12 customs. There was this idea of enhanced contactability so
 13 improved the communication, making sure everyone knew
 14 exactly when they had to pay, what bank account and what
 15 amounts and it wasn't the case at the time. There was the
 16 automated debt collection so authorised banks to collect
 17 the money on our behalf.

18 There was the performance improvement in the
 19 teams that I mentioned, the collecting teams, the 14 to 1,
 20 there was a prioritisation of debt book because when you
 21 have so many that you need to say where do I start from and
 22 so we thought that the prioritisation was not done in the
 23 most effective way. And then one important thing,
 24 unfortunately was discontinued after we left, was these
 25 campaigns on SMMEs and let me elaborate a second on it.

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1 So you can have a lot of entities in South
 2 Africa, SMMEs in particular some of them might not be
 3 paying taxes. You have a limited amount of auditors and
 4 actually that was one of the things we raised. They need
 5 more auditors, I believe. So how do you get the maximum
 6 outcome there? And the idea was – and by the way there's
 7 no (inaudible) it's probably one of the ideas that one of
 8 the tax officers had in his drawer for a long time.
 9 There's no paternity that comes out and once you have on
 10 any idea. And actually we like working in a collaborative
 11 way because that is what brings the best.
 12 So there was an initial (inaudible) because he
 13 ended up in the media, there was a campaign for cash and
 14 carry. So at the same time in the same week in different
 15 parts of the territory of the country auditors would go and
 16 specifically target cash and carries because that in our
 17 segmentation our prioritisation came up as a potentially
 18 higher evaders. There were others, categories that would
 19 have followed.
 20 So what happened there a lot of infractions were
 21 found, fines issued but most importantly the halo fact, the
 22 echo of okay SARS is going after cash and carry, they
 23 understand how we avoid paying taxes and so the idea was
 24 that in the next tax submission people would be more
 25 compliant. And this we thought was something that was

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1 again extremely operational - and sorry if this is
 2 extremely boring for you, it was very exciting for us, but
 3 I understand how it can be very boring. So just to say, I
 4 mentioned what we were doing on customs, I just mentioned
 5 what we were doing on tax and I think this concludes.
 6 Thank you.
 7 MS STEINBERG: Thanks, Mr Massone.
 8 Judge, would it be convenient to go forward in this way. I
 9 have questions really in themes or topics and I wonder if I
 10 could lead those questions and at the end of the topic
 11 invite you to ask questions on that topic but if we could
 12 try and go topic by topic because there is a lot to cover
 13 and it's quite complex.
 14 COMMISSIONER: Yes certainly, I think
 15 that's the way to do it, thank you.
 16 MS STEINBERG: Okay. Mr Massone, just to
 17 start with the contract, the tender and the contract, there
 18 are a number of irregularities and I'm not laying them at
 19 your door, I really only have two questions for you. There
 20 are irregularities that SARS will have to answer for and
 21 someone from the Treasury was supposed to come yesterday
 22 but will come probably tomorrow to answer the questions.
 23 What happened is that there was an RFP, a request for
 24 proposals that was put out merely for the diagnostic. Now
 25 the diagnostic at the end of the day cost under R3 million.

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1 What we see then is that SARS has, I have minutes from two
 2 Exco meetings where it's discussed that Bain will be
 3 appointed because your price was the cheapest for the
 4 diagnostic – that was a closed tender by the way, I think
 5 there were four or six companies invited. The Exco minutes
 6 then say after the diagnostic is completed we will have to
 7 go back and test the market and put out another RFP to make
 8 sure that we get the company at the best price to continue
 9 with this job. Well we know that didn't happen. What
 10 happened instead was that this under R3 million contract
 11 was expanded twice until it ended up at close to R200
 12 million.
 13 MR MASSONE: 164.
 14 MS STEINBERG: 164. Now that, there are
 15 irregularities there and that I will put to other
 16 witnesses. It ended up being a contract that was not
 17 awarded through a competitive process in the main, which is
 18 a big problem in South Africa today. I have two questions.
 19 The first is in that initial tender I have your pricing
 20 schedule and you price the diagnostic at 4.76 million, but
 21 then you say for this project a 50% discount will apply so
 22 the total is 2.38 million. And it's that discount that in
 23 fact wins you this tender because it puts you just below
 24 the next tenderer. Why did you offer that discount?
 25 MR MASSONE: Yes, it's a normal practice

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1 where we are entering or we are trying to enter a new
 2 client and we don't know them, so it's a sort of investment
 3 we will need to get to know the client and that's
 4 recognised in our discount. When we look at discount, by
 5 the way, we look at the absolute value, not only at the
 6 percentage or actually not so much the percentage so the
 7 discount in that case was actually very small, 2.
 8 something million rands. And so in that tender I think we
 9 specifically said that any continuation would have done a
 10 full fees. Eventually in the interaction with procurement
 11 we had to kind of lower the price very significantly, not
 12 only in the first piece but also going further. So –
 13 MS STEINBERG: So do I understand that
 14 going forward you didn't give that 50% reduction?
 15 MR MASSONE: No. No, because that would
 16 not be sustainable and in absolute terms, not necessarily
 17 in percentage.
 18 MS STEINBERG: The difficulty there, and
 19 again SARS must answer for this, is that in the Exco
 20 meetings that motivate for not going back to the market to
 21 get a company to do the big work, they say you will
 22 continue at the same rates, but that's in fact inaccurate
 23 because you continued at your full rate.
 24 MR MASSONE: 12% discount.
 25 MS STEINBERG: 12% as opposed to 50%?

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1 MR MASSONE: Yes, so we were left
 2 negotiating with procurement that forced us to give that
 3 discount and the discount stayed, like I said for the
 4 remaining work so in 15 there was 12%, in 16 that became 19
 5 and in 17 that became 26. So in terms of fairness of the
 6 fee I think no other clients in South Africa that can, and
 7 actually this would put me in trouble with other clients, I
 8 must believe, and we would do that because it was SARS and
 9 we were, like I say we were prouder to be part of a success
 10 story and serve the country.
 11 COMMISSIONER: I wonder if you could help
 12 me, it would help a lot. When she asks the question, could
 13 you just answer the question direct?
 14 MR MASSONE: Apologies.
 15 COMMISSIONER: So that we know what the
 16 answer is and if you want to expand on it, well go ahead
 17 but I'd like to know what the answer is. And the question
 18 was your initial tender was at a 50% discount and from then
 19 on you would charge your full fee but there were some
 20 discounts. She's saying to you that that was not the basis
 21 upon which SARS accepted it, understood it. Is that
 22 correct? Do you know that or not?
 23 MR MASSONE: No, I had no –
 24 COMMISSIONER: Carry on.
 25 MS STEINBERG: Ja that was in the Exco

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1 minutes so there's, yes. Yes.
 2 COMMISSIONER: No that's fine, I just
 3 want to get clear questions and clear answers.
 4 MS STEINBERG: Thanks Judge.
 5 MR MASSONE: Sorry for that.
 6 MS STEINBERG: Thanks Judge.
 7 COMMISSIONER: Not too much fuss around
 8 the questions.
 9 MR MASSONE: We have no evidence of what
 10 happened in those four months of where we were not working
 11 there. We were not physically there, we were giving a now
 12 and then an update with legal, it's very, very, very few
 13 information and the negotiation with procurement at the
 14 last moment.
 15 MS STEINBERG: As I say we'll have to
 16 take that up with SARS and Treasury because there does seem
 17 to be a misrepresentation there. The second question I
 18 have for you is when you come as an international
 19 consulting company into any country, but particularly a
 20 developing country like ours, I would imagine you to some
 21 extent familiarise yourselves with our procurement laws.
 22 COMMISSIONER: Is that correct? Did you
 23 familiarise yourself with our procurement laws?
 24 MR MASSONE: I spent two hours with two
 25 lawyers from a prestigious law firm back in 2013 and I

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1 confess I don't want this to be a problem for me. I
 2 understood as much as I, when I came in as when I came out
 3 and –
 4 COMMISSIONER: Thank you.
 5 MR MASSONE: Sorry, it's a -
 6 COMMISSIONER: No, no it's fine. I just
 7 get clear questions and clear answers.
 8 MR MASSONE: I tried. I tried and I
 9 don't understand it.
 10 MS STEINBERG: You see it's highly
 11 irregular to tender for something that cost just over 2
 12 million and then to end up with a contract for 164 million.
 13 And it's not, it's also a question of logic. You can't
 14 call that a competitive tender. And I wonder what Bain's
 15 checks and balances are in making sure from your side that
 16 you are respecting the laws of the country.
 17 MR MASSONE: Well I want to believe we
 18 were respecting the laws of the country on our side. Like
 19 I said a lot of lessons learned for me, for Bain on this
 20 matter, in particular when working with the public sector.
 21 I still believe that public sector for me is a fundamental
 22 part of what I want to do because the impact you can have
 23 on public sector you will never have in any other private
 24 sector company, and that's my passion. But clearly it
 25 seems that there are some challenges there that are

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1 different from the norm of what we do so we need to
 2 understand what that means for us in South Africa. We do
 3 public sector work in many other countries.
 4 MS STEINBERG: My question to be more
 5 direct is that this is obviously not a competitive tender.
 6 Was there not a red flag that went up on your side that you
 7 were appointed in a manner that was not competitive?
 8 MR MASSONE: No, because like I say we
 9 stopped working in February and then we were actually asked
 10 to keep the people on hold after a while because we were
 11 like the same people to, but we cannot but anyway, there
 12 was four months of no work and that sort of made us believe
 13 they were going through all the processes which will take
 14 time. It's not that they told us it was four months, it
 15 could have taken one year. So we were sincerely thinking
 16 that they were going through the process. Some of the
 17 steps were, like I said a phone call to say okay is this
 18 legal? We were told that there was an exemption of that.
 19 I think we received a mail on that so I, again I don't
 20 understand what that means but there was an important point
 21 for us. And then there was a negotiation with procurement
 22 which I can show you wasn't a pleasant experience because
 23 you get treated like the supplier of the toilet paper more
 24 or less so frankly I actually felt the pain of that
 25 negotiation and also the fees that we were then applying

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1 were actually among the most advantageous that we had for
 2 any client in South Africa. So in terms of fairness of the
 3 fees we were absolutely in a good place.
 4 [10:27] MS STEINBERG: It's just another company
 5 might have tendered for far less. We don't know because
 6 the market was never tested. I haven't got more questions
 7 about the contract -
 8 COMMISSIONER: Thank you've got a -
 9 MS STEINBERG: The tendering process.
 10 COMMISSIONER: I've got a question. You
 11 tendered for the diagnostic with the 50% discount which
 12 took you then below the next highest tenderer. But then
 13 you are going to charge your full rates for the rest of the
 14 project which means I would have thought you're going to be
 15 charging almost double the rates that the other tenders
 16 would have done for the rest of the project, isn't that
 17 rather odd and that goes back to this, this not market
 18 tested. But I've never seen a tender, I must say with a
 19 discount in it. But what you've got a discount that gets
 20 you the job and full rates that are going to apply for the
 21 rest of the job.
 22 MR MASSONE: There might have not been
 23 any follow-up work. The diagnostic might have finished
 24 today.
 25 COMMISSIONER: No I understand it might

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1 have but that's not how it worked. But if you do the
 2 diagnostic I would imagine you think there's a good chance
 3 you're going to get the implementation of the diagnostic,
 4 would that be correct?
 5 MR MASSONE: It was a possibility,
 6 absolutely.
 7 COMMISSIONER: Well more than a
 8 possibility I would have thought. The person who diagnoses
 9 the problem is generally going to be the one who fixes it.
 10 Wouldn't that be right?
 11 MR MASSONE: Well if we had done that
 12 work -
 13 COMMISSIONER: Sorry, is that correct?
 14 The person who does the diagnostic is generally going to -
 15 MR MASSONE: Most of the times.
 16 COMMISSIONER: Sorry?
 17 MR MASSONE: Most of the times, yes.
 18 COMMISSIONER: So when you're doing the
 19 initial tender you're fully aware that you're going to be
 20 charging double for the rest of the work, is that correct?
 21 MR MASSONE: Yes.
 22 COMMISSIONER: And you realised that the
 23 one who is put in the next tender their rates are far below
 24 yours. That's why you came in just underneath it.
 25 MR MASSONE: I believe, and I don't know

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1 if this is answering in any way your question. I believe
 2 one of the main reasons for us to win the tender was the
 3 references we provided. So there was a consideration on
 4 quality. I want to believe not only on price.
 5 COMMISSIONER: But it may not have been
 6 all on price but the fact of the matter is you came in just
 7 below the next tenderer with the 50% discount but you are
 8 expecting to get the job and then double the price, double
 9 your rates.
 10 MR MASSONE: Like I say it's a very
 11 normal commercial practice to do that when you are entering
 12 new client. If there was, a client where we would have
 13 known we would not have done a discount like that. It was
 14 a completely new client, you need to familiarise ourselves
 15 with the matter and on the other side someone else might
 16 have claim in the submission that they knew the client much
 17 better than anyone else and that would have been to our
 18 advantage and so that sort of -
 19 COMMISSIONER: Well you say it's normal
 20 in the business, that's why I say I've never seen a, and
 21 maybe I haven't had enough experience, I've never seen a
 22 tender with a discount. I've never seen that. So if
 23 that's a normal in the business to discount, to get the job
 24 and then double the prices that work for the rest of the
 25 job I would find it very unusual but you say that's what

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1 Bain and company generally does.
 2 MR MASSONE: I think most of the
 3 consulting firms are in general -
 4 COMMISSIONER: Sorry. Is that what Bain
 5 and company generally does?
 6 MR MASSONE: Generally, can you define
 7 generally because we do it sometimes when you enter into a
 8 new client with whom we are really willing to work. We are
 9 ready to compromise on price and again I want to point out
 10 for us the important thing is not 50 or 20 it's the amount,
 11 in the case that discount for us was a few, R2 million.
 12 COMMISSIONER: Well it may be only
 13 R2 million for this job but it's a 50% discount and that's
 14 a big discount in percentage terms.
 15 MR MASSONE: Yes.
 16 COMMISSIONER: It may be that in Rand
 17 terms and that was because this was a very small job. But
 18 in percentage terms it's a large discount, correct?
 19 MR MASSONE: Yes.
 20 COMMISSIONER: Carry on.
 21 MR KAHLA: Sorry, just a follow on. You
 22 indicated earlier that you had consulted some smart pants
 23 lawyers from a prestigious law firm around the procurement
 24 process. Did they suggest that the process you were going
 25 through was compliant with the laws in South Africa?

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1 MR MASSONE: It wasn't for this case, it
 2 was actually two years earlier. It was just for me to be,
 3 to be aware and I must admit it wasn't fair, I didn't
 4 understand what they were really saying. It was just a
 5 complicated.

6 MR KAHLA: You're saying you never, you
 7 never understood what your lawyers were saying about how to
 8 comply with the procurement process in the public sector?

9 MR MASSONE: Well basically I think what
 10 I understood is that you always have to have a tender
 11 unless you have to prove that you are, that supplier is the
 12 only supplier that exists or there is a requirement of
 13 urgency that, and two things are almost never happen. So
 14 if we had, if I had to apply that lens I would have never
 15 even started with the RFP because like the Advocate say it
 16 was a close tender. But I also saw we had done, from 2010
 17 5% of our work was in public sector. So we have seen these
 18 practices not involving us but other consulting firm, all
 19 the close tender happening all the times since 2010. So -

20 MS STEINBERG: You see it is of grave
 21 concern to South Africans. You might have followed last
 22 week at the commission of inquiry into state capture that
 23 South Africa chief procurement officer testified and he
 24 said this method of using what is called deviations where
 25 you say well there's an emergency or it's a single supplier

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1 I can't out go to tender was one of the primary mechanisms
 2 for corruption in the last ten years and this is an example
 3 of a deviation, a huge one. It's exacerbated by the fact
 4 that the initial tender was won on the basis of a 50%
 5 discount that gets you in the door. But then going forward
 6 not only is there not a competitive tender but the initial
 7 price is doubled actually. That is an example of what the
 8 chief procurement officer was talking about and it's of
 9 grave concern to this country given the corruption and
 10 really the question I was posing to you is what is the
 11 responsibility of an international company that comes in
 12 and works with our public sector when this is the
 13 environment in which you work?

14 MR MASSONE: I cannot answer that
 15 question.

16 PROF KATZ: I have no questions on this
 17 score.

18 MS STEINBERG: Okay. Moving onto the
 19 diagnostic, Mr Massone. The first thing I want to ask you
 20 about is the time period. It's called the six week
 21 diagnostic but I think it was part of the second
 22 submission, you made to us to us, you gave us a document,
 23 it's a table called SARS fee breakdown by project and what
 24 I see over there is that the diagnostic actually ran from
 25 the 2nd of February to the 28th of February, that's what

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1 your table says. Can you explain why on the one hand you
 2 say it's a six week diagnostic but what you bill for is a
 3 26 day including weekends diagnostic?

4 MR MASSONE: I think I alluded that
 5 before so I think we realise it was a bit, the work was a
 6 bit higher than, more then what we anticipating and we had
 7 to work a couple of weeks more to close it, to our cost of
 8 course.

9 MS STEINBERG: But -

10 COMMISSIONER: Well how much time, your
 11 bill shows 26 days apparently, your fees that you charged
 12 and I presume that fee was charged after the work was done?

13 MR MASSONE: Yes.

14 COMMISSIONER: Well why is it then a 26
 15 days when you say it was six weeks.

16 MR MASSONE: I cannot reconcile the weeks
 17 and the working days so, these are working days or days
 18 elapsed time.

19 MS STEINBERG: It's -

20 COMMISSIONER: What was that, what dates?

21 MS STEINBERG: It merely says start date
 22 2 February 2015, end date 26 February 15 fees 2.3 million
 23 expenses VAT, etcetera. So those are the days you say you
 24 worked. It's not, however you cut it, it's not six weeks.

25 MR MASSONE: It's less or more.

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1 MS STEINBERG: It's far less than six
 2 weeks.

3 COMMISSIONER: 26 days is about three and
 4 a half weeks.

5 MR MASSONE: That's what I alluded for,
 6 so for, we realised and then the work load was higher and
 7 we had to work longer and then of course there was no
 8 recollection of how many days have actually, we contracted
 9 for because you need to finish the work.

10 COMMISSIONER: I'm sorry I don't quite
 11 understand this. The bill was put in after the work was
 12 done. Is that right?

13 MR MASSONE: Yes.

14 COMMISSIONER: Well then you knew how
 15 long you had taken by then.

16 MR MASSONE: We cannot charge more than
 17 we were contractualised.

18 COMMISSIONER: Sorry?

19 MR MASSONE: We cannot charge more then
 20 what we were contractual, is our -

21 COMMISSIONER: No, I understand that you
 22 contracted for 2 and a half million or something. But you
 23 didn't contract on the basis of the number of days you were
 24 going to work surely, it was an amount you charged, an
 25 amount you quoted.

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1 MR MASSONE: Well there's a number of
2 people, number of days that bring to an amount, based on
3 our fees and this case what I'm saying is that we were
4 allowed only to get paid and charged for what we were
5 contractualised for and we realised during the project in
6 order to do a good job that we had to work a bit more and
7 that was our problem.

8 COMMISSIONER: But just explain to me,
9 your, I haven't seen the tender. Was your tender a per day
10 amount or was your tender a fixed amount?

11 MR MASSONE: I think there was a time and
12 an amount. So they were both things.

13 COMMISSIONER: No, no but the amount you
14 were going to charge was it a per day amount or was it a
15 fixed amount?

16 MR MASSONE: We normally work per month,
17 per month, by sort of per day and per month is the same
18 thing.

19 COMMISSIONER: Now in your, no, no you're
20 not, I'm obviously not expressing myself well. The tender
21 that you made did you tender a globular amount for the job
22 or did you tender a daily rate for the job?

23 MR MASSONE: It was both. There was a
24 boundary in terms of number of days we were paid and a
25 price for those days. So both things, which led to an

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1 amount that then became fixed.

2 COMMISSIONER: No but what was the
3 contract for, a specific amount no matter how many days you
4 worked or was it for an amount depending upon how many days
5 you worked?

6 MR MASSONE: I need to come back to you
7 for that. I don't remember what the contract was saying.
8 I believe that's what normally we do is there is a number
9 of weeks and months or days and an amount and, a financial
10 amount and both are boundaries for us.

11 COMMISSIONER: Well they both, I can see
12 you do your estimate or you do your costing on the basis of
13 you are expected to be so many days, etcetera but then you
14 come to a globular amount and that's what you tender for
15 that amount.

16 MR MASSONE: Yes.

17 COMMISSIONER: And that's the amount you
18 charge no matter how many days you do it, is that correct?

19 MR MASSONE: Yes.

20 COMMISSIONER: Well then I don't
21 understand that why it is that in your bill, because it
22 makes no difference how many days you worked, what days you
23 work you get the 2 and a half million in any event. So why
24 do you, why do you list the days there, 2nd to the 26th of
25 February when it didn't actually matter to make any

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1 difference to the price you're entitled to.

2 MR MASSONE: I don't know, it must have
3 been something related to the contract with SARS so I would
4 need to come back to you.

5 COMMISSIONER: Can you come back to me
6 and explain why it is that the days that you list after the
7 job are the 2nd to the 26th whereas you say it was 6 weeks
8 you worked, do you understand the question and you'll come
9 back to me on that one.

10 MR MASSONE: Yes.

11 PROF KATZ: Can I just ask, if I
12 understood the thrust of Advocate Steinberg's was that
13 short period sufficient to do a competent diagnostic? The
14 period that -

15 MS STEINBERG: I'm getting there, if I
16 can -

17 MR KAHLA: Maybe before you get there. I
18 just want to understand, if I'm following correctly. We
19 know what is set out in relation to what was billed for.
20 But are you saying that actual time spent in the work was
21 actually the 6 weeks. You may have billed for the 3 and a
22 half weeks but actual time spent was 6 weeks' time.

23 MR MASSONE: To our recollection, yes, it
24 was longer.

25 MS STEINBERG: Okay. Moving in the

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1 direction of where Professor Katz was going, in your second
2 submission you in fact say that the interviews were
3 conducted between the 2nd of February and the 13th of
4 February. Now if you take out weekends that's a week or a
5 week and a half of interviews with SARS. Is that correct?

6 MR MASSONE: Yes.

7 MS STEINBERG: Secondly you say you were
8 consulted on the basis of a list that was given you, given
9 to you by the Commissioner, that's correct.

10 MR MASSONE: Yes.

11 MS STEINBERG: Why did you accept that?
12 Why did you accept that the Commissioner's list was
13 sufficient for you to understand this huge complex
14 organisation?

15 MR MASSONE: To explain that I need to
16 say something which is, we're not auditors. We serve our
17 clients. We don't control them. We don't second guess
18 them. So I never had in my mind receiving a list of people
19 interview or list of things to do from a client the idea of
20 saying well let me see if this is right or not. So we take
21 it for granted to a certain extent. I also believe that
22 this is where all the people that were active or the most
23 important people that were active at the time they know
24 some of the people said I wasn't consulted, with those 23,
25 33 you don't get to a (inaudible) organisation some of the

<p style="text-align: right;">Page 1762</p> <p>1 people because of how it was structured were actually at a 2 lower level. But more importantly what I say, we never had 3 the idea of saying let me, let's just control if someone is 4 being left out.</p> <p>5 MS STEINBERG: You see it's again, I ask 6 you what, what you accept as part of your mandate because 7 what happened here, really when we look, when we look back 8 is that you consulted a few top level people picked out by 9 the Commissioner, bearing in mind that the Commissioner has 10 just joined the organisation. He suspended his Exco and he 11 picks out certain people for you to interview and it takes 12 you six or eight days and it's based, that is the 13 information you now have from the horse's mouth so to 14 speak. That's it. How do you accept that as a sufficient 15 way to start?</p> <p>16 MR MASSONE: Yes, so maybe with hindsight 17 and I said it was very painful to go through those 18 transcripts. I would say we should have consulted more, we 19 should have met more people, possibly people that were not 20 in SARS anymore. It didn't occur to us at the time. Would 21 that have changed dramatically the diagnostic, I don't 22 think so. But I accept that.</p> <p>23 MS STEINBERG: Sorry are you saying if 24 you had heard all those 20 people who had testified last 25 week, it wouldn't have changed your diagnostic?</p>	<p style="text-align: right;">Page 1764</p> <p>1 and senior people said they never saw Bain. Can that be 2 right?</p> <p>3 MR MASSONE: We interviewed other people. 4 So it's not the way I read you some quotes that were quite 5 strong.</p> <p>6 COMMISSIONER: NO but we must just get 7 answers to the questions. For example the head of the LBC 8 was not interviewed, she says, is that -</p> <p>9 MR MASSONE: Correct, yes we have -</p> <p>10 COMMISSIONER: Sorry is that correct?</p> <p>11 MR MASSONE: No, we have interviewed her, 12 it's not correct.</p> <p>13 COMMISSIONER: Ms Manik -</p> <p>14 MS STEINBERG: Ja, if I may say she says 15 she was interviewed but it was short and unsatisfactory.</p> <p>16 COMMISSIONER: Ja, okay and then the 17 other all -</p> <p>18 MS STEINBERG: Well customs let's start 19 there, whatever -</p> <p>20 COMMISSIONER: Well there wasn't a head 21 of customs.</p> <p>22 MS STEINBERG: Whatever Ms Vivier was 23 called, if you spent ten minutes talking either to the 24 freight association or insiders within SARS there are two 25 names in this organisation that were and are synonymous</p>
<p style="text-align: right;">Page 1763</p> <p>1 MR MASSONE: Not dramatically.</p> <p>2 MS STEINBERG: I must say I'm quite 3 astonished by that because we have, those 20 people and 4 many, many others who say you didn't hear what was going 5 on, you didn't understand what was going on in the 6 organisation. Do you not accept that that might be the 7 case?</p> <p>8 MR MASSONE: Certainly what was going on 9 in the background we didn't understand it and to that 10 extent I say I, we should have listened more and understood 11 more. We were working on facts. So the things that I 12 presented on the organisational structure and the need to 13 separate certain function or regroup certain functions, the 14 need to manage (inaudible) way or to control more of the 15 physical goods were the things we were focusing on. We had 16 no say, like I said on the decimation of leadership team 17 and we realised that was happening almost a year later. In 18 that sense I say yes we should have understood, I should 19 have understood much more what was happening. So in terms 20 of the fact -</p> <p>21 PROF KATZ: Just, if I may. I'm in the 22 same concern as Advocate Steinberg. You base your whole 23 diagnostic, an organisation that's been successful, is now 24 radically going to change, you base your whole diagnostic 25 on some interviews and almost every witness that came here</p>	<p style="text-align: right;">Page 1765</p> <p>1 with customs and that is Rae Vivier and Beyers Theron.</p> <p>2 COMMISSIONER: Well let me look at it 3 another way. Can you tell me who the people were on the 4 list which the Commissioner said talk to those.</p> <p>5 MR MASSONE: Yes. Thomas Moyane, 6 Commissioner, Jonas Makwakwa acting CEO operations, 7 Elizabeth Khumalo Human, CO Human Resources, Gene Ravele CO 8 enforcement, Kosie Louw CO legal policy, Matsobane Matlwa 9 CO Finance, Brian Kgomo GE internal audit, Thinus Marx J 10 Compliance audit, Sunita Manik GE Large business centre. 11 Mark Kingon GE Service, Johannes Padiachy GE processing, 12 Firdous Salle GE Contact Services. Makungu Mathebula 13 acting CEO strategy, Vusi Ngqulana GE debt management, Eric 14 Smith acting GE corporate legal, Giorgio Radesich GE 15 governance, Randall Carolissen GE Revenue Planning, Baps 16 Naidoo Coms and Marketing, Chris Madima debt management, 17 Dan Zulu GM branch operations, Eugene Wessels tax and 18 custom register, Paul Matshabe custom and excise, Naresh 19 Ramsumair shared services, Thabelo Malovhele case 20 selection, Ramesh Jinabhai governance and risk, Ronald 21 Makomva, enforcement, Siphon Bavuma, legal, Luther Lebelo 22 Human Capital, Jacques Meyer case selection, Brenda Hore 23 EBE, John Cruikshank, trade statistics, Mogogodi Dioka, 24 procurement.</p> <p>25 [10:47] COMMISSIONER: Approximately how many is</p>

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1 that?

2 MR MASSONE: There should be 33. That is

3 what I have written.

4 COMMISSIONER: 33 in six days were

5 interviewed in depth on what the organisation was about.

6 Is that correct?

7 MR MASSONE: Yes, there were a number of

8 people interviewing different people, yes.

9 COMMISSIONER: Yes. 33 in six days.

10 MS STEINBERG: Judge, let me just add

11 something here.

12 COMMISSIONER: Well, I think you've asked

13 your question.

14 MS STEINBERG: I have affidavits from two

15 of the people interviewed because there's the question of

16 who was interviewed then there's the question of the

17 quality of the interview.

18 COMMISSIONER: Yes.

19 MS STEINBERG: Now for example Mr Marx –

20 COMMISSIONER: I think just ask the

21 questions of the witness rather than explain it to us.

22 MS STEINBERG: Judge, I'd like to refer

23 to affidavits as I ask the questions if you don't mind.

24 Can I –

25 MR KAHLA: Can I just get clarity on the

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1 first question that you've just asked.

2 MS STEINBERG: Yes.

3 MR KAHLA: You got the list. Was there

4 any time at the time you had just gotten the list where

5 someone within Bain thought there might be value in adding

6 or seeking to add any additional people? You were

7 comfortable from the list that you were given and the kind

8 of areas of focus that you were going to be applying

9 yourselves onto that that universe was reasonably

10 sufficient or were there – was there a time where you

11 thought maybe there could be value in asking for other

12 people to be added into the list?

13 MR MASSONE: So clearly we saw there were

14 a few people missing because they had already left the

15 organisation so typically you would spend a lot of time

16 with the chief operating or the chief operating officer but

17 he was already gone, so clearly we saw there were some

18 holes there and a potential problem there but I don't –

19 there was nothing –

20 COMMISSIONER: I don't quite understand

21 that. Why couldn't you speak to the chief operating

22 officer anyway? The fact that he had gone from here,

23 around about the time you arrived in fact he hadn't gone by

24 the way. But anyway he went in January and you came in

25 January. But why couldn't you speak to him in any event?

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1 MR MASSONE: Well, that's an interesting

2 question. We normally don't go and interview people who

3 have left the organisation. I don't think they want to

4 speak with us but I think it's a good question. No, we

5 didn't.

6 COMMISSIONER: Thank you, it's a good

7 question, but I mean the chief operator had been here for

8 ten years and he was a very important person. Wouldn't you

9 think it's worthwhile to talk to him? Did you ask if you

10 may talk to him?

11 MR MASSONE: There was – Sorry?

12 COMMISSIONER: Did you ask the

13 Commissioner if you may talk to him?

14 MR MASSONE: No, we didn't. When someone

15 has left the organisation and I think that was a few months

16 earlier there would be – there will be a –

17 COMMISSIONER: No, no, no. My question

18 was did you ask the Commissioner –

19 MR MASSONE: No, we didn't.

20 COMMISSIONER: If you may speak to him.

21 MR MASSONE: No, we didn't.

22 COMMISSIONER: Did you speak to any of

23 the earlier commissioners? Mr Pillay had been here for

24 many years.

25 MR MASSONE: No, we didn't.

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1 COMMISSIONER: And he was still here

2 although on suspension. Didn't you think you should speak

3 to him?

4 MR MASSONE: Well, he was suspended so I

5 don't think it would have been normal to interview a

6 suspended person in the organisation or what –

7 COMMISSIONER: Did you ask if you may

8 speak to him?

9 MR MASSONE: No.

10 COMMISSIONER: Did you speak to Mr

11 Gordhan who had been instrumental in the whole philosophy

12 of this place.

13 MR MASSONE: No. I wish I had a

14 communication line with him at the time, I must say, being

15 – sitting, being here. I didn't have one and no, I didn't.

16 COMMISSIONER: What do you mean you

17 didn't have a line of communication?

18 MR MASSONE: I didn't know him.

19 COMMISSIONER: But you knew he had been

20 Commissioner here for many years and built up the

21 structure.

22 MR MASSONE: Yes.

23 COMMISSIONER: And you didn't ask to

24 speak to him either.

25 MR MASSONE: No.

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1 COMMISSIONER: Looking back on it
2 shouldn't you have spoken to those people?
3 MR MASSONE: Like I said I wish I had a
4 communication line open with the current Minister Gordhan
5 and have a guidance from him.
6 COMMISSIONER: No, No, in other words
7 looking back, don't you think you ought to have spoken to
8 them?
9 MR MASSONE: Yes, absolutely, to him in
10 particular.
11 COMMISSIONER: Can I just ask a question
12 relating to the very first question you asked which I had –
13 it troubles me and I think I had alerted them to this. Can
14 I just ask –
15 MS STEINBERG: I think Advocate Masilo
16 had a question on this point.
17 COMMISSIONER: Can I just finish this?
18 You see what worried me, she read to me this article
19 written by your partners which said look, you can't just
20 look at the structure, you must understand the philosophy
21 as well. Now you had the Commissioner at that time who had
22 been here for three months. He had no experience of tax
23 collection and no knowledge of the organisation. Did you
24 ask anyone to explain to you what the strategy was that had
25 led to this structure? Did you ask – speak to anyone about

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1 that?
2 MR MASSONE: That was one of the parts of
3 the – in the interview, yes.
4 COMMISSIONER: And who did you speak to
5 about the strategy?
6 MR MASSONE: Well I don't have the notes
7 but I guess that was one of the standard questions asked to
8 -
9 COMMISSIONER: You say you guess. Can you
10 tell me it was one or wasn't one?
11 MR MASSONE: It certainly was.
12 COMMISSIONER: Can you show it to me?
13 MR MASSONE: No.
14 COMMISSIONER: Haven't you got the answers
15 to the questions that you asked?
16 MR MASSONE: Yes, but in this case we
17 don't have any evidence of the minutes of the – or the
18 notes of the minutes.
19 COMMISSIONER: But it was quite a complex
20 strategy based upon the history of this country, are you
21 aware of that?
22 MR MASSONE: Yes, but there was like I
23 said before, there was no evidence and no message from
24 anyone that was initial and so we immediately moved on to
25 things that were more operational.

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1 COMMISSIONER: But your article as I
2 understand said that it is an issue before a consultant
3 goes and he must understand the strategy, as I understand.
4 Is that what your article says?
5 MR MASSONE: Yes, sir.
6 COMMISSIONER: So why is it not an issue
7 then to understand the strategy?
8 MR MASSONE: I believe we did understand
9 the strategy. Like I said we didn't want to change it at
10 all and so the idea of making things easier –
11 COMMISSIONER: I'm talking about – yes,
12 sorry, carry on.
13 MR MASSONE: The idea of making things
14 easier for the taxpayer to pay and more difficult for the
15 non-tax – for the one who doesn't want to tax –
16 COMMISSIONER: Is that the long and the
17 short of the strategy?
18 MR MASSONE: If you want, yes, in a tax
19 agency, yes. I think what we were focusing on is on the
20 structure which in our opinion didn't reflect – correctly
21 reflect that philosophy in that strategy because it was too
22 concentrated on the checks and balances.
23 COMMISSIONER: So as you understood the
24 strategy it was we must get more tax in and we must stop
25 people not paying tax? That's the strategy, is that right?

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1 MR MASSONE: Well, that the outcome, yes.
2 COMMISSIONER: So you can answer that with
3 one question. What is the strategy? We must get more tax
4 and we must stop people not paying tax.
5 MR MASSONE: Well, that's the mandate of
6 our – you know the custom to control the -
7 COMMISSIONER: No, I understand that. I
8 just want to know what you understood of the strategy.
9 MR MASSONE: Yes.
10 COMMISSIONER: Because we heard a day's
11 evidence, half a day's evidence from the architect
12 explaining why this organisation has been built up in the
13 way it was. Most – a lot of it because of the history of
14 this country and that failure to pay – not paying tax was
15 actually a weapon that was used in the struggle. It was a
16 way of protest so you had a very different situation to,
17 for example in New Zealand. People were not paying tax
18 because they had been politicised into not paying tax so
19 you've got to shift them. Do you remember that evidence?
20 Did you read it, of Mr Gordhan's?
21 MR MASSONE: Yes.
22 COMMISSIONER: But did you not know
23 anything about that when you started this?
24 MR MASSONE: No.
25 MR KAHLA: Just a quick follow-up just on

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1 that one. I didn't get you right. Are you saying that in
 2 the questionnaires in relation to the interviews with that
 3 33 – list of about 33 people, the question of strategy
 4 formed part of that questionnaire?
 5 MR MASSONE: That's what we normally ask.
 6 We start from the strategy, the focus on operating model
 7 and then you go with the IRS improvement and then you ask
 8 if there are any others – any recommendation that they have
 9 on any other point and then they –
 10 COMMISSIONER: Sorry, please you must
 11 answer the question.
 12 MR MASSONE: Yes.
 13 COMMISSIONER: The question was on that
 14 questionnaire. Was it on the questionnaire?
 15 MR MASSONE: Yes, I don't have the
 16 questionnaire anymore but it's standard practice that we
 17 start high level and then we go down to the issues so I
 18 don't have the questionnaire, Judge, if I could answer –I
 19 COMMISSIONER: No. Don't you have any of
 20 the questionnaires in your office or anywhere?
 21 MR MASSONE: Of that project, no. I'm
 22 sorry, Commissioner – Judge.
 23 COMMISSIONER: Can we break? Do you
 24 think is it an appropriate –
 25 MS STEINBERG: I think Advocate Masilo

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1 was trying to ask a question.
 2 COMMISSIONER: Sorry.
 3 MS MASILO: Thank you. You told us that
 4 you wouldn't question the list that you were given by the
 5 Commissioner so as not to doubt or undermine the person who
 6 gives you the list but ordinarily with the list that you
 7 are given when you come into an organisation that you don't
 8 know, wouldn't you also ask for the organogram so that you
 9 can get to understand who is heading which part of the
 10 organisation to see if their names are there and if they
 11 are not there to ask why are their names not included.
 12 And my second question would be also we have
 13 heard testimony of some of the heads of the different
 14 business units within SARS which were dealt with in a
 15 certain way in the new operating model and some of them
 16 state that you know, due to the frustration of not having
 17 been interviewed by Bain or consulted by Bain they prepared
 18 certain documentation and those documents which explained
 19 what those divisions did, which, I mean divisions which did
 20 very critical work for SARS, compliance for instance, Mr
 21 Kahn said he prepared – him and his boss prepared a concise
 22 document which explained what they did, the importance and
 23 the strategy behind it and he said he felt that this was
 24 not even considered by Bain, let alone the fact that they
 25 were not consulted. Would that be correct?

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1 MR MASSONE: Let me answer the first
 2 question. So yes, we had the organogram. That's the first
 3 thing we ask because that's one of the important part of
 4 the things we looked at and there were a few people missing
 5 or acting. We asked about that and the answer was some of
 6 them had left, some of them are suspended and there was at
 7 the time if you remember the – all that now we know now it
 8 was not true around the job unit and people confessing to
 9 illegal acts so that was the answer that we were given of
 10 the people not in the organogram. Some have left, some are
 11 suspended.
 12 On the second question I think we are not
 13 speaking of the diagnostics I think we are speaking about a
 14 few months later when actually the implementation happened
 15 and I think what I said earlier is that we might have been
 16 in some of the meetings but our role then, we are talking
 17 about end of 2015 and part of 2016, our role was anymore to
 18 question the single changes and I think you referred to
 19 compliance research. Compliance is actually a very high
 20 unit in the organisation. The witness will say the
 21 compliance research disappeared. So our role was to track
 22 that certain events happened. There had been I think seven
 23 steering committee –
 24 MS MASILO: Sorry, sir, I was referring
 25 to compliance audit, that in respect of compliance audit Mr

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1 Kahn says they prepared a document which they submitted and
 2 you said your diagnostic was based on fact so if documents
 3 which were prepared by some of the heads of the departments
 4 were not considered on what basis then could you finalise
 5 your diagnostic?
 6 MR MASSONE: So the key point here is
 7 that the changes that were made to the structure and
 8 compliance is a very high level ranking unit there around
 9 the structure and that's what we worked on. On the way
 10 they were working, on the methodologies they applied and
 11 how they interacted with other units we had no say. We had
 12 no involvement and it was no part of our mandate so if
 13 something was changed then in the way they were working I
 14 think the line and it is actually the CEOs need to take
 15 accountability for that. We had no participation to that
 16 and that was not part of our mandate. Sorry, I confused
 17 the two witnesses.
 18 PROF KATZ: Sorry, Judge, I didn't hear
 19 the answer to Advocate Steinberg's was it possible to do 33
 20 interviews in six days?
 21 MR MASSONE: Yes. Everything I heard,
 22 yes.
 23 MS STEINBERG: If you were – the question
 24 is about the quality of the interviews and I want to end
 25 this before we have tea just by reading you a couple of

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1 examples of many, many. So you did consult with Mr Thinus
 2 Marx and this is what he said. On the face of it – or let
 3 me start at the beginning. “The SARS operating model
 4 review appendix to Bain’s submission to SARS commission of
 5 inquiry document provided to me by the commission states
 6 that I formed part of Bain’s primary research and that I
 7 was interviewed. On the face of it the statement seems to
 8 suggest that I was meaningfully consulted and engaged. I
 9 wish to state quite clearly that I was not meaningfully
 10 consulted nor engaged in the process of developing the new
 11 operating model.” And then he explains in detail the
 12 process that took place. One was 12 minutes and one the
 13 person left in the middle and on and on it goes.
 14 A second example, someone who you did interview
 15 who doesn’t want to be named at this point. She says, “my
 16 personal experience in the interviews stage points to the
 17 following shortfalls. Interviews conducted by junior
 18 personnel who were not well versed in SARS operations.
 19 Input provided was not discounted in the final report.
 20 There is no explanation why my input was misaligned with
 21 the prevailing strategy and should be ignored or that the
 22 strategy was changed. My oral interview was not recorded
 23 to my knowledge and if it was I was not informed thereof.
 24 I was never required to verify whether my inputs were
 25 correctly captured. I was not requested to make any

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1 written input as a further validation of my oral input
 2 especially given that the interviewers were very junior and
 3 not knowledgeable at all about SARS and its functioning.”
 4 Now following that Mr Theron, who you didn’t
 5 interview, he said something many people say. “I have been
 6 closely involved in a leadership role in all major customs
 7 transformation and modernisation efforts since the
 8 inception of SARS with the exclusion of the current
 9 operating model, however in all the change programs
 10 referred to above and there’s a whole list there was an
 11 extensive internal and external engagements in the
 12 diagnostic phase and a careful and comprehensive internal
 13 and external communication and change management process in
 14 place to guide successful delivery.”
 15 I have another informant who actually compares
 16 your interview process with McKinsey’s which just happened
 17 a few years before. There they said, “we had senior
 18 people. We got written feedback after every interview.
 19 They insisted that we sign off on that feedback to show
 20 that it accurately reflected what they told us.” So really
 21 the question is how do you justify the quality of these
 22 interviews given that they were the very basis of your
 23 proposals?
 24 MR MASSONE: So first of all I will say
 25 if someone felt offended or mistreated by any of our

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1 consultants I need to apologise, so I want to start from
 2 that. I think in terms of consultation I think there’s a
 3 little bit of misunderstanding between providing input and
 4 then being consulted on the outcome of that input and it is
 5 normal that the leadership of a firm of an agency, in this
 6 case the Commissioner and his team to keep the outcome of
 7 the diagnostic, of the recommendation on the organisational
 8 structure confidential nor test them with the more junior
 9 team, for many reasons, confidentiality. There wasn’t the
 10 approval of Treasury at the time so I think that might have
 11 create a sort of expectation on how that work.
 12 In the methodology that you mentioned we normally
 13 and there is normally no an issue in the private sector to
 14 not send interview notes back and this is probably a
 15 practice that is required in SARS and like I said, a
 16 lessons learned for me and for Bain on that. So certainly
 17 in a new assignment we would need to redefine those
 18 standards and clearly the short period of time of the
 19 diagnostic that we were just - the boundaries that we were
 20 given probably had a big impact on certain being, short on
 21 certain things.
 22 COMMISSIONER: Mr Massone, it’s not quite
 23 – it doesn’t quite answer her question and I really do want
 24 answers. That these people are not talking about
 25 consultation after you have done your diagnostic there.

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1 When they talk about consultation they are talking about
 2 input from Bain before the diagnostic is over, which is
 3 still just doing the diagnostic, don’t forget.
 4 MR MASSONE: Yes.
 5 COMMISSIONER: We’re not talking about
 6 later stages. They’re talking about the diagnostic and
 7 they’re saying as you’ve read there and as we’ve heard
 8 constantly that there was very little input sought from
 9 them. You’ve heard those. You can look at those
 10 affidavits except for the one that’s confidential during
 11 the tea break if you like but I’m sure you’ve heard also
 12 there. So let’s not go down to consultation afterwards.
 13 She’s talking about input in the diagnostic.
 14 MR MASSONE: Yes. So from the 33 people
 15 I think we had a great level of input and I rate some of
 16 the quotes in the tender were quite strong and they were
 17 from quite senior people so – and I’m sorry if we haven’t
 18 captured input from other people. We thought at the time
 19 that we had.
 20 MS STEINBERG: Sorry, let’s leave –
 21 COMMISSIONER: Do you have the full –
 22 you’ve taken sentences from a lot of people, I saw it last
 23 night.
 24 MR MASSONE: Yes.
 25 COMMISSIONER: Have you got the full

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1 document from those people?
 2 MR MASSONE: No.
 3 COMMISSIONER: So where did the sentences
 4 come from?
 5 MR MASSONE: They were in documents.
 6 COMMISSIONER: Sorry?
 7 MR MASSONE: They were in documents.
 8 COMMISSIONER: In which documents?
 9 MR MASSONE: In the, for example in the
 10 end of the diagnostic there would be two or three sentences
 11 that are coupled with an analysis. So normally just to
 12 explain a methodology. Inputs from people, especially
 13 verbal inputs are just one of the pointers for us. Where
 14 are the areas where we should then do analysis? And then
 15 the analysis should then prove or disprove what the person
 16 has said.
 17 COMMISSIONER: Yes. No, I -
 18 MR MASSONE: So we see them in
 19 conjunction so I just took, to avoid sending 100 pages
 20 document I took the quotes on the different topics that
 21 were in the documents.
 22 COMMISSIONER: I understand. You
 23 explained that to me. My question was simply do you have
 24 the full document from which the sentences were extracted?
 25 MR MASSONE: Yes. Yes, yes, yes, there

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1 is a number of documents.
 2 COMMISSIONER: Where is that?
 3 MR MASSONE: We will submit it to you.
 4 COMMISSIONER: Do you have them?
 5 MR MASSONE: Yes. Yes.
 6 MS STEINBERG: Just to clarify. I read
 7 you from three affidavits. Two of those affidavits were
 8 from people who appear on your list. They were interviewed
 9 but they say we might as well not have been interviewed. I
 10 am – I was asking you to respond to that.
 11 MR MASSONE: I cannot comment on that. I
 12 don't know what happened then.
 13 MS STEINBERG: Have you got a question?
 14 COMMISSIONER: Well, sorry, just – well,
 15 I presume you would have the documents from which you've
 16 taken those which would reflect what happened.
 17 MR MASSONE: Not on that specific person,
 18 sorry.
 19 COMMISSIONER: Let me just finish.
 20 MR MASSONE: Yes.
 21 COMMISSIONER: Is that a document then
 22 recording what was said in the course of that discussion?
 23 [11:07] MR MASSONE: No, no, no, it's a document
 24 that was presented, a number of documents I must say, that
 25 were presented to the commission to the leadership that

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1 were including the comments from the people and actually a
 2 selection of them.
 3 COMMISSIONER: No but I'm not, correct,
 4 I'm not understanding this. Do you have for example one of
 5 your quotes there. Do you have the full document from
 6 which that quote was extracted?
 7 MR MASSONE: No.
 8 COMMISSIONER: Do you have any notes or
 9 minutes or statements recording these discussions you had?
 10 MR MASSONE: We found a few, we found
 11 very few, not for the 33.
 12 COMMISSIONER: When you say a few, how
 13 many do you think is a few? I won't you to the figure.
 14 MR MASSONE: I think is 12.
 15 COMMISSIONER: 12? And can we have
 16 those?
 17 MR MASSONE: Of course, absolutely.
 18 COMMISSIONER: Should we –
 19 MR MASSONE: That would have been part of
 20 our submission anyway, yes absolutely.
 21 COMMISSIONER: Do you understand what I
 22 mean? I'm not interested in the document in which that
 23 quotation appears as part of the presentation. I want the
 24 original document.
 25 MR MASSONE: Ja, ja.

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1 MS STEINBERG: Mr Kahla has a question
 2 and I have one final question.
 3 MR KAHLA: Earlier in relation to the
 4 question of individuals that you should have or maybe would
 5 have benefitted from interviewing, you indicated that in
 6 any event whether or not they were interviewed, it would
 7 not have had any material impact on the outcome of the
 8 diagnostic. Did I understand you right on that?
 9 MR MASSONE: Yes.
 10 MR KAHLA: Would that, am I correct to
 11 understand that effectively you could have run the
 12 diagnostic without having to pay much attention to the
 13 interviewees?
 14 MR MASSONE: We did with 33 and I know
 15 that someone was saying no we were not listening, I believe
 16 we were. If you look at the three major IRs that we
 17 pointed out attention, 1, the structure. We can elaborate
 18 as much as you want on what would have been different in
 19 the structure based on the feedback that we would have
 20 received, that was 1. On tax specifically on debt
 21 collection, on high net worth individuals and SMMEs and on
 22 customs on the physical control the goods. There might
 23 have been something else, so in that sense there might have
 24 been a deviation so maybe additional people would have
 25 pointed us towards other important areas of improvement.

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1 That one yes, but it wouldn't have changed the focus on
 2 what we did afterwards, I believe.
 3 COMMISSIONER: I just can't quite
 4 understand that, explain it to me. How do you know it
 5 wouldn't have changed anything, bearing in mind you didn't
 6 speak to them?
 7 MR MASSONE: Well I read the transcripts,
 8 but also if I see the structure of the previous one and the
 9 new one I still believe it is better.
 10 COMMISSIONER: I understand that but you
 11 say it wouldn't have changed anything materially? How do
 12 you know that if you hadn't spoken for example to Mr, the
 13 former Chief Operating Officer, if you hadn't spoken in
 14 depth to Ms Manik, how do you know it wouldn't have
 15 changed?
 16 MR MASSONE: Let me correct myself. I
 17 think we would have been, we would have understood SARS
 18 much better in the ways of working any methodologies, but
 19 that's not what we worked afterwards. So we would have
 20 been much more competent if you want on the topic. And
 21 maybe we would have seen things not happening the right way
 22 afterwards but they were not the things we were working on.
 23 So I haven't read anything for example on the debt
 24 collection that, the question about pre-final demand and
 25 post-final demand, that today knowing what they have said I

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1 would have suggested or recommended in a different way. We
 2 still believe that the split of the two was the right
 3 recommendation, just as an example.
 4 MS STEINBERG: But there's a
 5 contradiction here because if we all accept – which I think
 6 we do – that structure follows strategy, structure follows
 7 philosophy, and we hear that you didn't in fact understand
 8 the strategy in a deep way, or the philosophy in a deep
 9 way, how can you say well I would have put the same
 10 structure in anyway, if structure is supposed to follow
 11 strategy and philosophy?
 12 MR MASSONE: There's no strategy that
 13 would justify the structure they had at the time for the
 14 reason that I explained before. We can go back and look at
 15 that because –
 16 MS STEINBERG: We'll get there, ja.
 17 MR MASSONE: The concentration of powers,
 18 the lack of checks and balance, the fragmentation of
 19 activities, so there were so many reasons that proceeded
 20 from any strategy and actually in our opinion would not
 21 allow a full potential of the strategic implementation that
 22 were in that structure.
 23 MS STEINBERG: I have one final question.
 24 This, you mentioned that the diagnostic was confidential.
 25 Everybody I interviewed said actually this is the first

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1 time we saw the diagnostic. Number 1 I don't understand
 2 how a diagnostic can ever be confidential. It's supposed
 3 facts about the organisation. But my question to you is
 4 this, you say change management was very badly managed
 5 further down the line, there's no doubt of that. How can
 6 an organisation change if they don't even know the
 7 diagnosis for change, they don't even know why they're
 8 changing, they're just told to go and change. How could
 9 Bain accept an instruction that the diagnostic is
 10 confidential?
 11 MR MASSONE: So we prepared a
 12 communication plan for them later on that was part of
 13 mandate, what I understand from the transcript it was
 14 either not implemented at all or badly implemented. That
 15 communication plan included to create a sense of how, we
 16 call it the beach. Where are we going as an organisation?
 17 Why are we all, will we all be excited about that new
 18 organisation that we need to be together? It would explain
 19 what are the areas of change. Why change was good in this
 20 instance. We'll give transparent communication to every
 21 single employee –
 22 MS STEINBERG: Sorry Mr Massone you
 23 haven't answered my question. It is frustrating.
 24 MR MASSONE: Well we didn't accept it.
 25 We provided them with that. We realised it wasn't

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1 happening in April 15 or around that days and that's when
 2 we then stopped working there.
 3 COMMISSIONER: But you're not dealing
 4 with the question and we must get on. She asked about the
 5 diagnostic.
 6 MR MASSONE: Yes.
 7 COMMISSIONER: You were told that it must
 8 be kept confidential, is that right?
 9 MR MASSONE: Yes.
 10 COMMISSIONER: Why do you, do you think
 11 it ought to have been kept confidential?
 12 MR MASSONE: That's how normally it is.
 13 It doesn't get distributed.
 14 COMMISSIONER: Did you not question why
 15 you should keep it confidential though?
 16 MR MASSONE: No, it's absolutely normal
 17 that a diagnostic gets, anyway it is in the prerogative of
 18 the leadership to decide but in the normal cases that I've
 19 seen in 25 years of consulting is that typically those
 20 diagnostics are kept quite confidential at an Exco level
 21 and not disseminated in the organisation. And imagine when
 22 it is a public organisation even more. That doesn't mean
 23 that after when you are preparing for a change, you need to
 24 communicate what is the change and why it's good for
 25 people, etcetera. So –

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1 COMMISSIONER: But she's concerned with
 2 communicating to the people the diagnosis and that was kept
 3 confidential, it wasn't disclosed to them. What was told
 4 to them is where you're going but not what the problems
 5 were as you had identified. I think that's what she's
 6 getting at. And should you accept an instruction that
 7 change should be introduced without people being told what
 8 the problems were, is that correct, Ms Steinberg?
 9 MS STEINBERG: Yes it is.
 10 MR MASSONE: The problem went on at Exco
 11 level so the document and the diagnostic were very well
 12 known at the leadership level, so that's where normally
 13 that sits. The communication to the rest of the team
 14 happens in a specific way when it's clear the direction of
 15 change, and like I said it's a change management plan.
 16 COMMISSIONER: Can we break for tea?
 17 MS STEINBERG: Here's a question.
 18 MR KAHLA: Just a quick one.
 19 PROF KATZ: But can we carry on this part
 20 after tea?
 21 MR KAHLA: Just a quick one. When you're
 22 then, when you're then advising them to move the process to
 23 engagement with the whole organisation, did you provide
 24 them with any notes or communication guidelines to enable
 25 the organisation to understand the case for change?

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1 MR MASSONE: Yes, we prepare for them a
 2 plan to do that and it will be in our next submission, but
 3 they will not part of our mandate, so, and that often
 4 companies do that on their own and they do particularly
 5 well with their own communication team and their own HR
 6 team and so in that case they did it on their own.
 7 COMMISSIONER: Could you in the break, is
 8 it possible to get one or two of these documents you say
 9 that the quotations come from? Is your office able to send
 10 some to you? Could you just get a few? Thank you. 15
 11 minutes.
 12 MS STEINBERG: 15 minutes, just after
 13 half past we'll resume, half past 11.
 14 [INQUIRY ADJOURNS INQUIRY RESUMES]
 15 [11:41] COMMISSIONER: Are you ready to go on?
 16 MR MASSONE: Thank you.
 17 COMMISSIONER: Did you manage to find one
 18 of those documents? If you haven't, I mean, we'll get it
 19 later.
 20 MR MASSONE: Please.
 21 COMMISSIONER: You haven't yet got them.
 22 MR MASSONE: I know where they are. I
 23 just couldn't get -
 24 COMMISSIONER: No, no, it's fine. We'll
 25 get it later.

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1 MR MASSONE: An apology, my colleagues
 2 are telling me that I'm not understanding your question so
 3 apologies if I'm frustrating so.
 4 COMMISSIONER: No, well, I tell you what.
 5 It's very important and I know, I can hear that you're not
 6 a - English is not your first language. If you don't
 7 understand the question it's very important that you get
 8 clarity on the questions but do not answer a question if
 9 you don't know what the - it's very, very important and
 10 it's very important that counsel puts it clearly, that you
 11 understand it and that you give a clear answer.
 12 MR MASSONE: Thank you.
 13 MS STEINBERG: Mr Massone, two questions.
 14 Can you explain the process I drawing up this diagnostic
 15 and perhaps going forward who in SARS did you interact with
 16 and at what basis, on what basis? So you'd get some
 17 information. You'd have to process it. You'd have to go
 18 forward. How did the process work in terms of your
 19 interaction with SARS people and who were those SARS
 20 people?
 21 MR MASSONE: Yes, so we are talking about
 22 the diagnostic here.
 23 MS STEINBERG: Let's start with the
 24 diagnostic.
 25 MR MASSONE: Because the players changed

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1 quite significantly through the time. So during the
 2 diagnostic there was mostly the Commissioner. Jonas
 3 Makwakwa would then become the head of BAIT. Then head of
 4 enforcement would become then the head of the results
 5 delivery office, Roland and partially to a smaller extent
 6 the CFO, Matsobane. 80% of that were the first two persons
 7 that I mentioned so the Commissioner and Jonas Makwakwa.
 8 This is during the diagnostic. And in particular the
 9 Commissioner in regards to the organisation structure
 10 mostly if not uniquely.
 11 MS STEINBERG: Carry on.
 12 MR MASSONE: As we were moving into the
 13 other phases of the project on the tax side so the two or
 14 three operational interventions that I mentioned was again
 15 the head of BAIT at that point and some of the people
 16 working with him. I have a slide on that. I have the
 17 names but I prefer to answer this way. On customs it was
 18 the then chief officer, Jad Nicolatos, and Paul Mashaba I
 19 believe was one of the witnesses and we worked on a daily
 20 basis with him.
 21 And the organisational structure was, in the
 22 implementation phase was the whole Exco team at that point
 23 was recreated. So if I, as we see the names there. So
 24 this is how the organisation implementation was structured
 25 so there's the head of the RDO. There was Ronald sponsored

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1 by Jonas. The head of strategy, these are the first names
 2 so apologies for that. For human capital development was
 3 Tebogo. For BAIT was again Jonas.
 4 For finance was Matsobane but also for the
 5 revenue management. For customs and excise was Jad. For
 6 enforcement Shitangano. And this was one of the changes I
 7 mentioned happened afterwards so the head of enforcement
 8 became, sorry, the head of strategy became also the head of
 9 enforcement. And then the IT - and we had no work there,
 10 was again Jonas and this was another change that happened
 11 afterwards where the, at the interim I think the head of
 12 BAIT became also the head of IT. So these were the people.
 13 And below that these are the sponsors and below that you
 14 see the person that we are working almost on a daily basis,
 15 the person that is actually leading us on the ground.
 16 MS STEINBERG: Okay.
 17 COMMISSIONER: Are you moving on?
 18 MS STEINBERG: I have a separate
 19 question, yes, if you want -
 20 COMMISSIONER: I wonder if we can just go
 21 back a stage. You said that your colleagues say that you
 22 didn't understand the questions. Can you tell me which
 23 questions you didn't understand?
 24 MR MASSONE: It's the one on the - but
 25 the one on the -

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1 COMMISSIONER: Let's go through them all
 2 and make sure we do get it.
 3 MR MASSONE: Ja, the one on the
 4 concentration.
 5 COMMISSIONER: What was the difficulty
 6 there?
 7 MR MASSONE: Because I was alluding to
 8 the structure as would now have changed within the -
 9 would've changed a lot is our understanding of what was
 10 going on at SARS and I think that clearly is more important
 11 than how compliance or how structure would've changed and
 12 clearly we had no understanding at the time and if I had,
 13 if we had spoken with say the architect or more other
 14 people we would've realised what would've happened a few
 15 months later and clearly we would not be part of that
 16 journey. So that I think is what I missed in your question
 17 which is absolutely true is we -
 18 COMMISSIONER: Thank you, yes. Sorry,
 19 are there any other questions that you - just let me just
 20 make sure we know where we are.
 21 MS STEINBERG: Okay.
 22 MR MASSONE: But I think it was the same
 23 question that you asked different times but it was saying
 24 what would've changed. Well, everything. Nothing of the
 25 structure probably but everything and everything else so

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1 apology, I knew the consultant plotting down on the little
 2 boxes. I understand now you're not talking about that.
 3 Everything would have changed.
 4 MS STEINBERG: Except the structure.
 5 MR MASSONE: Ja.
 6 MS STEINBERG: You see, I have a question
 7 about that. This really is bothering me. You say the
 8 structure was inherently flawed and that necessarily the
 9 new organogram that you supplied is inherently better. If
 10 that's the case why can't you merely do a desktop exercise,
 11 take the existing organogram, analyse it, say it's
 12 inherently flawed? This is a better model. In fact here
 13 are three or four or five better models. Why do you need
 14 to bother to consult or bother to spend R164 million to get
 15 to that point which you say you knew just from looking at
 16 the organogram?
 17 MR MASSONE: So the, we were requiring
 18 input, not consultation at the time, and the idea about
 19 speaking with people is to understand what they do, what is
 20 the work that they do, so in a box you don't understand -
 21 there's a title but you don't understand what is actually
 22 the work and you need to go on the granularity of what
 23 actually they do. The second is in the interviews they
 24 were pointing towards issues they were seeing and I
 25 understand that many of the issues were not presented to us

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1 because we did interview all the right people and possibly
 2 the most senior people. But a lot of issues were raised,
 3 as an example the one on customs or the one on enforcement
 4 or all the others that actually came out. So that's why we
 5 interviewed the people to understand what they are doing
 6 exactly at a more granular level than what a title says and
 7 to ask them what were the issues they were seeing if any
 8 and if any what recommendation they had.
 9 MS STEINBERG: No, but I'm asking you
 10 this. You say that whatever they said actually wouldn't
 11 have made a difference to the structure so why bother?
 12 MR MASSONE: The additional people -
 13 sorry.
 14 MS STEINBERG: Hm?
 15 MR MASSONE: The additional people I
 16 said.
 17 MS STEINBERG: I don't understand.
 18 COMMISSIONER: So she put to you, you are
 19 saying that whatever they said it wouldn't have changed
 20 materially the structure so I'm also a little bit confused.
 21 Why talk to them at all?
 22 MR MASSONE: No, let me correct myself.
 23 Having read the transcripts on the points that were made
 24 and knowing them now for example on the debt management or
 25 on separating enforcement we would not have changed the

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1 structure. That was my inference. Absolutely almost all
 2 the changes we recommended were coming from the interviews
 3 that we have made and they were corroborated by the
 4 benchmark with, sorry, the benchmark with the organisation.
 5 MS STEINBERG: I understand.
 6 MR MASSONE: I explain myself in a very
 7 bad way. The interviews were actually fundamental.
 8 COMMISSIONER: No, I understand that but
 9 that's the problem. We're talking about methodology. So
 10 it's no good going back later saying, well, I've read it
 11 now and I wouldn't have done anything. We're talking about
 12 methodology and the methodology as I understand it was that
 13 you didn't, I mean, you didn't know what they would say if
 14 you interviewed them properly. And yet you go ahead and
 15 without doing that you put the structure in place. Forget
 16 about what you now know and said oh, well, it didn't make
 17 any difference at the end of the day. We're talking about
 18 methodology. Are you really saying that, and that's what
 19 she put to you, well, why bother to talk to them at all if,
 20 you know, if you're going to do this structure in any
 21 event?
 22 MR MASSONE: Apologies, Judge, I think
 23 what I'm saying is that the 33 interviews we made in a good
 24 way or in a bad way, I'm sorry for that, were actually
 25 fundamental for us to understand how the organisation

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1 should change.
 2 COMMISSIONER: So do I understand you now
 3 to be saying yes, those interviews, I should've had proper
 4 interviews and input first before I changed the structure?
 5 MR MASSONE: Yes, and of course the
 6 corroboration of their benchmarks and the other -
 7 COMMISSIONER: Yes, and you didn't have
 8 that when you changed the structure.
 9 MR MASSONE: We had 33 of them.
 10 COMMISSIONER: Yes. You had the six days
 11 you're telling us about. Is that right? You must speak.
 12 MR MASSONE: Yes.
 13 COMMISSIONER: Thanks. Is that -
 14 PROF KATZ: I think it's common cause
 15 that SARS was a spectacular success at a point in time.
 16 Its collections, it was recognised in the world, it was
 17 recognised domestically as the successful department. You
 18 say their structure was badly flawed so are we saying that
 19 they achieved that success with a badly flawed structure?
 20 MR MASSONE: Let me say this and I don't
 21 know, sorry if I then don't respond your question, to
 22 answer your question correctly. If you had the same team
 23 that was running structure in September 2014 with this
 24 structure you would have an even better SARS, not
 25 dramatically better but a better SARS. And that was coming

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1 out of the diagnostic that we made so clearly the people
 2 are, which is I think the point I was making earlier, the
 3 people are much more, and the way they work together, are
 4 much more important than the boxes that you create.
 5 COMMISSIONER: You mean if you had had
 6 the same team that existed in September you say or July.
 7 You see, these people you consulted, do you know how much
 8 they knew about tax and tax collection and did they know
 9 much about it?
 10 MR MASSONE: Some of them were long time
 11 employees, yes.
 12 COMMISSIONER: Which were the long time
 13 employees?
 14 MR MASSONE: Not these ones, the ones -
 15 COMMISSIONER: No, no, I looking at these
 16 here, these that you put on. As far as I know, and I may
 17 be wrong, the Commissioner had come from the prison,
 18 Department of Correctional Services. He didn't, had never
 19 been in tax collection before. Mr Makwakwa had been for a
 20 number of years but the others all came out from outside
 21 with no tax collection experience. Are you aware of that?
 22 MR MASSONE: Matsobane also was a SARS
 23 employee and then CEO of SAICA but, yes, I understand where
 24 you're going, yes. There was an area of concern.
 25 COMMISSIONER: Did you know that at the

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1 time that they had no tax collection experience?
 2 MR MASSONE: Yes.
 3 MS STEINBERG: I want to come back to the
 4 point that Professor Katz has just raised. When we show
 5 people the diagnostic that had been kept confidential all
 6 these years their response was one of outrage and it was -
 7 the outrage was not so much that it was wrong because
 8 there's much in there everyone agrees was right. It's that
 9 it set out, the allegation is that it set out to paint SARS
 10 in the worst possible light. For example were you
 11 familiar, are you familiar with the IMF's tax
 12 administration diagnostic tool, TADAT?
 13 MR MASSONE: I am personally not. I
 14 think it's one of the things we looked at.
 15 MS STEINBERG: So, you know, it's one of
 16 the leading, highly recognised world benchmarks for tax
 17 administrations. Now, as you came in TADAT had given SARS
 18 a report card and I have it here. It's As and Bs and B
 19 pluses. You know, if your child came home from school
 20 with this report card you'd give them a present. I think
 21 there's one C across all the categories. Now, that is not
 22 mentioned anywhere in the diagnostic. As Bain came in
 23 there was another terribly important landmark for SARS.
 24 They have just received a letter from the IRS,
 25 America's revenue service, saying they had just completed

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1 their review process of South Africa and it says the United
 2 States is satisfied that South Africa has in place, number
 3 1, the appropriate safeguards to ensure that the
 4 information received pursuant to the agreement shall remain
 5 confidential and be used solely for tax purposes and,
 6 number 2, the infrastructure for an effective exchange
 7 relationship.

8 This was absolutely critical to SARS because it
 9 meant that there could be enhanced third party information
 10 on their side. And the Americans said we trust you enough
 11 to open ourselves up to you and you do the same with us. I
 12 must tell you that since then this has dried up. The
 13 Americans haven't formally withdrawn it but they have
 14 stopped providing information. Now, these things happened
 15 just as you arrived. And the people we interview say,
 16 well, where is this? Where is this in the diagnostic?
 17 And it's critical because the changes, the case
 18 for change as you put it can either be, well, we have a
 19 good organisation that can be tweaked or we have a failing
 20 organisation that must be overhauled. Now, the reality is
 21 we had a good organisation and the best diagnostic tools in
 22 the world tell us that but the case was made for radical
 23 change. Now, why did you present a diagnostic that looked
 24 like the child was failing at school rather than getting
 25 As?

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1 MR MASSONE: So if someone is reading the
 2 - we suggested and I said in my opening statement it is
 3 suggested that SARS was broke or a mess or a bad
 4 institution. I apologise but that was absolutely not the
 5 intention. In our work we tend on the focus on the things
 6 that don't work, not on the things that do work because
 7 that's what we are called. Going back to the client,
 8 telling them this is all great - we focus on the few things
 9 that we believe are not.

10 And so we never suggested a radical
 11 transformation. We suggested to work on the structure on
 12 one side and I'm going to go back to the old structure so
 13 we can see what we thought wasn't working there. And in
 14 some specific areas like I said very operational, the debt
 15 collection, and not to say it's bad. It's to say it can be
 16 improved or customs, customs was a little bit worse but
 17 again it's not as bad. It can be improved.

18 The SMMEs that are missing, I'm sure in every
 19 country in the world there's a percentage of SMMEs or
 20 people that are not filing so this wasn't in absolute way
 21 our intention to paint SARS in a bad way. And the case for
 22 change was for absolutely these three things to happen, a
 23 change in organisational structure and I'm going to
 24 elaborate on how, this is one of the questions, how you
 25 change at the edges. That was one of the questions.

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1 So it is very difficult to change an organisation
 2 at the edges. You actually either change it or you don't.
 3 And I want to go back to my point which is the
 4 effectiveness of SARS I believe was not relying on the
 5 structure, was relying on the people and the experience and
 6 the leadership and the culture and that's what was damaged
 7 afterwards. The structure, let me go there, wasn't
 8 optimal. And I think it was said by a few of the witnesses
 9 that actually the structure we recommended was right and
 10 one said actually they've had in the drawer since 2008 and
 11 they were just about to implement it. So then I have
 12 difficulties to understand what the problem was but let me
 13 go to the structure.

14 MS STEINBERG: I don't want to go to
 15 structure yet. My question is still about a diagnostic. I
 16 have a diagnostic from another consulting firm who
 17 consulted to SARS earlier and I don't want to advertise for
 18 them so I won't say who they are but their diagnostic
 19 starts with what is the journey so far, what are our gains.
 20 And then it's how do we then expand on these gains. Now,
 21 that's the type of diagnostic that people in SARS were used
 22 to where you say where did we come from. We've started a
 23 brand new revenue service from scratch. What was the
 24 journey? Where are we and where do we go from here? So
 25 the question is why did you design, write a diagnostic that

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1 just pulls out the weak points.

2 MR MASSONE: I think the difference is in
 3 the relationship within the client and the advisor. If
 4 there's been a discontinuity on the client's side you miss
 5 like we discussed earlier a lot of the points that were
 6 there. So that certainly is one of the issues that we
 7 faced there and we were working within the boundaries that
 8 we were given and the timeframe that we were given. So -

9 COMMISSIONER: Was the timeframe not
 10 enough?

11 MR MASSONE: Well in hindsight yes, two
 12 weeks more would have been certainly useful.

13 [12:01] PROF KATZ: I think what Advocate
 14 Steinberg is really getting at, was your mandate, we the
 15 client think there's something badly wrong in SARS, help us
 16 diagnose it and help us to remedy it? Or we come in now,
 17 organisations do need refreshment we're not telling you
 18 that there's anything wrong, please see what you do, or was
 19 the instruction we've come into an organisation, we've seen
 20 that it's wholly wrong, help us to remedy it. Which of the
 21 two was it?

22 MR MASSONE: Well it was something in the
 23 middle so clearly when you call a consultant it's because
 24 you have some concerns. And so there was a concern from
 25 the Commissioner around the company. And during the

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1 diagnostic the organisation came up as one of the areas of
 2 concern on our side as well as those two or three areas
 3 that I mentioned earlier.
 4 PROF KATZ: But was the emphasis when you
 5 get your mandate this is an organisation that's wrong, help
 6 us or just do a routine refreshment?
 7 MR MASSONE: Well something in the
 8 middle, sorry, Professor, if I don't answer your question,
 9 is I think in our discussion where the Commissioner would
 10 tell us so there were problems in SARS, not specifically in
 11 the organisation structure, yes, Judge.
 12 COMMISSIONER: No, no I'm just making a
 13 note, sorry.
 14 MR MASSONE: And in the diagnostic the
 15 structure came up as one of the issues.
 16 COMMISSIONER: When did you tender for
 17 this diagnostic?
 18 MR MASSONE: December –
 19 MS STEINBERG: '14.
 20 MR MASSONE: '14, Sir, yes.
 21 COMMISSIONER: December '14 so there were
 22 two months that the Commissioner had been here with no tax
 23 experience. What did he tell you, you must do? Did he say
 24 look I've examined this whole organisation in two months,
 25 this is why it's wrong? Did he tell you why it's wrong?

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1 MR MASSONE: No he didn't say that, no,
 2 no.
 3 COMMISSIONER: What did he tell you?
 4 MR MASSONE: Well when we started the
 5 work he said so let's look into this organisation, these
 6 are the people to interview, get access to the numbers and
 7 do the diagnostic.
 8 COMMISSIONER: Did he tell you what the
 9 problem was?–
 10 MR MASSONE: No.
 11 COMMISSIONER: Did you ask him well
 12 what's the problem, why are we in the first place?
 13 MR MASSONE: No.
 14 COMMISSIONER: It goes back to Professor
 15 Katz's question. You can go in and say look just take a
 16 look at this place and see if it's okay or you can go in
 17 and say this place is wrong and it must be changed, tell us
 18 how to change it. So I'm not sure where this answer in the
 19 middle comes from. If he didn't tell you what the problem
 20 was and you didn't ask him what the problem was.
 21 MR MASSONE: Well it's – you think that
 22 the client thinks there is a problem when they call you,
 23 yes so then, I think with the benefit of hindsight I think
 24 we can understand there was an intent.
 25 COMMISSIONER: What sorry?

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1 MR MASSONE: There was an intent there I
 2 think, I haven't seen the – I haven't read the transcripts,
 3 you can see how we might have been used, so that's –
 4 COMMISSIONER: So do you think you were
 5 used?
 6 MR MASSONE: Well like you say I still
 7 have to - on this and elaborate and understand much more as
 8 I read the transcript.
 9 COMMISSIONER: But let's go back to where
 10 we were, you come in for two months, did you know that –
 11 and you knew that the Commissioner knew nothing about tax
 12 collection. And yet you say he didn't tell you what he
 13 wanted and you didn't ask what he wanted.
 14 MR MASSONE: Well yes there was a
 15 discussion about what the scope of the work was which was
 16 in the RFP –
 17 COMMISSIONER: That's what I asked you,
 18 what was the discussion about?
 19 MR MASSONE: Yes so look into the
 20 organisation structure, interview the people, look at the
 21 numbers and see where are the areas of improvement which
 22 was perfectly right, normal for us at the time.
 23 MS STEINBERG: Well this question of you
 24 being used, the allegation is that you came in with a
 25 script, that these consultations, there were very few, they

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1 were very superficial, no one was actually interested in
 2 the answers because there was a predetermined script. And
 3 what that script was, was to fundamentally restructure this
 4 organisation one way or another to turn it on its head. Is
 5 that correct?
 6 MR MASSONE: There was no script for us,
 7 I mean we would not have accepted a script, sorry our
 8 intent like I said was to improve SARS and to make it even
 9 better, not to destroy it, absolutely, absolutely. I mean
 10 we have success stories and actually the references like I
 11 mentioned before that we provided, the three we provided
 12 were very important, we were told by procurement for us to
 13 win. And so our business relies on success stories. So
 14 for us this is already a massive failure, so we will never
 15 come in with the intention of just damaging a company, that
 16 will be not only bad from an integrity perspective, or
 17 against all of our instincts, but also would be a very bad
 18 business decision for a client that was actually relatively
 19 small for us at the time.
 20 MS STEINBERG: But you would agree that
 21 is what happened at the end of the day.
 22 MR MASSONE: Well I can see how you can
 23 think about that yes. Like I say –
 24 COMMISSIONER: How you can think about
 25 what?

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1 MR MASSONE: About the fact that there
 2 was a script.
 3 MS STEINBERG: No, no I say –
 4 COMMISSIONER: Just tell me why do you
 5 say that?
 6 MR MASSONE: Well I read the transcript
 7 and so if you see that a lot of people were moved on, so
 8 let me go back. When we do restructuring the name of the
 9 people, the people that are there especially if your team
 10 don't change normally, so you end up in a new structure and
 11 we've done a number of them where more or less the people
 12 are the same.
 13 PROF KATZ: Yes and it wasn't, that
 14 didn't happen here.
 15 MR MASSONE: That's what I'm realising
 16 now.
 17 PROF KATZ: So are you saying that the
 18 structure you created was capable of being used for some
 19 other purpose?
 20 MR MASSONE: The process of
 21 implementation the structure yes.
 22 PROF KATZ: No the structure itself lent
 23 itself to being used, is that what you are saying?
 24 MR MASSONE: The structure no, the
 25 implantation process yes.

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1 COMMISSIONER: No but you implemented the
 2 structure and you've seen that - you've heard a lot of the
 3 evidence of how groups were broken up. They keep talking
 4 about being fragmented, that was the structure.
 5 MR MASSONE: Yes that's a separate point,
 6 so on the fragmentation I think in some cases fragmentation
 7 was necessary. Like I said for example enforcement and
 8 service, in other cases it was consolidation. So for
 9 example legal office or finance. I don't think that was
 10 the problem, I think it was in the appointment of the
 11 people as the chief officers and the other people were
 12 appointed, too many people for possibly I can read, for the
 13 wrong reasons were appointed. In general too much change
 14 in an organisation especially at the leadership level it's
 15 not healthy. And that compounds to this change of the
 16 structure because now people don't find each other. Let me
 17 make maybe a stupid example. If two people have been
 18 working together, reporting to the same line for five
 19 years, they know each other, they know the job, they have a
 20 way of working which is very consolidated. If someone
 21 moves, let's say for a second for a good reason, to another
 22 office reporting to another line, if the two people stay
 23 the same and someone works on reconnecting then the
 24 processes by which they decide, a budget or they make
 25 decisions, in a few weeks you again having the advantages

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1 of these two people working together –
 2 COMMISSIONER: Just stop there because
 3 I'm sure we're going to go into that process. I'd like to
 4 just get back to my question. I was just intrigued by you
 5 saying that you feel you might have been used. In what way
 6 do you say you would have been used because I mean
 7 implementation had – who you appointed had nothing to do
 8 with you. So you weren't used in – sorry you must listen
 9 otherwise your colleagues will tell you, you don't
 10 understand the question. So the appointment of people had
 11 nothing to do with you. So in what way do you think your
 12 contribution might have been, as you put it, used?
 13 MR MASSONE: Yes the triggering point is
 14 the change in the organisational structure.
 15 PROF KATZ: Well that's what we're
 16 talking about, that's why I ask you. So I mean you'd agree
 17 with counsel that your organisational structure might have
 18 been used for other purposes.
 19 MR MASSONE: Yes.
 20 PROF KATZ: And just following on, on
 21 that, would you agree that pre this process we had a very
 22 successful SARS, post this process we had a failing SARS?
 23 MR MASSONE: The evidence seems to
 24 suggest that, Professor, I don't have –
 25 COMMISSIONER: But you agree and I think

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1 that is correct and I mean I'm not being critical, but it
 2 was a successful organisation although most organisations,
 3 including this one, could have been improved. That's
 4 really your evidence as I understand it.
 5 MR MASSONE: Yes.
 6 MS STEINBERG: See and on that I'd like
 7 to talk about these quotes. You place reliance on them now
 8 and you placed reliance on them at the time. I think you
 9 looked at SARS's connection survey if I'm not mistaken
 10 which also asks staff internally what they're feeling about
 11 the place and rating it. Now you know the context in
 12 January 2015 is a new Commissioner who'd come in and almost
 13 immediately after he came in every Sunday the newspapers
 14 were publishing some scandal about SARS, rogue units and
 15 brothels and a complete breakdown. The Commissioner had
 16 suspended his Exco, people were leaving or being driven
 17 out, it was the beginning of frankly a reign of terror in
 18 SARS which is only ending today. So of course when people
 19 are asked are you happy, should there be changes, they're
 20 going to say we're not happy, there should be changes. Why
 21 at that point in time do you use those responses to say
 22 change the structure? Isn't the answer change the
 23 leadership?
 24 MR MASSONE: So I don't know if the
 25 scores they were given or the comments they were given were

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1 referring to the past or to the current situation. At the
 2 time we thought well clearly they refer to the past. There
 3 wasn't, if you –

4 MS STEINBERG: Sorry, how can you say
 5 they referred to the past? You're taking the temperature
 6 now, you're saying as we sit here today would you like to
 7 see change.

8 MR MASSONE: I say we thought –

9 MS STEINBERG: Yes.

10 MR MASSONE: - we thought because of the
 11 topics they were talking about, for example governance or
 12 for example enforcement is not together or all these things
 13 were not referring to something that had changed at the
 14 time. It was referring to things that were there and
 15 announced before. I can see now how some of that might
 16 have been the current specific moment although this
 17 happened in January 2015. So I don't know if there was
 18 already at that point, I don't know, I have no evidence to
 19 say that there was already a bad climate internally in
 20 SARS.

21 MS STEINBERG: Well the whole Exco had
 22 just been suspended and as you say, some of the key staff
 23 who held the place together had just left.

24 MR MASSONE: Okay if we had read in one
 25 of the comments (inaudible) either in face to face or

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1 online something they referred to there that would have
 2 changed the way we would have interpreted the number. But
 3 that wasn't the case at the time.

4 MS STEINBERG: I don't understand.

5 MR MASSONE: There was nothing in the
 6 comments that was pointing to something that had just
 7 happened. Like you know someone would have read or would
 8 have written there's a problem with the current leadership
 9 team. What they were saying is that there is a problem
 10 with silos for example, so things that refer to the
 11 traditional, the previous situation, not to the current.
 12 And like I say if we had found some of the comments saying
 13 well the current leadership is flawed or something on the
 14 Commissioner, that would have been a warning sign for us.
 15 But I don't recollect anything like that in reports.

16 MS STEINBERG: Well I think the comments
 17 you read out early on weren't about silos and structures,
 18 they were about – you know the ones you read me, I know
 19 there were some about silos, but the ones you chose to read
 20 and many of them were about just wanting change. I
 21 wouldn't recommend that someone comes to work here. Well I
 22 certainly wouldn't have recommend it that someone come to
 23 work in SARS in January 2015 when there was a process going
 24 on of getting rid of people and instilling fear in people.
 25 And that was public knowledge actually. So I'm saying as

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1 part of your diagnostic why don't you say well there's a
 2 cultural problem, there's a leadership problem? Why change
 3 the structure to address that problem?

4 MR MASSONE: They were separate issues so
 5 the culture should have been rebuilt afterwards, like I
 6 said and it hasn't happened. But the issues where we found
 7 were related to the organisational structure. There wasn't
 8 something suggesting a big problem in terms of culture at
 9 the time. Yes the silo culture yes, but there would have
 10 been interest afterwards. I think as you advance in time
 11 then culture becomes a problem because a leadership team is
 12 not recreating a new cohesion around the team or a new
 13 direction or a new level of fairness that transpires
 14 internally. The culture and the change management mention
 15 came up months later, a long time later.

16 COMMISSIONER: But again it comes back I
 17 think to, if you don't mind, to that article written by
 18 your partners one of which is one must understand the
 19 culture before you view the organisation. Now I think
 20 counsel is putting to you if you had come here in January
 21 and you were here for some time one would have known by
 22 then that there were big problems here. That Exco had been
 23 suspended, the acting Commissioner had been put on
 24 suspension, disciplinary proceedings against them. There
 25 were articles in the press about rogue units here, the

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1 chief operating officer had resigned because the
 2 mechanisation had stopped and I know mechanisation wasn't
 3 your – but that's the sort of culture that was here at the
 4 time. And shouldn't you have investigated that as your
 5 partners had suggested you do before you rush in to
 6 changing the structure and say well you know is it the
 7 structure that's the problem or is the culture here that is
 8 the problem? Would you agree with your partner that you
 9 should do that?

10 MR MASSONE: Yes, yes and knowing what I
 11 know now I probably wouldn't – not only we would have
 12 investigated, like you suggested, all the other things, we
 13 probably wouldn't have done the work.

14 COMMISSIONER: You wouldn't have the
 15 work, yes I'm sure if you're looking at it in retrospect.
 16 But I'm asking about then and there, these things you were
 17 aware of and you never seemed to take it into account.
 18 Wasn't it important to take that into account?

19 MR MASSONE: We would say that's what's
 20 happening, so we took face value what we were told and yes
 21 it was a mistake.

22 COMMISSIONER: No, no please. You've got
 23 to answer the question and if you don't understand it you
 24 must tell me. I really want you to make sure you
 25 understand the question. I'm saying that when you came in

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1 here and started your work you knew that all these things
2 were happening.

3 MR MASSONE: Yes.

4 COMMISSIONER: And it was very disruptive
5 to an organisation. Did you not think to yourself let me
6 take that into account and enquire into this culture before
7 I start changing the structure?

8 MR MASSONE: No we didn't do that and it
9 was a mistake.

10 COMMISSIONER: Just one minute, if you
11 don't mind. Yes okay, carry on, thank you.

12 MS STEINBERG: I want to expand on this
13 point from a different angle. One of the, if not the
14 biggest criticism I hear of your work is that Bain did not
15 understand the evolution of the organisation, so the
16 diagnostic took a snapshot of one moment in time without
17 understanding why it looked that way given a long past and
18 where the people on the inside were taking it. So it was
19 just a snapshot rather than a deeper understanding of that
20 moment in time as a function of history and something to be
21 improved on in a particular way. Now in your submission
22 you say to us a new operating model is not about starting
23 with a clean sheet, it's an evolution of an existing model.
24 And I don't think anyone can disagree with that. You also
25 tell us that SARS did not share any prior assessment of the

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1 operating model with you. Now again I ask you how do you
2 accept a mandate, you know, you say you know you're not
3 starting with a clean sheet, you're starting with this
4 living organism, but yet SARS did not share any of the
5 history with you. How do you accept that as a mandate?

6 MR MASSONE: Like I say we take face
7 value what the client says and we work within the
8 boundaries of what they tell us as in placing the
9 relationship between the decision maker and the consultant.
10 And I realise how now that was a mistake.

11 COMMISSIONER: I want to be fair to you,
12 are you saying and I'd hate to find it reported this way,
13 we come in, the client says do this and we unquestioningly
14 do whatever the client says. Is that what you're saying?

15 MR MASSONE: Yes.

16 MS STEINBERG: And would you do that
17 again tomorrow?

18 MR MASSONE: No. No, no like I said
19 there is also – these things never happen in the private,
20 it never happened to me in my life. Clearly there are a
21 lot of lessons learned, I would need to elaborate this for
22 the next month. I don't think I can get ahead of these, in
23 this. And there are a lot of lessons learned on how we
24 work and what work we do and we do it and what kind of due
25 diligence we do before starting the work. There's a long,

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1 long list I think of things we would need to rethink.

2 [12:21] COMMISSIONER: Just following from that,
3 that question that was asked of this journey. You come into
4 an organisation that's been on a journey, it must have been
5 to get here and a journey has got an aim in mind, a place
6 in mind, a destination, but you did not know what that
7 destination was and what would have taken place because you
8 didn't ask anyone. Would that be correct?

9 MR MASSONE: Yes, and a new leadership
10 team should have created a new one.

11 COMMISSIONER: No but you knew that the
12 new leadership team knew nothing about tax collection
13 except Mr Makwakwa and – ja, but they didn't know about tax
14 collection, you knew that. But you didn't speak to the
15 people who had been here for 20 or 30 years in any depth to
16 find out where they were going in any event, is that
17 correct?

18 MR MASSONE: Yes. Judge if I may?

19 COMMISSIONER: Yes.

20 MR MASSONE: When we work in a client,
21 and I'm referring now to private sector, there is normally
22 less change so I understand how now with the benefit of
23 hindsight this is all different, but we wouldn't ask the
24 previous CEOs or the previous board members to tell –
25 unless requested, which we would be very happy to – to

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1 explain to us what the journey was. That would be implicit
2 in the memory of the company because there would have been
3 much less change. There would be a CEO change and maybe
4 one or two other positions. This was a very unique
5 situation, I'm realising now, only now and believing
6 actually very stupid about that –

7 COMMISSIONER: I understand entirely and
8 let me say immediately that, I understand the difficulties
9 there but when you talk about going into another company
10 there's an institutional memory that you can rely on. You
11 don't need to go and talk to the old CEO, there's an
12 institutional memory. But here you didn't have an
13 institutional memory in the people you were talking to.

14 MR MASSONE: Some of them yes, so it
15 wasn't complete blind.

16 COMMISSIONER: Well we've heard about the
17 six days and that you spoke to 33 people. But they all
18 say, listen, as you've heard, this wasn't an in depth
19 conversation about our journey, where we had come from,
20 where we were going to, etcetera. But the top management
21 you were talking to and taking instructions, did not have
22 institutional memory except for two people.

23 MS STEINBERG: Professor Katz, if you'll
24 just give me a moment. You know –

25 COMMISSIONER: Can I just?

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1 MS STEINBERG: Oh I'm sorry, I didn't
 2 realise you were, I'm very sorry, Judge.
 3 COMMISSIONER: Would that be correct? So
 4 it's not the case of this going to the organisation where
 5 there's the top level have institutional memory. This
 6 wasn't such an organisation. Would that be correct?
 7 MR MASSONE: Yes. Although some of the
 8 people, and I think I don't know how many lamented the
 9 depth of interviews, I'm sure some of the people will
 10 recognise more so what they told us was then reflected both
 11 in the changes in the structure but also in the areas of
 12 improvement.
 13 COMMISSIONER: I understand but the
 14 organisation itself according to people we've heard, they
 15 were, they hadn't reached the end point, this was not the
 16 destination. They were on their way somewhere and they
 17 might have got to the same position for that matter had
 18 they been, had you not come in. Might be, might not be.
 19 MR MASSONE: Yes.
 20 COMMISSIONER: And, just give me a
 21 moment. And these, you know I would have difficulty saying
 22 all of these people who came here and said no one really
 23 spoke to me in any depth. I'd have difficulty, my
 24 colleagues might think differently, saying they're all
 25 liars.

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1 MR MASSONE: No absolutely not.
 2 COMMISSIONER: So I think, you know at
 3 face value one must accept that these people who are
 4 integrally involved in these and who had the institutional
 5 memory were brushed aside. A few questions here and there
 6 and that's it. So let's accept that for the time being and
 7 I don't think you can dispute that they –
 8 MR MASSONE: I apologise for that.
 9 COMMISSIONER: Do you agree with me
 10 though? You're not suggesting I should reject all their
 11 evidence on that, are you?
 12 MR MASSONE: No, no, well pointing to the
 13 numbers or the reports were wrong, so in that case, yes I
 14 think you should and we can go back to there. I cannot
 15 comment on the fact that someone wasn't interviewed. If
 16 they say they weren't interviewed, they weren't, so we have
 17 the list of 33. Anyone who is not here we didn't. And I
 18 apologise if someone felt that we didn't spend enough time
 19 or actually were not –
 20 COMMISSIONER: It's not a matter of
 21 apologies. We're trying to understand what happened and
 22 maybe later you can go and apologise to the people, but at
 23 the moment we're not concerned with apologies, this is an
 24 inquiry into what happened. I'm talking about the people
 25 who said, you've got your 33 people, I'm talking about the

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1 people who have said consistently, have seen it in the
 2 record, seen it in some of these, who said somebody may
 3 have talked to me, but not in any depth. Now I'm not,
 4 you're suggesting I should reject that? If they were
 5 spoken to, not in any great depth, that's what they say.
 6 But that is where the institutional memory lay, correct?
 7 There wasn't any above it.
 8 MR MASSONE: There were others still, so
 9 it's not that we didn't capture any of the input from the
 10 people, we captured the input from the people that we were
 11 given and being then 33 we thought it was enough. And
 12 there might have, in some cases, so I don't in this case
 13 but we have a lot of evidence, a lot of things they were
 14 alluding to so for us the interviews were actually quite
 15 powerful in terms of insights.
 16 COMMISSIONER: But you have no record of
 17 them unfortunately that we can look at.
 18 MR MASSONE: No.
 19 COMMISSIONER: And that's the problem.
 20 I'd actually like to look at that and know what record you
 21 have of these 33 interviews you had in six days. But you
 22 haven't got any records of that you say. Why don't you
 23 have records of it, by the way?
 24 MR MASSONE: So we take notes, we don't
 25 minute so we take just notes and we extract what is more

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1 relevant in the interview.
 2 COMMISSIONER: What happens to the notes?
 3 MR MASSONE: Well they get destroyed
 4 afterwards, we are talking about three years and a half
 5 ago, so apologies.
 6 COMMISSIONER: Do you not keep your whole
 7 sort of pack of what you did?
 8 MR MASSONE: No.
 9 PROF KATZ: As a well experienced
 10 strategist, management consultant, looking at SARS now,
 11 what do you think the strategy was? Has resulted in what
 12 we now see?
 13 MR MASSONE: Okay the one, what changed,
 14 you mean? Maybe I should ask you to elaborate the
 15 question, please for me, Professor.
 16 PROF KATZ: So there was even looking at
 17 that fifth, you gave four, there was a fifth, there was a
 18 new operational model adopted, what do you think the
 19 strategy was that it sought to achieve looking at what SARS
 20 looks like now? So either there was a good strategy that
 21 went wrong in its implementation or there was some other
 22 strategy, but there was a strategy adopted and post the
 23 adoption of that strategy we see a very damaged SARS. What
 24 would that strategy have been?
 25 MR MASSONE: I cannot comment on that,

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1 Professor.

2 COMMISSIONER: Ms Steinberg, I think

3 you'll probably be getting to the point of you know we've

4 seen the four options that were put in and the fifth that

5 changed somewhat. Are you getting to that or?

6 MS STEINBERG: I'm getting to that. I

7 wonder if we could just try and stick to this topic.

8 COMMISSIONER: Yes.

9 MR KAHLA: I just want to understand

10 from, we've heard the information in relation to the

11 interviews that were undertaken, the ten minute or so in

12 some instances. To what extent those interviews were

13 conducted consistent with, for want of a better word, the

14 Bain way of conducting these interviews? Is this

15 consistent with the way you conduct such interviews in

16 preparation for or as part of doing your diagnostic, or was

17 there something that was distinct here at SARS relative to

18 how you do it anywhere else?

19 MR MASSONE: So clearly a ten minute

20 interview is not an interview so I don't have any evidence

21 of what happened there but clearly that's not an interview

22 so clearly it cannot be a normal way of doing and certainly

23 wasn't intentional. I believe what they say is one of the

24 person left and the other stayed and that the other were

25 junior, which is often a comment that we hear.

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1 MS STEINBERG: Actually Mr Khan testified

2 that the whole interview lasted 12 minutes.

3 MR MASSONE: That's not our standards and

4 not acceptable.

5 COMMISSIONER: Why did it happen here

6 then?

7 MR MASSONE: I don't know. It's a

8 mistake.

9 MR KAHLA: What I'm trying to get to is

10 how would you ordinarily have run these interviews? How do

11 you run them with other clients? And really just trying to

12 figure out whether at SARS you deviated from your normal

13 practices or was this part of the way you normally do it,

14 it's just that at SARS people struggle to understand the

15 way you do it?

16 MR MASSONE: I'm sure that if you

17 interviewed the 33 people we interviewed, many of them will

18 say that they had an extensive and maybe even pleasant, I

19 don't know, interview. So that's the way we do things and

20 that's where we did it at SARS, we believe in the majority

21 of the cases. And in some cases I hear that didn't go that

22 way. I don't know in what stage if in the diagnostic of

23 later on when it came to the implementation, I don't know,

24 so that would be very different from – in order to respond

25 to your question – so the intention itself was to apply

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1 actually our best methods.

2 MS STEINBERG: I have interviewed some of

3 the people, maybe half of the people on your list. Nobody

4 said that the interview was adequate. Nobody said it was a

5 pleasant - it doesn't mean that there aren't some but I can

6 tell you so far nobody said that. You know on this

7 question of the journey of the evolution, because I think

8 it's the crux of the matter actually, the most, we've

9 received a lot of submissions as this commission but I can

10 say the most extraordinary submission in my opinion arrived

11 one day on a trolley, boxes and boxes and boxes. And it

12 was put together by a senior woman in SARS who you did

13 interview and her team and some senior colleagues and I'm

14 going to read you just some of the indexes.

15 COMMISSIONER: Is this the indexes to the

16 papers in the box?

17 MS STEINBERG: To the papers in the

18 boxes, which by the way I spent I think almost two days

19 with her eventually. I called her in and I said this is

20 remarkable, guide me through it. The reason she sent it

21 was to show where we've come from as SARS and where we were

22 planning to go. And there are boxes documenting this

23 journey and the future plans. And the index, I've never

24 read an angry index before but this is an angry index. It

25 says the purpose of this file, file 1 is to show the

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1 different operating models that clearly show the strategic

2 alignment between the strategy model and the structure

3 which has always been segmented and differentiated and

4 approached in line with the compliance model. And then

5 there are 15 documents which take a box full the files,

6 showing the business models from 2003, ending with

7 Commissioner Pillay's suggestions on the operating model

8 that were made just before he was suspended.

9 The next file. The purpose of this file is to

10 show that governance was never just on paper which was one

11 of the points in your diagnostic. Governance has been an

12 evolving matter over the years and each time when we do

13 reviews we enhance the governance structures. Governance

14 is much more than only committees as what Bain seems to

15 think as their only reference to governance that's on paper

16 is in relation to committees, etcetera. This file has 14

17 documents showing the extraordinary measures SARS had put

18 in place to deal with governance and showing where they

19 were going forward. These boxes also include an

20 independent assessment by I think Ernst & Young in the

21 middle of all of this, an independent assessment of

22 governance which again gave it a good score card but made

23 some suggestions as to improvements. And on and on and on

24 it goes. The purpose of this file – this is the tax gap

25 file – is to show Bain, is to show that Bain, that the

<p style="text-align: right;">Page 1830</p> <p>1 previous studies done – sorry this isn't quite grammatical. 2 It shows the detailed studies per tax product that were 3 done and led to very successful activation programs. On 4 and on and on it goes. And I asked her in because for me 5 to understand SARS well enough to do this commission, I 6 needed to understand that. And there is this extraordinary 7 journey. And then the way forward. Now that's the journey 8 which you've said you're unaware of which you didn't call 9 for, having interviewed this woman who was trying to tell 10 you. But look forward. Part of what's in here is SARS' 11 annual performance plan. Are you aware of that document? 12 MR MASSONE: Yes. 13 MS STEINBERG: Now that annual 14 performance plan in fact identifies very similar weaknesses 15 to the ones that Bain identified. And it has an action 16 plan for each one of them. So for example with the large 17 business centre, it says weakness, we don't have enough 18 resources directed at high net worth individuals. Plan, 19 intensify resources in that segment. And on and on and on. 20 A highly detailed plan. Did you take that into account 21 when you made your recommendations? 22 MR MASSONE: Well that plan, I don't know 23 what plan you're referring to. This was one of the things 24 we heard loud and clear about the need to prove and that 25 was one of the recommendations we submitted. Absolutely it</p>	<p style="text-align: right;">Page 1832</p> <p>1 been very similar to ours. 2 COMMISSIONER: Or put it the other way 3 round, your model would have been very similar to what 4 theirs would have been. 5 MR MASSONE: Yes. 6 MS STEINBERG: But you see they wouldn't 7 have implemented it overnight. And part of what brought 8 this organisation almost to its knees is an overnight 9 implementation. Now you see one of the documents that I 10 was given here, it's a chart, it's a graph and it 11 classifies an organisation as either infancy, adolescence, 12 prime, stable. You probably have seen these graphs, 13 they're common. And it was trying to identify where in its 14 level of maturity SARS sat. It was somewhere between 15 adolescent and prime and based on that the plans going 16 forward were well how quickly can we change? We know the 17 instruction should probably look like that, we didn't need 18 to employ consultants to tell us. But the organisation is 19 not mature enough, or ready enough just to jump there in a 20 few months. Was that not part of your thinking and your 21 recommendations? 22 MR MASSONE: No it wasn't. 23 MS STEINBERG: Why not? 24 MR MASSONE: I cannot answer. I don't 25 have a good answer to that. I think what the real problem</p>
<p style="text-align: right;">Page 1831</p> <p>1 was - and especially high net worth individuals. 2 MS STEINBERG: Now I'm not asking you, 3 that was an example. I'm saying did you study the annual 4 performance plan? 5 MR MASSONE: Yes. Well my colleagues did 6 at the time, yes it was one of the documents taken into 7 account. 8 MS STEINBERG: Because that plan 9 suggested that all those weaknesses that you identified 10 could be addressed not by massive structural changes but by 11 actually adding segments to the model or intensifying 12 resources in existing segments. 13 COMMISSIONER: Is that correct? Do you 14 agree with that? 15 MR MASSONE: Yes. Yes, but the structure 16 changed so enforcement separated from the taxpayer service 17 wasn't done to improve the performance, was done to improve 18 the checks and balances, was suggested to improve them. 19 MS STEINBERG: But did you understand how 20 far SARS had come with checks and balances and where they 21 proposed going and at what speed they proposed going there? 22 MR MASSONE: Well the speed no, we didn't 23 understand and clearly there has been too much change in 24 too short amount of time. I think in one of the 25 testimonies they were saying that their model would have</p>	<p style="text-align: right;">Page 1833</p> <p>1 was the change in the leadership team because you can – 2 MS STEINBERG: Sorry the change in the? 3 MR MASSONE: In the leadership team at 4 different levels so not only the top one or two layers but 5 more, because you can change structure and there are 6 different ways of doing that. You can do it in a slow way, 7 you can do it in a fast way. Clearly if you do it fast and 8 then you also change all the people, then you have a 9 problem. 10 MS STEINBERG: But why didn't you say 11 that? Why wasn't that part of your recommendations? 12 MR MASSONE: Ja we said. We said that. 13 MS STEINBERG: You said that? 14 MR MASSONE: Yes. 15 MS STEINBERG: Where did you say that? 16 MR MASSONE: Well in a number of 17 conversations we said that there was too much change that 18 was happening. Like I said we realised that people were 19 changing very quickly, it was in around April I think 2016 20 and we started, also we were seeing some of the 21 recommendations were not happening on the tax field, 22 etcetera. And so we started having conversation on that. 23 And there was a slide, I think it's in this document, 24 explained where we think there were lack of capabilities as 25 well. Part of that was a consequence of the I think you</p>

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1 call it juniorisation of the team and that's when we
 2 started realising that, so we had a number of conversations
 3 about that and we were –
 4 MS STEINBERG: Who did you have the
 5 conversations with?
 6 MR MASSONE: With the Commissioner, of
 7 course, with Jonas Makwakwa, with the head of HR, with the
 8 head of strategy, with many people and each of them I think
 9 a number of times.
 10 MS STEINBERG: And what was their
 11 response?
 12 MR MASSONE: Yes we're going to work on
 13 it.
 14 COMMISSIONER: Work on what?
 15 MR MASSONE: On introducing new people
 16 and more senior people and ja, so it wasn't a satisfactory
 17 answer.
 18 MS STEINBERG: And you never put this in
 19 writing?
 20 MR MASSONE: Well we should, well yes
 21 there are documents that speak about that but not in
 22 writing as in a formalisation of, yes, but there are mails
 23 and there are documents about that.
 24 [12:41] MR KAHLA: You are saying that you were
 25 never given a satisfactory answer on that issue by the

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1 people you spoke to?
 2 MR MASSONE: No, not really. While there
 3 was reassuring like yes, something would really be
 4 happening and which is when then, when the contract came to
 5 an end we went away.
 6 MS STEINBERG: You see, the difficulty
 7 with taking the right structure on paper and just imposing
 8 it on an organisation is that we know ex-ante that that
 9 can't work. And that's why I come back to the beginning.
 10 Why did you accept a mandate just to change a structure?
 11 MR MASSONE: So the, we prepared a change
 12 management plan so we are already speaking about when -
 13 this is a conversation we're having with them about the
 14 structure. We are in between June and August of 2015 when
 15 the new structure is approved. That's when you start now
 16 saying we need to start communicating because we know what
 17 the structure would be. We need to start communicating,
 18 making sure leadership team is in place, making sure
 19 everyone understands where we are going and there is
 20 fairness for people, treatment of people. That's when we
 21 came with the communication plan.
 22 MS STEINBERG: And when did you realise
 23 that your communication plan was being ignored?
 24 MR MASSONE: Well, more or less at the
 25 same time we realised that people are leaving so very,

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1 very, several months later. Like I said we work - it seems
 2 like from the interviews that we were basically doing
 3 everything at SARS but we were working in a very narrow
 4 environment and life was going on as we were there and so
 5 we had no communication or evidence of what was happening
 6 on the side and now again with the benefit of hindsight we
 7 should've been more alert.
 8 MS STEINBERG: No, no, there's a
 9 contradiction. You've said on the one hand leadership
 10 wasn't listening to you. You said to them change is
 11 happening too quickly. This isn't going to work. But on
 12 the other hand you're saying we didn't actually realise.
 13 Which is it?
 14 MR MASSONE: The conversation started
 15 around April, in April 2016 so that's where we're seeing
 16 people are leaving and things are now happening. Our
 17 concern was not on the speed. Actually the implementation
 18 took long months so I think it started December 2015 and
 19 then I was told October 2016 so it took a long time as they
 20 were going through those change requests. So the actual
 21 implementation took enough time. The problem I see is that
 22 too many people at a senior and a junior level were changed
 23 during that time, that that change management plan that we
 24 gave them wasn't then taken by them, hadn't been taken by
 25 them and appropriately implemented so making sure that

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1 people are aware of what's happening, given support, and
 2 then the third thing is that the people were -
 3 MS STEINBERG: At what stage did you
 4 realise there was a problem?
 5 MR MASSONE: Ja, around April,
 6 March/April. I cannot recollect exactly but there was the
 7 feeling of things are now happening on the tax collection
 8 as well as on customs and more on the tax collection and we
 9 are seeing that a lot of people are not there anymore.
 10 MS STEINBERG: The minister -
 11 COMMISSIONER: Can I just stop there?
 12 MS STEINBERG: Ja.
 13 COMMISSIONER: Why were people leaving as
 14 far as you knew at that time? Did you ask why a lot of
 15 people were leaving?
 16 MR MASSONE: No.
 17 COMMISSIONER: You didn't ask, well,
 18 maybe they're not happy with this new organisational
 19 structure?
 20 MR MASSONE: Ja, that was a possibility.
 21 COMMISSIONER: But you didn't ask anyone.
 22 MR MASSONE: No, like I said -
 23 COMMISSIONER: Sorry, is that a clear
 24 answer? No, we did not?
 25 MR MASSONE: No, we didn't ask.

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1 COMMISSIONER: Sorry?

2 MR MASSONE: I personally didn't ask.

3 COMMISSIONER: No, I'm talking about your

4 team. Did anyone ask?

5 MR MASSONE: Well, if they did they

6 didn't tell me.

7 COMMISSIONER: You would expect them to

8 tell you if they had.

9 MR MASSONE: If that is something

10 relevant to tell me, yes.

11 COMMISSIONER: Well, wouldn't that be

12 relevant to tell you? We asked people why they're leaving

13 or we noticed people leaving and we haven't asked them. I

14 mean, as you say this was one of your concerns at that

15 time. People are leaving. You don't ignore that I

16 would've thought. Am I wrong?

17 MR MASSONE: I raised the concerns with

18 the leadership team so I mentioned the names and like I

19 said the answer was not satisfying. More on the, well,

20 will happen, more than an explanation of what happened in

21 the past so we were not happy with the answer in terms of

22 yes, this problem will be solved.

23 COMMISSIONER: No, no, but you're not

24 dealing with my question. You saw that people were

25 leaving, skilled people, correct?

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1 MR MASSONE: Well, we saw people leaving.

2 We didn't have an opinion on anyone because we don't have

3 opinion on people if they were skilled or not. That's why

4 when the appointments started happening it's not that we

5 could say it's the right appointment or the wrong

6 appointment. We did not have any insight on that.

7 COMMISSIONER: But you saw people were

8 leaving.

9 MR MASSONE: Yes.

10 COMMISSIONER: And you say you've got no

11 knowledge of whether it was asked whether they were leaving

12 or not.

13 MR MASSONE: No.

14 COMMISSIONER: When did Ms Manik leave by

15 the way? She had left in 2015 I think, 2016?

16 MS STEINBERG: I don't recall. Minister

17 Nene went to the trouble of appointing an advisory board

18 chaired by Judge Kroon. Now, I've looked at the minutes of

19 the meeting. There was one meeting between Bain and Judge

20 Kroon and team. Nowhere there do you raise these concerns.

21 MR MASSONE: Yes, because the meeting

22 happened I believe around March or April, forgive me if I

23 don't remember, of 2015.

24 MS STEINBERG: Which is when you said the

25 problems were happening.

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1 MR MASSONE: 16.

2 MS STEINBERG: 16.

3 MR MASSONE: 2016. We started realising

4 that things were not happening in 2016.

5 MS STEINBERG: Ah, I see.

6 COMMISSIONER: When was the meeting with

7 Kroon, Judge Kroon?

8 MR MASSONE: I will have to come back to

9 you but I believe between the end of the diagnostic before

10 we start a new thing, the new mandate, so that would've

11 been March, April 2015.

12 MS STEINBERG: I didn't understand. When

13 you said you realised problems started in April you meant

14 April 2016.

15 MR MASSONE: 16.

16 COMMISSIONER: This meeting you had with

17 Judge Kroon and his committee how many were there?

18 MR MASSONE: I wasn't present. I was

19 outside the country. A colleague of mine did the

20 presentation. So I would need to come back to you on that,

21 Judge.

22 COMMISSIONER: Who's your colleague?

23 MR MASSONE: It's one of the parties that

24 were working on the -

25 COMMISSIONER: Is he here?

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1 MR MASSONE: No, not today.

2 COMMISSIONER: Is he in the country?

3 MR MASSONE: Yes.

4 COMMISSIONER: Where? In Johannesburg?

5 MR MASSONE: Yes.

6 COMMISSIONER: Do you think you could

7 just ask him and I don't mind if it's hearsay frankly, ask

8 him how many meetings there were with the Kroon advisory

9 committee and how long were they?

10 MR MASSONE: I think there was only one

11 meeting. I don't know the duration. I will ask. I will

12 ask.

13 COMMISSIONER: Thank you.

14 MS STEINBERG: You've mentioned a couple

15 of times that those four structures that you came out with,

16 some of our witnesses said, yes, that's exactly where we

17 were going. I think that's right but the point I'm making

18 about the evolution of an organisation is that it's no

19 answer to say but we had the right model on paper. What

20 brought this organisation to its knees was imposing that

21 model too soon and too fast on an evolving organisation.

22 Would you agree?

23 MR MASSONE: I respect your opinion but I

24 said I think what went wrong at SARS is those three things,

25 not the structure. The structure might have been a

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1 compounding factor or a triggering factor. The three
 2 things were too much change in the leadership team, even at
 3 a more junior level, lack of buy-in because clearly it
 4 seems that that change management plan was not done
 5 properly or at all and the third, those software elements
 6 that when you then, you took away to organisations, to
 7 units within one organisation and you don't recreate the
 8 connectivity and alignment, etcetera. That will not work
 9 effectively. In my opinion these three are the root causes
 10 of what happened afterwards.

11 MS STEINBERG: But you misunderstand my
 12 question. I'm not saying the model is flawed. I'm saying
 13 maybe that was the right model for five years' time or for
 14 ten years' time. That's where SARS was going to. The
 15 problem was Bain recommended that model now. And that's
 16 what broke this organisation.

17 MR MASSONE: That's where I differ in
 18 terms of opinion. My opinion is that, and I said that, if
 19 you had the same people, imagine the ones that were running
 20 SARS in 2014, and you asked them to implement that
 21 structure more or less in the same time working on the soft
 22 elements and making sure there is enough communication,
 23 buy-in, consultation etcetera there would not have been
 24 problems at SARS.

25 MS STEINBERG: Let me ask you this. That

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1 graph I read out where you have an infant, an adolescent,
 2 prime, stable, would you not recommend a different model
 3 depending on where on that graph the organisation fits?

4 MR MASSONE: I cannot comment on the
 5 graph because I haven't seen it. Organisational changes
 6 don't happen in decades in the organisation I've seen even
 7 it's a public institution and I've been reorganising them
 8 in different countries many, many times. And I repeat the
 9 problem is that who is leading the change, not how much
 10 change you have in the organisation. And we have example
 11 in South Africa where a lot of change has happened from, by
 12 the right people in the right way and there's been a very
 13 successful change, very profound changes.

14 MS STEINBERG: No, but I'm asking you
 15 this. If organisation X is in its infancy and organisation
 16 Y is at its prime would you suggest the same organisational
 17 structure for those two, X and Y, the next day?

18 MR MASSONE: It's a theoretical question
 19 so I cannot answer to that. I would need to understand
 20 what the two companies are and how the business model is
 21 evolving and what they are trying to achieve to say what is
 22 the speed of change because maybe an infancy company to
 23 change faster because they are growing and their business
 24 model is changing, internationalising, and a very old
 25 company need to change in a slow way. But there is also

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1 reason to do it in a different way because a traditional
 2 company is very consolidated so you will achieve change
 3 very slowly and so it depends on the situation.

4 MS STEINBERG: You see, that is my point.
 5 You said you would need to understand how the organisation
 6 is evolving but you took a mandate where you were actually
 7 precluded from understanding how the organisation was
 8 evolving.

9 COMMISSIONER: Is that correct?
 10 MR MASSONE: Yes, I understand it now.

11 COMMISSIONER: And if you look back had
 12 you not accepted the mandate on those terms but said, look,
 13 we're advisors, we've got our own views on what mandates we
 14 will accept and not accept and we don't just do what we're
 15 told. Well, you say Bain does just do what it's told but
 16 leave that aside. Would you not say, look, I shouldn't
 17 have taken this mandate? I didn't know enough. Would that
 18 be fair?

19 MR MASSONE: Yes.
 20 COMMISSIONER: You know, I understand
 21 entirely what, you know, you spoke about leadership change
 22 and management. From what we've heard there's a lot in
 23 what you say. My concern is just that you seem to, you
 24 know, you don't seem to have appreciated that at the time
 25 that this was occurring and it goes back to your partners.

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1 I'd like your partner - please compliment them for me. I
 2 like what they say. And they say you must understand the
 3 whole, what, your environment in which you're acting. But
 4 it does seem with respect, and correct me, that really you
 5 came in and after a very short time really changed the
 6 structure and moved out. That's really what you did. I
 7 mean, I know you had 33 interviews in six days but beyond
 8 that you really just moved in, changed the structure,
 9 looked at it structurally, looked at New Zealand, Australia
 10 and all these other places, how they do things, change it
 11 structurally and moved out. That's really what happened.
 12 Is that fair?

13 MR MASSONE: Yes.
 14 PROF KATZ: Mr Massone, you answered the
 15 judge saying you were precluded. Was that a unusual
 16 instruction that you are precluded from looking at the
 17 background and -

18 MR MASSONE: I don't think it was a
 19 precise instruction. I think it's what happened, what
 20 actually materially happened. So there wasn't a discussion
 21 about I want to - no, you cannot because that would've
 22 triggered an alarm. It was just a - and that's why I say
 23 it was a mistake. I should have pushed much more to the
 24 point of kind of breaking away. I don't know what the
 25 reaction would have been if I asked that because I never

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1 asked a question.

2 COMMISSIONER: May I just - so my

3 observation when I read your submissions which is quite a

4 long document and I came away with the feeling, and tell me

5 if I'm wrong about this, that what really happened is that

6 you looked at the structure here. You knew I presume what

7 you call continued best practice around the world, New

8 Zealand and wherever. And you said, well, best practice

9 requires this structure and this structure doesn't fit so

10 we'll change this to best practice. That's the impression

11 I got to a large degree. Would that be fair?

12 MR MASSONE: No, Judge. That's one

13 component, the benchmarks.

14 COMMISSIONER: Yes.

15 MR MASSONE: And every country has a

16 different situation so you cannot just kind of bring down a

17 model and actually not all the organisations in the world

18 are organised in the same way so there's not one single -

19 COMMISSIONER: No, of course.

20 MR MASSONE: What we did with the

21 interviews and all the other quantitative elements point

22 out to a few areas of issues that we found in the

23 structure, the concentration of powers, the duplication and

24 fragmentation of activities, the lack of their checks and

25 balances between the first and second line of defence and

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1 many others that I mentioned. Then if you say, okay, that

2 is - you mentioned if that is the issue, okay, what are the

3 solutions and then we explore the different solutions and

4 we match them towards what the rest of the world was doing.

5 And we find different models. The one that we thought was

6 the right one was the one we recommended.

7 COMMISSIONER: But you say you matched it

8 to what the rest of the world is doing. I mean, just tell

9 me what is the relevance of what they do in New Zealand? I

10 mean, it's a very law abiding country, small country. They

11 behave themselves there. Well, it's not quite the same way

12 here when it comes to tax compliance. I'm sure they're

13 largely compliant.

14 MR MASSONE: Yes, New Zealand and

15 Australia are best practice in terms of customs.

16 COMMISSIONER: Well, you call it best

17 practice. It's practice. But whether it's best practice

18 for here, I mean, this might be best practice for Africa

19 for that matter but not best practice for Australia. So

20 this whole idea that you look at New Zealand where they, as

21 I say they're largely compliant and you come here where the

22 real problem was lack of compliance and how do you get to

23 compliance. It seems to me that you need a different

24 strategy, a different model. Would that be not right?

25 MR MASSONE: No, Judge. If I may go to

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1 the structure that we found so I can say, well, we found it

2 wasn't appropriate.

3 COMMISSIONER: Yes.

4 MR MASSONE: So the previous structure

5 had also deputy Commissioner. This is the structure we

6 found when we were there. So the one point you see is

7 there is one single unit, chief of operations.

8 COMMISSIONER: Ja.

9 MR MASSONE: Out of the less than 14 000

10 people employs 9 500. And the head of that structure has

11 15 or 16 direct reports and eight layers, well, seven

12 layers below him, seven plus one.

13 COMMISSIONER: Yes, sorry, can I just

14 interrupt you? You can carry on with this. I just want to

15 go back to my question. My real question is to what extent

16 is New Zealand relevant when you come here? Isn't it more

17 relevant as it's been put to you regularly and all the

18 witnesses, what is relevant here is to understand the

19 problem here instead of just going to New Zealand?

20 MS STEINBERG: Let me give you an

21 example.

22 COMMISSIONER: No, no -

23 MS STEINBERG: Sorry, I've done it again.

24 Sorry.

25 COMMISSIONER: Yes, please just give me a

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1 chance. I want to understand this. I haven't quite

2 understood why New Zealand is of any great relevance. As

3 I've said to you what seems to me of relevance is to

4 understand the society here and the journey one has been on

5 to address the problems here. That seems to me far more

6 important than New Zealand. Would that be correct?

7 MR MASSONE: Yes, yes.

8 COMMISSIONER: And very little of that

9 took place. How did you know about New Zealand by the way?

10 Have you worked in New Zealand?

11 MR MASSONE: Well, so the - I don't know

12 how we decided who's those seven countries. They other

13 were America, Malaysia, etcetera. So they were data

14 points. It's not that -

15 COMMISSIONER: Sorry, you've got to just

16 listen to the questions. Your colleagues I promise you are

17 going to say you're not understanding. Has Bain and

18 company worked in the New Zealand tax office or is this

19 simply from literature that you know about New Zealand?

20 MR MASSONE: I don't know if we work or

21 not. We wouldn't be able to speak of our clients. It was

22 probably, I'm speculating here, an (inaudible) outside in

23 on how they're organised. They typically publish the

24 structure and the idea if I can explain why we do

25 benchmarks is to say okay, if this is the structure what

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1 other models are in place around the world. And you can
 2 choose seven or 25 or two. And basically that, all that
 3 came from that benchmark was to say, well, there isn't one
 4 model but the two models are around the taxpayer and around
 5 the faces of the business, registration, enforcement,
 6 etcetera.

7 COMMISSIONER: Ja.

8 MR MASSONE: Most of them have come in
 9 time to have a hybrid. That gives the advantages of being
 10 close to the taxpayer and focused on the taxpayer but also
 11 the advantages of separation of powers between for example
 12 enforcement and the structure. That was all that came from
 13 those benchmarks.

14 COMMISSIONER: But you see, you call them
 15 benchmarks and that's what worries me. So that is a
 16 benchmark, you mean that's the level that I should aim for.
 17 I can understand you take into account, you look at how the
 18 systems work but having done so you then concentrate on the
 19 problems here and you call them benchmarks. It worries me
 20 that you call it a benchmark because you're measuring this
 21 against that and it must conform with that. Is that how
 22 you use the term benchmark?

23 MR MASSONE: There wasn't a push to
 24 conform so benchmark is the data point. Sorry, maybe the
 25 benchmark name is not the right language but it's a data

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1 point that you have, to understand what other people are
 2 doing.

3 [13:01] MS STEINBERG: You see I want to give you
 4 an example because I think it typifies the problem we are
 5 putting our finger on here. One of your benchmark was in
 6 the UK, you say, you're talking about SARS footprint
 7 coverage in terms of the number of branches and you say
 8 well in South Africa there are 11.3 branches per million
 9 taxpayers. In the UK there are 7.6 million, 7.6 branches
 10 per million and you therefore conclude that are too many
 11 branches in South Africa. Cut down on your branches and
 12 that was one of the recommendations.

13 MR MASSONE: No, absolutely not.

14 MS STEINBERG: I'll find it for you.

15 MR MASSONE: No, no absolutely -

16 MS STEINBERG: Because I -

17 COMMISSIONER: Show it to him first.

18 MR MASSONE: NO, no, not.

19 COMMISSIONER: Before you carry on.

20 MS STEINBERG: Well let me start with the
 21 affidavit of the man responsible for branch operations, Mr
 22 Dan Zulu.

23 COMMISSIONER: No, I'm sorry I think you
 24 must just, you put -

25 MS STEINBERG: It's going -

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1 COMMISSIONER: You've got to also listen
 2 to me, Ms Steinberg. I sometimes have something that I
 3 want to say. I think you put to him that it's one of their
 4 recommendations, you must cut down on branches. Now he
 5 disagrees I think.

6 MR MASSONE: Absolutely not.

7 COMMISSIONER: You do disagree with that.

8 MR MASSONE: Yes.

9 COMMISSIONER: Well can you just show him
 10 where his recommendations -

11 MS STEINBERG: Judge, I'm going to have
 12 to find it in the lunch break, I can't find it now.

13 COMMISSIONER: Leave the question and
 14 then come back to it if you will but I think to be fair to
 15 him we must decide whether that is their recommendation or
 16 not.

17 MS STEINBERG: Well then it might be a
 18 convenient time to break anyway and I'll find it over lunch
 19 time.

20 COMMISSIONER: Thank you. 2 o'clock. 2
 21 o'clock, Ms Steinberg?

22 MS STEINBERG: 2 o'clock.

23 [INQUIRY ADJOURNS INQUIRY RESUMES]

24 [14:02] COMMISSIONER: Mr Massone, are you ready?
 25 MR MASSONE: Yes.

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1 COMMISSIONER: I just want to ask you to
 2 do something for me, if you don't mind. I'm interested to
 3 know whether your benchmarking as it were comes on these
 4 other tax authorities, come from personal knowledge or from
 5 literature as it were. Now I know, I understand that you
 6 don't want to disclose your clients so can we, but
 7 unfortunately it doesn't apply here. But I'm not going to
 8 embarrass you. What I would like you to do for me is to
 9 overnight, just prepare, very short, to inform me what tax
 10 authorities Bain has actually worked for and in a short
 11 paragraph what work you did. Now if you give me that in
 12 the morning, it will not be disclosed in public and I will
 13 not disclose it in any report but I just need to know for
 14 my own information. Is that fair? Thank you.

15 MS STEINBERG: We were discussing the
 16 question of the SARS branches.

17 MR MASSONE: Yes.

18 MS STEINBERG: I just want to refer you
 19 to what I had in mind. This is the first submission that
 20 you made to the Commission and if you recall there quite a
 21 number of slides. Slide number 7, and this is the
 22 diagnostic summary, 3 of 4, service channels, there are
 23 indications that SARS footprint could be optimised. SARS
 24 footprint coverage is higher than benchmarks. There are
 25 11.3 branches per million taxpayers in South Africa against

<p style="text-align: right;">Page 1854</p> <p>1 7.6 branches per million taxpayers in the UK. SARS is 2 increasing its branch footprint. Other tax authority such 3 as HMRC are reducing their footprint while increasing 4 capillarity with tax kiosks and increased service through 5 digital applications. 6 If we then go to slide 45 it's graphs showing 7 that SARS footprint coverage is higher than benchmarks. 8 SARS branch Opex in some provinces appears high. And there 9 are the graphs comparing us to other countries. The next 10 page 46, extension of SARS branch footprint is planned and 11 the recommendation is that there are other ways to improve 12 branches. The next page 47, benchmarks show movement away 13 from bricks and mortar branches. Then if we go to page 63 14 under the design principles, one of them is customer 15 channel (branches, contact centres, etcetera) approach and 16 footprint should deliver good service to taxpayers while 17 improving efficiency and reducing cost. Now these 18 recommendations were then put to Mr Dan Zulu who I believe 19 was on the actual project – 20 COMMISSIONER: Can I just stop you? 21 MS STEINBERG: Yes. 22 COMMISSIONER: Are you in agreement now 23 that your report did deal with branches? Was that the 24 point that beforehand? Because I thought you said – 25 MS STEINBERG: Well can I just –</p>	<p style="text-align: right;">Page 1856</p> <p>1 something to look at in the future stage, this specific 2 point on the branches. And in fact we never had any 3 additional work post the diagnostic on the branches. So be 4 clear, all the things you said I recognise is analysis, 5 there are few missing on that. And there was no 6 recommendation to shut them down and there was no, 7 importantly a decision to even look at that so we didn't do 8 any work on that subsequently. 9 MS STEINBERG: You see Mr Zulu says there 10 was a recommendation, that the reason you marshalled all 11 this evidence, it wasn't for nothing. You were saying 12 look, SARS has more branches per million people than the 13 other countries we've looked at. Now you say that for a 14 reason. You're leading towards a recommendation to have 15 fewer branches and to create accessibility to taxpayers in 16 other ways. Now he certainly understood that to be a 17 recommendation because he says, "Bain recommended that SARS 18 slow down its footprint expansion and scale down on 19 building new branches in order to align with UK best 20 practice. I refused to adopt that recommendation." And it 21 wasn't for reasons of retrenchment. This is the point I'm 22 making about benchmarks. This is his reason. "The SARS 23 branches are designed to meet social needs of people many 24 of whom live in rural areas and do not have access to 25 internet. South Africa is a very different country to the</p>
<p style="text-align: right;">Page 1855</p> <p>1 COMMISSIONER: No, no, just a minute, I 2 just want to get agreement on one thing. Earlier you said 3 no we didn't say anything about branches. 4 MR MASSONE: No sorry, I – 5 COMMISSIONER: Just to make sure we're on 6 the same page on that. 7 MR MASSONE: Yes thank you Judge. So our 8 diagnostic covered the branches. 9 COMMISSIONER: Ja. 10 MR MASSONE: There are a few analysis 11 that I recollect were not mentioned on the same topic, for 12 example the 45% of the e-Filing was actually done in the 13 branches and so there will have been – 14 COMMISSIONER: Let me interrupt you. 15 What was the problem with what she put to you before lunch 16 though? 17 MR MASSONE: The whole evidence as they 18 are correct and there are analysis. There's no 19 recommendation – that is the word, recommendation – and 20 second reducing the footprint. There have been a lot of 21 discussions around that and the decision was again by the 22 client, by the leadership at the client that there was no 23 possibility to reduce the number of branches because that 24 would have created a retrenchments and this whole exercise 25 was not about retrenchments and this could have been</p>	<p style="text-align: right;">Page 1857</p> <p>1 UK or Canada." 2 So I raised this point in the context of the 3 Judge probing you about the use of benchmarks to suggest to 4 you that, to underline his point and his question. What is 5 the relevance of a benchmark like this to a country like 6 ours? And did Bain consider the relevance of merely 7 importing what happens in the UK or New Zealand to this 8 context? 9 MR MASSONE: Absolutely. We did consider 10 the differences. I've been working in several industries 11 in South Africa in particular in telecommunications. That 12 is one that has, feels the difference in the urban density 13 and on the type of (inaudible) you have so I understand the 14 structure of South Africa from that perspective quite well. 15 Again benchmarking in this case is a data point, is what is 16 happening outside, is one of the many points that we use. 17 And like I said the diagnostic was looking at many things. 18 That is, that was sorry, and I think still is one of the 19 opportunities for SARS to do a better service at a lower 20 cost because the idea there is not just to shut down the 21 branches. 22 First of all there is no plan. The idea is there 23 is a possibility to reduce the number of branches or to 24 reduce the size of the branches and add instead a number of 25 kiosks and point of presences on having a stronger internet</p>

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1 presence which clearly that led, okay this is going to
 2 happen in the next ten years, probably we're not ready now.
 3 We also require a lot of change, a lot of investment.
 4 That's why we were not leading to recommendation, we were
 5 actually scouting and we were looking at all the
 6 opportunities. That was, and I believe still is one of the
 7 opportunities. We have never recommended shut down the
 8 branches. And actually I don't think we even recommended
 9 to reduce the, to slow down the pace. I think we have not
 10 even called to do that afterwards. I'm sure that in some
 11 of the discussion that has come up because clearly you need
 12 to look at the cost side. You're using taxpayers' money
 13 and the branches are very expensive. They are big
 14 buildings with a lot of people and the benchmark was, as
 15 like I say, one of the many data points and the other one,
 16 about the seasonality of usage of them, so in many cases
 17 they are empty and in a few short period of time they're
 18 actually incredibly busy and there was the fact on the e-
 19 Filing, you cannot change it very quickly. But 45% of e-
 20 Filing is done in the branches, so people they go to the
 21 branch and sit down in front of an employee. An employee
 22 does the e-Filing for them, which is something in the long
 23 term you could think you can take away. In that
 24 perspective and there was a long term idea to, there will
 25 be the possibility, like I said to reduce the cost of

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1 offering in the service but providing a better service to
 2 the taxpayer.
 3 MS STEINBERG: Mr Zulu did like the idea
 4 of kiosks, by the way, and said that they have been
 5 implementing that.
 6 MR MASSONE: It was probably his idea at
 7 the time as well. Like I said there is no paternity of the
 8 ideas, I'm happy he likes that.
 9 MS STEINBERG: But again there's a gap
 10 between what you meant and what was understood. If you
 11 hear, if you listen to Mr Zulu's words he's saying they
 12 recommended that we cut down on the number of branches. I
 13 rejected that. Did he misunderstand?
 14 MR MASSONE: I believe so. By the same
 15 time I can say that there was a discussion about that and
 16 the discussion end up to not formulate that recommendation
 17 because of the reason that I just explained, in particular
 18 the one around retrenchments.
 19 MS STEINBERG: I'm ready to –
 20 COMMISSIONER: I can't understand that.
 21 There was a discussion. What was your view, what were you
 22 discussing? What were you suggesting?
 23 MR MASSONE: Yes –
 24 COMMISSIONER: Were you suggesting
 25 closing down branches?

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1 MR MASSONE: No. We understand first of
 2 all there was a specific original indication that there
 3 wouldn't be any retrenchments which for us was fantastic
 4 because often times we are called to do instruction and
 5 imply retrenchment. So with that in mind clearly when you
 6 start closing branches then you need to –
 7 COMMISSIONER: I understand that but I
 8 mean if you're talking about retrenchments, retrenchments
 9 only come if you're recommending the closing down of
 10 branches.
 11 MR MASSONE: Yes.
 12 COMMISSIONER: Otherwise why talk about
 13 retrenchments? So you must have been talking to him about
 14 closing down branches, otherwise why do you talk about
 15 retrenchment?
 16 MR MASSONE: No the retrenchments was a
 17 specific message we were given. We don't want to cut any
 18 jobs.
 19 COMMISSIONER: I understand.
 20 MR MASSONE: Specifically on the branches
 21 it was a discussion like I think on every point you will
 22 find on that diagnostic there would be a discussion with
 23 the relevant person in the organisation. They will lead
 24 then to recommendations, but we never recommended to shut
 25 down the branches. And to my knowledge it hasn't happened.

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1 I don't know about that.
 2 MS STEINBERG: No, it hasn't happened
 3 because Mr Zulu stopped it from happening. That's the
 4 evidence I have.
 5 COMMISSIONER: But you disagree with
 6 that, do you?
 7 MR MASSONE: That we recommended to shut
 8 down? Yes I disagree. We didn't recommend it. In fact
 9 you will not find it on a document.
 10 MS STEINBERG: But then why do you have
 11 all those slides that keep pointing to the fact that South
 12 Africa has more branches than other countries? What was
 13 the point of putting all that there?
 14 MR MASSONE: Like I say one of the areas
 15 of the diagnostic was the branches. It's an important part
 16 of the organisation and an important part of the taxpayer's
 17 service. So we look at a number of data point around that,
 18 some of them coming from interviews, some of them coming
 19 from like I said benchmarks, and some of them coming from
 20 observation that are in that document. There are a few
 21 there missing there, like we did in many other areas that
 22 didn't lead to any subsequent recommendation, for a lot of
 23 reasons. In this case it was because it was a complicated
 24 exercise. Very expensive because to do the kiosks,
 25 etcetera, you need to upgrade the information systems, it

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1 takes time and importantly because closing down branches
 2 would mean retrenchments.
 3 COMMISSIONER: You say you didn't
 4 recommend it?
 5 MR MASSONE: No.
 6 COMMISSIONER: Can we move on?
 7 MR MASSONE: Sorry.
 8 MS STEINBERG: I'd like to move to the
 9 point you've raised a couple of times. I think we're going
 10 to need to get the screen back. It's about the over-
 11 concentration that is part of your diagnosis. It's quite a
 12 big feature in your diagnostic that there was this over-
 13 concentration of people really under the Chief Operating
 14 Office. Can you start by telling me why that's a problem?
 15 MR MASSONE: Okay. So organisational
 16 structure need to be balanced. Imagine it's like a house
 17 and you need to split it in different specialisations so
 18 they can then work together in an effective way and in an
 19 efficient way. When you have an imbalance because one of
 20 the pieces of the organisation the one that has it in the
 21 room is too big compared to the others that creates an
 22 imbalance. And the consequence of that imbalance are
 23 several, one, there is a concentration of power, but then
 24 it's linked more to the what actually is in the
 25 organisation. I'm going to come back to that. And the

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1 other one is the, how the interaction works with the other
 2 units, they are smaller. So one of the issues that was
 3 represented by I think the chief of HR is that she said we,
 4 I'm not really able to do my job in that structure because
 5 it's a sort of silo and will not have impact in that
 6 structure. That's one of the messages. I'm using this as
 7 one of the examples to say a big structure within a larger
 8 structure creates an imbalance of power within an
 9 organisation. More specifically in this case there was the
 10 duplication of activities that were happening inside and
 11 outside the structure and again like some of the checks and
 12 balances were not happening. More importantly from the, I
 13 don't want to call it strategy because we said I don't
 14 understand it but from, it was clear that customs needed to
 15 be more prominent in the organisation for many reasons.
 16 And so that structure contained pieces of that organisation
 17 of customs, they needed to be taken away. This is in a
 18 short summary why a big unit within a company is creating
 19 an issue.
 20 MS STEINBERG: Why is the metric of the
 21 number of people reporting to the COO, why is that an
 22 important metric, the number of people? Why is that a
 23 metric of power?
 24 MR MASSONE: It is not a metric of power
 25 it's a metric of complexity, it's a metric of size, it's

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1 one of the metrics you use, clearly like I said when you
 2 think about checks and balance it's about the activities,
 3 it's not about how many people you have but in general if
 4 you have a 14 000 people organisation and 70% is in one
 5 unit everyone will tell you that there is an issue there.
 6 I don't think it's only my opinion.
 7 MS STEINBERG: No, no, everyone won't
 8 tell you that. I don't know if you asked why the
 9 organisation looked like that at that moment in time, what
 10 it had looked like before and what it should have looked
 11 like afterwards. Do you know why? Do you know why it was
 12 structured that way?
 13 MR MASSONE: No.
 14 MS STEINBERG: Because I asked. And the
 15 answer that I was given was this, that at the moment that
 16 Bain came in, the modernisation process was at its peak and
 17 the organisation had found that those parts of the
 18 structure that were not under the COO, who was the head of
 19 modernisation, were being left behind, because
 20 modernisation impacted on everything in the organisation.
 21 So it was decided collectively that for a period of time
 22 there would be a concentration of all these departments
 23 under the COO as he led modernisation and entrenched it.
 24 And that once that phase in the organisation's life was
 25 over they would begin to unbundle again. So you give the

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1 example of HR. HR had only recently been put into that,
 2 the reporting line to the COO. The reason given for that
 3 is that became modernisation was affecting the organisation
 4 so thoroughly, people's KPIs were no longer relevant, for
 5 example. So HR had to be there to understand how to change
 6 KPIs and how to re-organise people and so on and so on. HR
 7 is one. Finance is another. Finance was put under there
 8 in order to understand where to prioritise the finance of
 9 the organisation, because modernisation was happening.
 10 That is the reason that was given. And it was understood
 11 that it was a period of time until the organisation was
 12 ready to flatten that structure a bit.
 13 COMMISSIONER: Well you didn't know this
 14 of course, did you? I think you said you didn't ask.
 15 MR MASSONE: No we didn't know. If I
 16 may, I don't know what the question was in this, please?
 17 COMMISSIONER: The question was, I think
 18 she's explaining to you what it was.
 19 MR MASSONE: Yes.
 20 COMMISSIONER: But I think the initial
 21 question was did you know why there's this concentration?
 22 Your answer is no.
 23 MR MASSONE: No.
 24 COMMISSIONER: Did you ask why it was
 25 like this?

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1 MR MASSONE: I'm sure in the process we
 2 asked and we didn't find any valid reason because what I
 3 was about to say was that –
 4 COMMISSIONER: Well why do you say you
 5 should, did you?
 6 MR MASSONE: Sorry?
 7 COMMISSIONER: You say you're sure you
 8 did. Did you, do you know as a fact that you did?
 9 MR MASSONE: Again, like for the
 10 strategies one of the questions why is it organised this
 11 way.
 12 [14:22] In reality people were telling that they are not
 13 appreciated –
 14 COMMISSIONER: Sorry can I just get an
 15 answer. Did you actually ask the question?
 16 MR MASSONE: I don't know.
 17 COMMISSIONER: No.
 18 MR MASSONE: I only can presume because -
 19 MS STEINBERG: You see, I got this answer
 20 from people you interviewed. "I later got confirmation
 21 from Mr Magashula. It was Mr Magashula that changed Mr
 22 Gordhan's structure in order to put more of his employees
 23 under the COO and that was the reason they did it." Isn't
 24 that a critical factor, question to ask and have answered
 25 before you break it up?

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1 MR MASSONE: Yes, like I said part of the
 2 methodology is to ask that question and there is always an
 3 historical reason to do that.
 4 MS STEINBERG: Yes.
 5 MR MASSONE: I still believe now after
 6 what I've seen that there were other, and what you just
 7 told me, there were many other ways to obtain the same
 8 objective without creating that structure because that
 9 structure was imbalanced in many other ways. And like I
 10 said before unfortunately organisation is not a perfect
 11 science where you define an upgrade and it gives you a
 12 solution. There are trade-offs and I made example of the
 13 legal office. Here is another example. You can decide to
 14 have an organisation that gives you some advantages, in
 15 this case make sure that a certain part of SARS if I
 16 understand correctly was progressing well within the
 17 organisation. And you are creating disadvantages somewhere
 18 else. It is a - as a professional I need to express my
 19 opinion about what a good structure would look like and
 20 there are then many other reasons for the leadership of
 21 that entity, that company, to do it in another way for the
 22 good reason that she just said.
 23 COMMISSIONER: No, I understand. I am
 24 sure there are many ways to do things but I think the
 25 import of the question is this. Before you break it up

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1 shouldn't you know why it's there? And I think your answer
 2 is yes. Am I correct?
 3 MR MASSONE: Yes.
 4 COMMISSIONER: And you didn't know why it
 5 was there. Correct?
 6 MR MASSONE: I cannot be certain.
 7 COMMISSIONER: Carry on.
 8 MR KAHLA: But for the over-concentration
 9 that you're placing an emphasis on would there have been a
 10 need to change the structure?
 11 MR MASSONE: Okay, so I mentioned
 12 customs, the need to create a strong customs organisation
 13 that was united and can work together and improve there.
 14 And it was one of the messages coming from all different
 15 sources and again the way it is normally organised. The
 16 idea of creating a unified enforcement unit that would be
 17 stronger and specialised and serving the units. There was
 18 the tax registry that was spread around different units.
 19 And then there was the consolidation of the staffs, legal
 20 and accounting for example, so these were the reasons that
 21 will lead to say this is not a balanced structure.
 22 COMMISSIONER: But I don't follow all
 23 that. If customs is weak you build up customs. But it's
 24 not as if you've got sort of building blocks that you say,
 25 well, I can only build up customs if I take away from

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1 there. I mean, you talk about this balance as if it's a
 2 set of scales that you have to keep the apples and the
 3 pears balanced in. I mean, to build up customs why did
 4 that require that you break down operations?
 5 MR MASSONE: Because there were pieces of
 6 customs within that organisation.
 7 COMMISSIONER: Okay.
 8 MR MASSONE: So to build up customs -
 9 otherwise you would be duplicating so -
 10 COMMISSIONER: You took customs out.
 11 What else did you take out?
 12 MR MASSONE: Finance.
 13 COMMISSIONER: Finance you put somewhere
 14 else?
 15 MR MASSONE: Yes.
 16 COMMISSIONER: Why did you need to put
 17 finance somewhere else?
 18 MR MASSONE: So you have one single view
 19 of the, of finance and -
 20 COMMISSIONER: Okay, but that's not a
 21 building up of finance. That's just saying it should go to
 22 a different place. I understand that.
 23 MR MASSONE: Well, you have a single
 24 point where the lead organisation can control finance who
 25 has a single view of the organisation from a financial

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1 perspective and the same with legal.
 2 COMMISSIONER: Ja, but that's not a
 3 balancing thing. That's just this is in the wrong place.
 4 MR MASSONE: Yes.
 5 COMMISSIONER: Yes.
 6 MR MASSONE: Yes, as I said the
 7 concentration was one of the elements we put in place.
 8 There were many others which I mentioned.
 9 COMMISSIONER: You see, power at the end
 10 of the day, you know, we're talking about concentration of
 11 power. The Commissioner has power over the whole
 12 organisation.
 13 MR MASSONE: Ja.
 14 COMMISSIONER: So concentration of power
 15 in itself is inherent in an organisation.
 16 MR MASSONE: It is.
 17 MR KAHLA: I'm just trying to understand
 18 just going back to this power, I suspect I'm always
 19 fascinated by the Italian statesman, Andreotti's saying
 20 that power burdens only those who don't possess it. Was
 21 that driven in any way by those people, the change around
 22 those people who were burdened by this? Who was burdened
 23 by that power concentration?
 24 MR MASSONE: Sorry, can I -
 25 MR KAHLA: Who was burdened -

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1 MR MASSONE: The -
 2 MR KAHLA: Who was burdened by the
 3 concentration of power in this instance?
 4 MR MASSONE: No, like I said it wasn't a
 5 question of power that we looked at. We looked about in a
 6 balanced structure. So like I said HR for example wasn't
 7 able to do a (inaudible) so if you remember one of the
 8 things we said before was everyone was getting high scores
 9 which is contrary to the logic of Gaussian distribution.
 10 Customs say we cannot work effectively together because
 11 there are pieces of customs everywhere.
 12 There's not enough focus on this taxpayer because
 13 it's mixed with other things so it was many ways impacting
 14 that. At the time we also thought because the person that
 15 was running that organisation is not here. It is also very
 16 difficult to find someone else that can do the job because
 17 that's, forgive me if that's not professional, it's a
 18 Superman job because you're basically running everything.
 19 So you need also to find someone that can do that and I
 20 don't know if there was anyone. And so as a professional -
 21 did I say something wrong? As a professional firm you need
 22 to express an opinion of what would be a good structure and
 23 of course like I said the leadership needs to decide if
 24 they want to deviate from that or not. In this case they
 25 did eventually earlier.

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1 MS STEINBERG: You know, I think the
 2 facts actually answer Mr Kahla's question because
 3 ironically what happened is the fifth operating model, the
 4 one that was adopted, created a much bigger concentration
 5 of power than the one we see here. If you use another
 6 metric, right, I suggested to you that the number of people
 7 reporting to somebody is not necessarily the right metric
 8 to measure power.
 9 MR MASSONE: Ja.
 10 MS STEINBERG: You agree with that.
 11 MR MASSONE: Yes.
 12 MS STEINBERG: In the case of SARS it's
 13 perhaps where revenue is collected, where the money sits,
 14 that is a better metric of power. Now, in the new
 15 structure, number 5, that you ultimately signed off on
 16 there's a much greater concentration of power when you look
 17 at revenue collection largely because the LBC was brought
 18 into the structure that it always used to be outside of.
 19 So the new COO, Mr Makwakwa, ended up with far more power
 20 than the old COO, Mr Hore, ever had. So I would suggest
 21 putting aside motive that is the answer to Mr Kahla's
 22 question on the facts.
 23 COMMISSIONER: Okay, you know what the
 24 facts - I mean, a revenue authority, the real power is
 25 where the money is. Now, under the new, the one that was,

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1 BAIT was created all corporate and all personal tax were in
 2 the hands of one man. Do you know that?
 3 MR MASSONE: That's the concentration of
 4 power. For me concentration of -
 5 COMMISSIONER: No, that's a more - I
 6 would've thought in a revenue authority that's a more
 7 relevant concentration of power than simply if you've got
 8 finance under you or legal. Would you agree with that?
 9 MR MASSONE: No, I would not agree
 10 respectfully, Judge. I think the concentration of power
 11 the way I see it is your ability to open and close a cycle
 12 of an activity on your own and that's one important part
 13 that we defended at the time and stayed as such in the
 14 famous fixed structure which is enforcement and audit
 15 separate from BAIT. That means you cannot go after a
 16 taxpayer, corporate or private, and then close the cycle
 17 with him or her or the corporation on your own. You need
 18 to involve another entity which is enforcement. It has
 19 objectives that are opposite compared to the ones that you
 20 have. And that was the balance of power that we wanted to
 21 create is there is a taxpayer service in education and what
 22 they want to do is, yes, increase the net and do a great
 23 service. And then there's enforcement whose job is to
 24 control that everyone actually follows the rules and that
 25 separation of power was the one that was very important for

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1 us. And when you think about finance, finance is the one
 2 that tells you if the cash is there or not.
 3 COMMISSIONER: But not the R1 trillion in
 4 revenue.
 5 MR MASSONE: Well, to a certain extent
 6 yes because they are the ones who manage - and there was a
 7 discussion I think in one of the witness about Treasury.
 8 COMMISSIONER: Yes.
 9 MR MASSONE: The only one that really
 10 knows how much cash is in the bank and how much is being
 11 paid when it comes to midnight of that famous day is the
 12 treasurer and so having that as a separate function from
 13 the ones that actually do the collection is a very
 14 important balance of power.
 15 COMMISSIONER: But isn't finance
 16 concerned with internal finance of the organisation?
 17 MR MASSONE: No, also with the collection
 18 because they, eventually they have the money. And the same
 19 could be said for legal. So if I have a legal office that
 20 reports to the Commissioner you would suppose there is a
 21 dialectic that you create between the user of the legal
 22 service and the company. That create, that positive
 23 tension creates the balance of power. So in my humble
 24 opinion I think the fixed structure has less concentration
 25 of power specifically on this topic than the one they had

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1 before. There were other reasons by which, for which we
 2 did it and customs was one of that. So power was one of
 3 the considerations but actually not even power, it's the
 4 checks and balances that we were looking at.
 5 COMMISSIONER: Sorry, can I just ask
 6 Advocate Steinberg are we going to come to how the fifth
 7 one came into being?
 8 MS STEINBERG: Yes, we are. Ja, I think
 9 that's next on our list, ja.
 10 COMMISSIONER: Am I allowed to ask a
 11 question on one thing about this balancing of powers?
 12 MS STEINBERG: Yes.
 13 COMMISSIONER: You see, Bain recommended
 14 that corporate tax and personal tax be separated.
 15 MR MASSONE: Yes.
 16 COMMISSIONER: And I'm sure you had good
 17 reason for that.
 18 MR MASSONE: It's focused on the
 19 taxpayers.
 20 COMMISSIONER: I understand but obviously
 21 you had good reason for that no doubt.
 22 MR MASSONE: Yes.
 23 COMMISSIONER: The Commissioner said I
 24 want the two together in the one organisation.
 25 MR MASSONE: Yes.

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1 COMMISSIONER: And did you agree with
 2 that?
 3 MR MASSONE: Yes, let me go there, Judge.
 4 So actually trying to - so there was one of the structures,
 5 this is the fourth example and I'm also relying on the fact
 6 that some witness said that they kind of like this. They
 7 basically say you can have a deputy Commissioner, you could
 8 have theoretically a deputy Commissioner who would be
 9 running both taxpayer segments, the corporate and the
 10 private. So that was one of the options.
 11 COMMISSIONER: Yes.
 12 MR MASSONE: So in that sense when the
 13 fifth came which had these two deviations the only
 14 deviation that was additional to that was the branches.
 15 And the branches don't bring power per se. Yes, there's a
 16 lot of people actually because eventually this ended up
 17 being 4 500 if I'm not mistaken which is still half of what
 18 it was before. But there's no real power in the sense that
 19 we have just been discussing so your ability to open and
 20 close an event with the taxpayer on your own. Why?
 21 Because enforcement is still separated. Legal and finance
 22 are separated and HR who should decide on the, how you
 23 treat and how you pay people and how you monitor the
 24 performance of the people are separated.
 25 COMMISSIONER: Why did you want to

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1 separate individual tax and corporate tax?
 2 MR MASSONE: Yes, because they are big,
 3 big animals and they require great skills to be run. And
 4 so you want to make it - there is a question around
 5 complexity. You don't want to create too complex structure
 6 so it was better to put it separate and also because there
 7 you will be completely focused on one taxpayer and we
 8 thought it was better. The Commissioner decided that he
 9 wanted to have the structure and it's his prerogative to do
 10 that. We were not concerned because we were not
 11 infringing. We were still within the boundaries of our
 12 design principles. It was still a better structure we
 13 believed at the time than the one that was existing in SARS
 14 and so we accepted to have recommend. By the way the
 15 structure was then decided after we started the second
 16 mandate, not before. So it happened as part of the first
 17 months of the second phase.
 18 MS STEINBERG: SARS had an excellent
 19 enforcement department in late 2014. Why was it so
 20 critical to change it? Why did you need to move it around
 21 on the structure?
 22 MR MASSONE: We wanted to make it
 23 stronger, that was the idea, and create the balancing of
 24 powers that we were just speaking about. So the idea was -
 25 there was no criticism on what they were doing at all. It

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1 was actually the, let's make it even stronger by
 2 concentrating it -
 3 MS STEINBERG: By concentrating it, how?
 4 MR MASSONE: Well, there is a chief
 5 officer that is called enforcement. Previously enforcement
 6 was spread. Now the same boxes are reporting to a chief
 7 officer who has more prominence, power if you want,
 8 delegation authority within the organisation and it can see
 9 end to end. There is also the question of specialisation
 10 so if you have a specialised job you want to keep them
 11 together so that skills go faster than if you have them
 12 spread around the organisation because they don't cross-
 13 fertilise.
 14 MS STEINBERG: But it was precisely the
 15 end to end visibility that the Bain operating model
 16 destroyed for enforcement in this way. You had teams
 17 called the centralised project team, the national project
 18 team etcetera, etcetera which had a lawyer, an auditor, an
 19 investigator, etcetera under one roof. They would get
 20 cases from case selection, a whole case. It sometimes
 21 meant 33 cases relating to one taxpayer, one group of
 22 gangsters. And in that team with all those specialists
 23 they could do their enforcement job. Now, in the name of
 24 ending duplication and strengthening enforcement you took
 25 their people out of those teams and put them somewhere in

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1 the middle. And since then they've never had an end to end
 2 view of those taxpayers ever again.
 3 MR MASSONE: Yes, that's exactly what I
 4 was referring to that this is not a structural change.
 5 It's in the way they're working because you can still have
 6 a lawyer working with enforcement person where the auditor
 7 is actually here so that would actually make it easier than
 8 say a finance person working together belonging to
 9 different parts of the organisation and creating a
 10 taskforce. The definition of a taskforce, people that come
 11 from different departments and units for a certain purpose
 12 and for a certain amount of time, are dedicated to the
 13 task. And they can collaborate and be extremely effective
 14 still respecting the structure design which is the lawyers
 15 work with lawyers and you have the professional family
 16 develop there and enforcement. And you also maintain the
 17 balance of power as opposed to have them in one unit. So
 18 what I'm saying is that this is not a structure. The
 19 problem that was alluded to is not driven by structure.
 20 It's driven by ways of working and the process of how you
 21 make people work together.
 22 MS STEINBERG: I would suggest the
 23 problem is fixing something that wasn't broken. You see,
 24 there are many ways to organise these organisations. You
 25 had one way, there's another way. We all agree there are

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1 models all over the world. You found an enforcement unit
 2 that was highly effective. It was feared by gangsters and
 3 general taxpayers. Why play with it?
 4 MR MASSONE: I repeat there were many
 5 enforcement structures.
 6 MS STEINBERG: Working is my point. They
 7 were working.
 8 MR MASSONE: We just put them together
 9 and there's no indication of putting together three
 10 effective structures that you're now breaking down in
 11 effect the structure. Actually you should in any logic
 12 make them even stronger. Again I think it's about the
 13 leadership who is leading in terms of the person, what
 14 mandate he or she has and how those collaboration system
 15 with the rest of the organisation (inaudible) enforcement
 16 is what we called in the document second line of defence,
 17 how they collaborate for example in this case with case
 18 selection.
 19 MS STEINBERG: Ja, but you changed where
 20 they sat. So there were people who sat together in one
 21 office who no longer did.
 22 MR MASSONE: Apology for interrupting.
 23 We didn't change anyone and people can have, they can live
 24 all in the same building even if they belong to different
 25 structures. It's called co-location. So we had no say by

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1 the way on where people should sit which is certainly not
 2 in our mandate and not something you would ask a
 3 consultant. It's an executive consultant.
 4 MS STEINBERG: Sorry, if you say person A
 5 on the old organogram sits here under this head but in B,
 6 in your new organogram person A moves to report to another
 7 person isn't that a necessary implication?
 8 MR MASSONE: No.
 9 MS STEINBERG: Why not?
 10 MR MASSONE: Because people need to work
 11 where the work happens so I don't know the specifics of
 12 this example but there is no need for a person to be
 13 sitting close to his reporting line. When you have
 14 companies that are international for example that happens
 15 all the time or people that are exactly like we said in
 16 taskforces. They will be working in, where the activity
 17 happens and working together with people that they need to
 18 work to independently of where their home office is.
 19 MS STEINBERG: Ja, but their KPIs change,
 20 you see, so they leave the space and they get a different
 21 KPI. So what we heard again and again last week was I used
 22 to walk down the passage, tell that person in enforcement
 23 what was going on and he was there and his KPI was to sort
 24 it out. He now is somewhere else far from me and he has
 25 another KPI. He has another priority. Why? Because he

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1 has another boss who's got another set of priorities. We
 2 don't report to the same boss anymore. So we're pulling in
 3 two directions.
 4 MR MASSONE: You are saying exactly what
 5 I am saying, Advocate. It's not a question of structure.
 6 It's a question of who is driving the priorities and how
 7 those links are made. That is what was missing.
 8 PROF KATZ: Sorry, can I just ask - may
 9 I?
 10 MS STEINBERG: Please.
 11 PROF KATZ: The fact is pre the change it
 12 was operating exceptionally well, post it wasn't.
 13 [14:42] Ordinarily as Advocate has put when something is
 14 working really well there has got to be a very cogent
 15 reason for moving away from it. Could there have been any
 16 other cogent reasons that justified the move that you can
 17 think of? That anyone else would have had in mind?
 18 MR MASSONE: Well, at the time, no.
 19 Reading what I've read now clearly I have a lot of
 20 questions, Professor. But it is not in my place to comment
 21 on them. I certainly have a lot of questions.
 22 COMMISSIONER: But you see, I don't quite
 23 understand this. The priorities do change. The KPI she
 24 calls it. If you go into a legal department they are doing
 25 a lot of different legal things, not just enforcing them,

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1 so now they've got their priorities and their priority
 2 might be enforcement of the problem relating to this
 3 gangster for example. It's not high on their priorities
 4 because they're not in enforcement so the boss there says
 5 no, put it at the bottom of the pile whereas when he is
 6 with the other one they all had the same priorities. Do
 7 you understand what I'm saying. Now isn't that a good
 8 thing to all have the same priorities in enforcement?
 9 MR MASSONE: Absolutely. And it is a
 10 good thing in the same organisation to have all the same
 11 priorities. Actually the first thing to making sure that
 12 what is important, what is less important is agreed by the
 13 leadership translating to for example budget allocation.
 14 COMMISSIONER: Yes.
 15 MR MASSONE: I made example on the
 16 lawyer. If I had the lawyer here sitting with me at my
 17 disposal I will work with him or her in a much better way
 18 and they will be completely at my disposal and we will find
 19 a perfect way to work together and that will be a pro.
 20 There are cons of that which is you start having lawyers
 21 straight around the organisation so you don't control what
 22 they do. You don't accumulate the capabilities in time and
 23 you might end up, that is one reason for which legal
 24 offices are centralised, that they express different point
 25 of views in similar situation which is a situation where a

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1 company don't want to be. So what I'm saying is that there
 2 are positives and negatives on any organisation change you
 3 make and we were looking to work on the positive. In this
 4 case enforcement, there was no criticism expressed at any
 5 point in time from our side.
 6 COMMISSIONER: But you know, I just don't
 7 - I still don't quite understand. Perhaps you can explain.
 8 I think that's what counsel is getting at. Whether they
 9 are lawyers or auditors or CEOs or whatever they are their
 10 job is to catch the criminals.
 11 MR MASSONE: Yes, that is correct.
 12 COMMISSIONER: So the fact that they're
 13 different professions doesn't matter. They've got exactly
 14 the same objective. So the team leader says okay, here's
 15 this gang, we'd better investigate them. All of you are on
 16 the same page going the same direction.
 17 MR MASSONE: Yes.
 18 COMMISSIONER: The problem I think being
 19 put to you, I know we've heard a lot of it is you now
 20 spread them out. The lawyer sits with the lawyers because
 21 they're lawyers but they don't all have the same objective.
 22 The boss man says I want, I need an opinion on this tax
 23 issue and I need whatever other - I don't know what lawyers
 24 do, it's a long, but anyway. But the point is that they
 25 aren't all focused on the same thing so the fact that they

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1 have got different skills, different professions, different
 2 - doesn't change the fact that when they were in a task
 3 team they worked as a task team so why not keep them as a
 4 task team if that was what was working before?
 5 MR MASSONE: That is the mistake. They
 6 should have kept as a task team still belonging to their
 7 reporting structure.
 8 COMMISSIONER: No, but the can't -
 9 MR MASSONE: Let me make an example if I
 10 may, Judge.
 11 COMMISSIONER: Yes.
 12 MR MASSONE: If I am a junior enforcer
 13 person I am just arrived in an organisation and I'm making
 14 it up, so maybe I come up with a very stupid example. If I
 15 belong to a structure where all the enforcement people are
 16 I will have a lot of people that can transfer their
 17 knowledge to me.
 18 COMMISSIONER: Yes.
 19 MR MASSONE: Because they will be
 20 continuously feeding each other with experiences and ways
 21 of working and methodologies they have refined and they
 22 will strengthen in time.
 23 COMMISSIONER: Yes.
 24 MR MASSONE: Also if at the leadership
 25 level there is a right set of priorities from a single SARS

<p style="text-align: right;">Page 1886</p> <p>1 perspective, not singly but single SARS perspective, they 2 would make sure that you know, you have the best people 3 going after the best criminals but also the best lawyers 4 and the best - all the other parts of the organisation 5 going after the best – the worst criminals, sorry. So if 6 you then spread all the people around you lose that 7 advantage.</p> <p>8 COMMISSIONER: Yes, well –</p> <p>9 MR MASSONE: What I was trying to say is 10 you can have both advantages of having the mission, the 11 dedicated mission by creating a task force of people that 12 represent – and this is how most of the companies are 13 organised now, three or four different professional lists, 14 they work together, co-located.</p> <p>15 COMMISSIONER: I understand that you can 16 do that. You can say we'll pull together. Legal 17 department, send me that audit, send me that – but why not 18 just put them together in the first place?</p> <p>19 MR MASSONE: Because that create 20 inefficiencies. That's the last –</p> <p>21 COMMISSIONER: What is the efficiency 22 though?</p> <p>23 MR MASSONE: Excuse me?</p> <p>24 COMMISSIONER: What is the inefficiency?</p> <p>25 MS STEINBERG: You see, agreed that it</p>	<p style="text-align: right;">Page 1888</p> <p>1 we've seen here and I've seen it in some taxpayer affairs 2 is that you get taxpayer affairs that are all linked in 3 various ways and if you've got people scattered around 4 looking at individual bits no one ever gets an overview of 5 the taxpayer, because the taxpayer is not necessarily one 6 person, but one person has got companies and trusts and 7 whatever the case may be and you never get an overall view 8 and that is what it seems from what we've heard to be 9 critical here is that there are taxpayers over whom no one 10 has an overview. They all have little pieces. She talked 11 about the files that they had of, you know, the 30 12 gangsters for example. Well, one is looking at one 13 gangster and another department they look at another 14 gangster but no one's got an overview and when you see the 15 whole overview you get a very different picture and that's 16 I think one of the problems you talked about.</p> <p>17 MR MASSONE: If I may, Judge, by creating 18 a single enforcement structure you actually improve that 19 because there is a head of enforcement that should be able 20 to connect all those dots and saying someone who is an 21 individual and actually there's a network of individuals, 22 and again I'm making it up. Network of individuals 23 connected to that one and a network of companies because he 24 is the head of enforcement can make those connections and 25 make sure that there is the right people going after that</p>
<p style="text-align: right;">Page 1887</p> <p>1 was working.</p> <p>2 COMMISSIONER: Just a minute, you must 3 give him a chance to answer on that. What is the 4 inefficiency?</p> <p>5 MR MASSONE: Imagine you have six 6 different units, you will have six different lawyers, six 7 different accountants, six different HR people, six 8 different everything and then eventually when you then re- 9 sum up and you say how many HR, how many – it will be much 10 higher so that won't link and then secondly is the 11 concentration of capabilities. They create a learning 12 curve. If you put all the enforcement together they will 13 learn from each other and they will refine the methodology 14 much more than you have them spread into three or four 15 places and the same applies to finance and the same applies 16 to legal.</p> <p>17 MR KAHLA: So effectively you're saying 18 the issue here, our not having effective task team base 19 working is not a consequence of the structure, it's a 20 consequence of the ways of working?</p> <p>21 MR MASSONE: Exactly.</p> <p>22 COMMISSIONER: You see the – okay, sorry. 23 Carry on.</p> <p>24 MS STEINBERG: No.</p> <p>25 COMMISSIONER: You see the one problem</p>	<p style="text-align: right;">Page 1889</p> <p>1 class of – if you had two or three enforcement that's when 2 you will lose that. So I would suggest that this structure 3 – I would understand that this structure actually favours 4 the comprehensive view of who are the offenders, not the 5 opposite.</p> <p>6 MS STEINBERG: This is an – that's in 7 theory and it might be true in another country but you came 8 to this country and you found a very effective enforcement 9 department and now SARS' enforcement capacity is broken for 10 whatever reason. There – you know there is an allegation 11 is that this strategy was implemented precisely to break 12 the enforcement capacity here and we see from the 13 economists that it's really Christmas for the illicit 14 economy because this capacity is gone. Now my question to 15 you is, I understand in theory this can be marvellous but 16 you come into an organisation that is highly effective in 17 its enforcement abilities. Why fix what isn't broken?</p> <p>18 MR MASSONE: I can respond on the work I 19 do, Advocate, which is the theoretical work. Unfortunately 20 that is the work of consultants. I think that question 21 should be asked to the – whoever was the head of 22 enforcement at the time or now.</p> <p>23 MS STEINBERG: I'm asking why you said it 24 should – why did you recommend that something that was 25 working so well needed to change at all?</p>

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1 MR MASSONE: Because we thought by
 2 putting it together we'd obtain a number of advantages
 3 which is the one I've just summarised including the one
 4 overviewing the clusters of offenders.
 5 PROF KATZ: Is your case – sorry. Was
 6 this discussed with client at the time? Was there any
 7 interactive between Bain and client before you actually
 8 recommended this? Was there any input from client? Was
 9 client worried about this?
 10 MR MASSONE: He certainly has been. I
 11 don't recollect exactly what was the discussion.
 12 MR KAHLA: Did I get you right from
 13 earlier submissions you made? If you had the right
 14 leadership and of course you've suggested the leadership
 15 that was here in about 2014, they would have been able to
 16 execute under this structure effectively, so it's not so
 17 much the structure that you make, going back again. He is
 18 not saying this is an issue of the structure, as you're
 19 saying it's an issue of the warm bodies populating the
 20 structure and the ways of working arising from those warm
 21 bodies.
 22 MR MASSONE: Absolutely.
 23 MR KAHLA: Thank you.
 24 MS MASILO: I just – I would like to get
 25 clarity on what you mean about enforcement sitting

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1 everywhere because our understanding based on the
 2 organisational, I mean on the organogram of SARS as at 2014
 3 before the changes came there was a head – I mean
 4 enforcement did have a chief officer, Mr Ravele, under the
 5 structure called Tax and Customs Enforcement
 6 Investigations. You said there was no chief officer in
 7 enforcement.
 8 MR MASSONE: So there was a Tax and
 9 Custom Enforcement Investigations, there was enforcement in
 10 Large Business Centre and there was enforcement in
 11 Operations. So like in customs there was one person who
 12 said I am customs, but in reality there were more than one
 13 person saying I am customs. I don't know if that response
 14 answered the question.
 15 MS MASILO: It does not really because
 16 LBC was an end to end centre which had its – I mean it had
 17 audit, enforcement and all the other business areas and
 18 there was enforcement, my understanding on the TCEI with
 19 its chief officer, Mr Gene Ravele, so where was the other
 20 enforcement officer sitting?
 21 MR MASSONE: Tax and custom enforcement.
 22 MS MASILO: That is the one that we know
 23 of.
 24 MR MASSONE: Well the one you mention is
 25 in LBC.

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1 MS MASILO: LBC was a structure at SARS
 2 which had end to end business units which would have had
 3 enforcement, but you said it was sitting in many places.
 4 So other than TCEI with Mr Gene Ravele at the time who was
 5 the chief officer where else was – other than TCEI and LBC
 6 where else was enforcement?
 7 MR MASSONE: It was in Operations, but
 8 most importantly the one thing they were speaking mostly
 9 about is the people that were doing enforcement or did
 10 enforcement in LBC. They were moved together with the
 11 other. So that was the change.
 12 COMMISSIONER: Do I understand you to be
 13 saying, as you say in theory, well it depends on the
 14 bodies, but the theory you've put in place opens itself to
 15 an operation in which the bodies don't connect. In other
 16 words the left hand doesn't know what the right hand is
 17 doing. Would that be correct?
 18 MR MASSONE: Correct.
 19 COMMISSIONER: You may tell your chief
 20 officers that they must work in this way, but you may tell
 21 them not to work in that way as well.
 22 MR MASSONE: Correct. If you start
 23 giving them different priorities you will obtain what you
 24 just mentioned is happening.
 25 COMMISSIONER: So the structure itself

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1 you are saying won't necessarily have the problem, but it
 2 certainly opens itself to the problem.
 3 MR MASSONE: Yes.
 4 PROF KATZ: Sorry, Mr Massone, I think it
 5 may have been covered earlier, but I just want to see that
 6 in this context that I'm understanding, the whole
 7 interactive process between the client and Bain in putting
 8 the models together ordinarily one would have thought the
 9 client would say but enforcement's working well now. Why
 10 do you think it's necessary to change? Did you have that
 11 kind of discussion with the client?
 12 MR MASSONE: Professor, this was two
 13 years and a half ago, I don't remember. I can assume these
 14 conversations happened and I imagine I would have said
 15 something like that. But again if the decision from the
 16 Commissioner at the time or the leadership management was
 17 to keep it separate I would have been happy for that. I
 18 think it would have created a problem, but this is what we
 19 said about –
 20 PROF KATZ: You say the decision of the
 21 Commissioner to keep it separate.
 22 MR MASSONE: Eventually it's the
 23 Commissioner that decided the structure that was
 24 implemented independent of what we might or not have said.
 25 In this case I think we are defending the enforcement

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1 separation because it creates - it breaks down the end to
 2 end that favours the checks and balance and allows people
 3 to focus these two different jobs, servicing and education
 4 taxpayers. And auditing and enforcing the payments.
 5 PROF KATZ: I think we're interrupting
 6 you a bit too much, Ms Steinberg.
 7 MS STEINBERG: No it's fine. When it
 8 comes to customs I would just like to say this, that there
 9 was a man who was head of enforcement of customs and you
 10 didn't consult with him. He had a team and you didn't
 11 consult with any of them. Now they had their reasons,
 12 again why enforcement, at that moment in SARS evolution,
 13 was where it was. And by the way there was a head of
 14 customs and I'm a little shocked that you didn't know that
 15 there was a head of customs. Rae Cruickshank in 2012 was
 16 appointed GE Customs Operations. So there was a head of
 17 customs, there was a head of Enforcement at customs and you
 18 make very certain allegations, certain comments about what
 19 was best for customs. But you hadn't spoken to any of
 20 them. Is that right?
 21 MR MASSONE: I don't remember the way
 22 I've been talking with them. We didn't make any
 23 allegations, we reported some of the events, but I must say
 24 it's the opposite argument. In this case we suggested they
 25 were working together, so they were not working together at

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1 the time, they were separate. There wasn't a single chief
 2 officer representing the whole activity of customs and that
 3 we suggested there was – that the structure was to be
 4 modified in that way.
 5 MS STEINBERG: But I'm saying you didn't
 6 understand why it was structured that way, what these
 7 people in charge wanted and where they thought they should
 8 go.
 9 MR MASSONE: Absolutely not, I don't
 10 remember the names that you're mentioning, we interviewed a
 11 number of people –
 12 MS STEINBERG: No they're not on your
 13 list.
 14 MR MASSONE: So if they're not on the
 15 list we possibly haven't spoken for the reason we've
 16 mentioned before.
 17 MS STEINBERG: You interviewed one person
 18 from customs and that's Mpho Mashaba who testified last
 19 week. As he told us last week he'd actually just been an
 20 ambassador, he hadn't been involved in customs at SARS for
 21 a while, he was in another country. That's the only
 22 customs person. Within enforcement you didn't interview
 23 the people in enforcement who are dedicated to customs. So
 24 again theoretically your model might be right – it might be
 25 right for New Zealand, but I come back to the point there

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1 were reasons why this organogram looked the way it looked
 2 which it seems Bain didn't establish. Nor did it establish
 3 where people in charge thought it should go, isn't that
 4 right?
 5 MR MASSONE: We saw many things that were
 6 suggesting that you had to put them together –
 7 COMMISSIONER: Sorry if I may interrupt
 8 you. She asked you a direct question, would you give her a
 9 direct answer?
 10 MR MASSONE: Yes so the answer is I don't
 11 know.
 12 MS STEINBERG: I can tell you, they've
 13 testified they were not consulted and they are not on your
 14 list of 33. And I don't think they were part of the online
 15 surveys for whatever that's worth. The head of customs and
 16 the head of border control were not consulted nor any of
 17 their staff. But these radical decisions were made because
 18 apparently that's what's best in theory. Is that right?
 19 MR MASSONE: Yes.
 20 MS STEINBERG: Well I think that's part
 21 of the problem.
 22 COMMISSIONER: Move on.
 23 MS STEINBERG: You know I just want to
 24 wrap up this point by saying the irony of the situation is
 25 that we ended with a structure where de facto there's a far

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1 greater concentration of power than there ever was in the
 2 past.
 3 COMMISSIONER: Well he disagrees, but
 4 we'll give that thought yes.
 5 MS STEINBERG: The topic I know
 6 ,Professor Katz you're keen to reach, we'd like to
 7 understand a little more about the process that was
 8 followed. What we do know is that you presented the
 9 Commissioner with four models, you showed them to us and as
 10 you said they were all quite similar. He rejected those
 11 four and a fifth one was adopted. Do you agree that the
 12 fifth one does differ from the first four?
 13 MR MASSONE: It does.
 14 MS STEINBERG: It does. Can you explain
 15 to us what was the interaction, what was the process in
 16 between you presenting the four and coming up with a fifth?
 17 How did you get there?
 18 MR MASSONE: I need to recollect things
 19 that happened three years ago, so forgive if I'm a bit kind
 20 of high level, but and I go to the structure. So important
 21 that we see this structure which sees already two taxpayer
 22 segments together. This was our fourth and this is the
 23 structure that was then accepted as you said.
 24 COMMISSIONER: Could you just go back for
 25 a moment to the other one?

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1 MR MASSONE: Yes sorry.
 2 COMMISSIONER: Just stop for one moment.
 3 Thank you if you'd go to the next one.
 4 MR MASSONE: So there are two and one is
 5 big and one is a minor changes compared to the previous
 6 structure. One is put into the either business and
 7 individual which in our structure was a possibility with
 8 the deputy Commissioner which would indicate a very senior
 9 person in the organisation with a specific level of
 10 authority.
 11 [15:02] So it is a change but it is a minor change
 12 compared to that. And the second is the branches, which
 13 includes the direct channels, etcetera. This is one
 14 important change and the other one is the strategy and
 15 communication received a number of units that were in the
 16 previous structure, separate and reporting directly to the
 17 Commissioner. For example, the office of the Commissioner,
 18 Governance and Risk and together with Strategy. So these
 19 are the two changes.
 20 COMMISSIONER: Can you, I'm sorry if I
 21 take you back to the other one again.
 22 MR MASSONE: Yes.
 23 MS STEINBERG: When one looks at the
 24 centre of powers here, other than customs and excise nobody
 25 really has power here except the head of BAIT and the

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1 Commissioner.
 2 MR MASSONE: Can I disagree with that?
 3 MS STEINBERG: Please, I'm interested.
 4 MR MASSONE: So the head of customs has a
 5 lot of power.
 6 MS STEINBERG: No, no I'm saying take
 7 customs out.
 8 MR MASSONE: Okay sorry.
 9 MS STEINBERG: Take customs out.
 10 MR MASSONE: So enforcement has a lot of
 11 power because it's the counterpart for whatever BAIT wants
 12 to do and so that is a balance of power. Settlement cannot
 13 happen within BAIT. IT which doesn't give you power but
 14 gives you a lot of, you're actually making things happen or
 15 not. You know when you think about privatisations if you
 16 don't want to privatise a project, well it will never
 17 happen. It's separate from that. And then we have the
 18 central stuff which is professional behaviour of the people
 19 will be analysed by human capital which is separate. The
 20 numbers, the expenses will be controlled by finance. Legal
 21 will be separate so they cannot express legal point of
 22 views or do things on their own, if you want. And then
 23 strategy and communication of course is separate.
 24 PROF KATZ: May I ask, Carol?
 25 MS STEINBERG: Ja.

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1 PROF KATZ: Why would the Commissioner
 2 have wanted that and Bain not originally suggest it? What
 3 does it do, say for the Commissioner, that your four models
 4 hadn't?
 5 MR MASSONE: Yes. I think it creates
 6 more complexity. So I think -
 7 COMMISSIONER: Sorry, what did the
 8 Commissioner say? What did he want? Why did he want it
 9 like this?
 10 MR MASSONE: The answer, so when he said
 11 I would like this, he said I want less reports to me and I
 12 don't have enough people. That's what he said.
 13 COMMISSIONER: So he wanted less reports
 14 to you?
 15 MR MASSONE: Yes.
 16 MR KAHLA: To him.
 17 MR MASSONE: To him, sorry.
 18 COMMISSIONER: To him, the Commissioner?
 19 MR MASSONE: To himself, yes sorry.
 20 COMMISSIONER: Fewer people reporting to
 21 him?
 22 MR MASSONE: Yes, so -
 23 COMMISSIONER: So he could more
 24 centralised?
 25 MR MASSONE: Well actually it's more the

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1 centralise. The more reports you have, the more you are
 2 centralising.
 3 COMMISSIONER: Well we are talking about
 4 centralising in a different way but I understand what
 5 you're saying. He wanted fewer people reporting to him?
 6 MR MASSONE: Yes. Which is a normal
 7 dialogue. There is, again there is no rule there but you
 8 know how maybe 12 reports are too many, six are too little,
 9 something between works. From our perspective the
 10 criticisms to this structure, and I again repeat this
 11 wasn't our structure is you take away focus from the
 12 taxpayer segment. Corporates and individuals are
 13 completely different in terms of legislations, ways of
 14 doing, etcetera, etcetera.
 15 COMMISSIONER: Can we just go back, sorry
 16 to keep going backwards and forwards.
 17 MR MASSONE: No of course. That's what
 18 consultants do, Judge.
 19 COMMISSIONER: Under this one individual
 20 and corporate tax you have their reporting to a, what's it,
 21 Deputy Commissioner.
 22 MR MASSONE: Deputy Commissioner.
 23 COMMISSIONER: Who in turn reports to the
 24 Commissioner?
 25 MR MASSONE: Yes.

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1 COMMISSIONER: The way the new one works
 2 is that individual and business report straight to the
 3 Commissioner, so you've cut out the Deputy. That's
 4 correct? So that seems to be quite a major change. You've
 5 got one reporting structure taken out.
 6 MR MASSONE: Yes.
 7 COMMISSIONER: You've got individual and
 8 corporate tax together, reporting direct to the
 9 Commissioner whereas before you had them apart, going
 10 through a Deputy Commissioner and onto the Commissioner.
 11 So in fact the Commissioner under the new structure is more
 12 in control as it were, in that he's only got one person
 13 reporting to him on taxes. Would that be correct?
 14 MR MASSONE: I would say no because if
 15 you have a Deputy Commissioner that controls both entities,
 16 that Deputy Commissioner has a higher weight because he's a
 17 Deputy Commissioner than if you have a normal, if that
 18 makes sense, Chief Officer, that has both. What takes away
 19 from my perspective, is the focus on the taxpayer because
 20 now you're merging the structure.
 21 COMMISSIONER: I understand your, that.
 22 But I'm just saying, but I'm talking about the
 23 Commissioner. The Commissioner has greater control over
 24 taxes because he's got one person reporting direct to him.
 25 He doesn't have the intervening Deputy Commissioner so in

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1 that sense the Commissioner's got greater power over
 2 taxpayers, would that be correct?
 3 MR MASSONE: Agreed. Agreed, yes.
 4 PROF KATZ: And do you think that was a
 5 good idea?
 6 MR MASSONE: We thought it was sub-
 7 optimal compared to what we had suggested but it was still
 8 acceptable. Clearly with the good intents, was still
 9 acceptable because there were some advantages in fact on
 10 that. So let me go back to that structure. Branches work
 11 both for corporate, sorry they could work both for
 12 corporate and individuals while they were mostly working
 13 for individuals so if you put them together you might
 14 assume that they actually would be working together in a
 15 better way, so that was a possible positive. And for us
 16 the main point was about keeping enforcement separate
 17 because that creates that balance of power. So it was
 18 still acceptable, less optimal we believed.
 19 COMMISSIONER: But as far as power is
 20 concerned it changes things quite significantly –
 21 MR MASSONE: It does.
 22 COMMISSIONER: By all taxes going direct
 23 to the Commissioner. It changes the power structure quite
 24 significantly, do you agree?
 25 MR MASSONE: It does because the dialects

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1 between the Deputy Commissioner and Commissioner is a
 2 strong dialect. I don't know how it was working in the
 3 past but you can assume there is a stronger dialogue let's
 4 say between them. What am I saying there, I think part of
 5 the issues that I saw is that there were further changes
 6 happening down the line and I remember only two that I
 7 heard, so and again so in this case if you don't want me to
 8 speculate I would not but I think the IT was then merged or
 9 anyway reporting to the Chief of BAIT and enforcement and
 10 this is the thing that I personally disagree with, would
 11 report to the head of strategy.
 12 PROF KATZ: I understand.
 13 MR MASSONE: And you start seeing now how
 14 two people control almost everything except customs. Also
 15 there is no reason to put together strategy and enforcement
 16 because they are completely different jobs. I cannot think
 17 about two more different jobs.
 18 COMMISSIONER: I know, we can debate that
 19 but I think the question at the moment is why the
 20 Commissioner wanted it changed, and that's what we're
 21 dealing with. And the one reason you say he was concerned
 22 with the reporting structure to him, is that correct?
 23 MR MASSONE: How many people he had to
 24 deal with.
 25 COMMISSIONER: Mm.

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1 MR KAHLA: So effectively what you're,
 2 here you're saying that he ended up just having one instead
 3 of two, in relation to these two areas. In any event, it
 4 would not have changed anything in relation to his power,
 5 would it have?
 6 MR MASSONE: Well in the sense of what
 7 the Judge was saying, yes because the Deputy Commissioner
 8 with respect has a sort of higher autonomy to contradict,
 9 if I may, the Commissioner than a pure Chief Officer. So
 10 in that sense he actually acquired power. Our structure
 11 allowed the consolidation so Deputy Commissioner would by
 12 definition would have a higher power. So the balance of
 13 the power would happen, balance of powers would have
 14 happened at that level.
 15 MR KAHLA: But of course still, at the
 16 apex of all of this would be the Commissioner, of course.
 17 So the power would still lie at the apex.
 18 PROF KATZ: Yes, but it wasn't diffused,
 19 it was direct.
 20 COMMISSIONER: You nod, is that correct?
 21 MR MASSONE: Yes. Yes, correct.
 22 COMMISSIONER: And you said he had
 23 another, the reporting structure was one thing, you said
 24 there is another reason that he had for changing it, what
 25 was that?

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1 MR MASSONE: I don't have enough people.
 2 COMMISSIONER: Meaning, I'm not quite
 3 sure, don't I have enough people in the organisation?
 4 MR MASSONE: Well I think what he meant,
 5 and again one should ask him, is the –
 6 COMMISSIONER: No I understand, but I
 7 want to know what was conveyed to you. So let's not try
 8 and read his mind. I want to know what was conveyed to
 9 you.
 10 MR MASSONE: Well we understood so maybe
 11 that is what he had in mind, maybe not. This is June, July
 12 2015 and many of the senior people had left the
 13 organisation and so he doesn't have many leaders.
 14 COMMISSIONER: Oh I see, okay.
 15 MR MASSONE: In fact the people start
 16 arriving later on, October, November, I think somewhere in
 17 December 2015 which is the head of strategy, the head of HR
 18 and the head of customs.
 19 COMMISSIONER: But that's an odd reason,
 20 you're building an organisational structure. You don't
 21 build it around the fact that you've got a, you haven't
 22 hired someone yet. You build a structure and you hire
 23 someone.
 24 MR KAHLA: Okay, I just want to go back
 25 to this issue of power. You're suggesting that if you had

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1 that structure under 4, example 4, it would have allowed
 2 for the power of the Commissioner to be diffused. Help me
 3 understand that because my understanding in terms of the
 4 law, the authority still lies with the Commissioner.
 5 MR MASSONE: Agreed. It depends on
 6 delegation of authority.
 7 MR KAHLA: But he does the delegations,
 8 doesn't he?
 9 MR MASSONE: The implication I made and
 10 it might be wrong, so you are spot on is that if you create
 11 a Deputy Commissioner position you would give him
 12 delegation of authority. So it was actually an inference
 13 that it doesn't, could not have happened. He might have
 14 created Deputy Commissioner position and not give any
 15 delegation of authority.
 16 MR KAHLA: But delegations are not
 17 dependent on the fact that you would have a Deputy
 18 Commissioner. You could have equally given delegations to
 19 Chief Officers.
 20 MR MASSONE: Absolutely. You're right.
 21 You are an advocate, so you are absolutely right.
 22 COMMISSIONER: I suppose a better way of
 23 putting it is that there is less oversight over the tax
 24 collection in that you've now got one rather than two.
 25 MR MASSONE: Correct.

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1 COMMISSIONER: You've got two rather than
 2 three, that's probably the better way of participation of
 3 power, it's oversight.
 4 MR MASSONE: In the example 4 you still
 5 have the concentration of the two units.
 6 COMMISSIONER: You've got greater
 7 oversight in your model than in this one, would that be, I
 8 think that's a better way of putting it, is it? Do you
 9 agree?
 10 MR MASSONE: Well it depends on the
 11 delegation of authority you give to the, so if I imagine
 12 that the Deputy Commissioner is someone who can be, and
 13 stand up to the Commissioner that is true.
 14 COMMISSIONER: No that's what I mean.
 15 MR MASSONE: Yes.
 16 COMMISSIONER: But that's what I'm
 17 talking about, greater oversight. In other words there's
 18 the Deputy Commissioner is what the Commissioner does and
 19 the, and so forth.
 20 MR MASSONE: Yes. But theoretically from
 21 a pure legal perspective it might create a Deputy
 22 Commissioner and not give him or her any delegation of
 23 authority, then you end up in the same situation.
 24 COMMISSIONER: That's why I moved away
 25 from suggesting it's a dissipation of power. It's not

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1 really power, it's oversight. I think that's more
 2 accurate, is that right?
 3 MR MASSONE: Yes. There is also the
 4 other, if I may, that for me is important and if you have
 5 to imagine a real life situation and you have head of
 6 individuals and head of business, imagine the old head of,
 7 it's an old in age sense, is the previous head of LBC you
 8 would have a voice that can speak up, if something's going
 9 wrong. If you –
 10 COMMISSIONER: Ja. Well the LBC, the
 11 fact, you mentioned earlier well she was just a GE.
 12 MR MASSONE: GE.
 13 COMMISSIONER: GE. She reported direct
 14 to the Commissioner, do you know that?
 15 MR MASSONE: Yes of course.
 16 COMMISSIONER: So it's a different title
 17 but the reporting line is exactly the same as the Chief
 18 Officers.
 19 MR MASSONE: Yes but the delegation and
 20 all the other components are not that level.
 21 COMMISSIONER: It depends how you
 22 delegate.
 23 MR MASSONE: True, but there's a sort of
 24 homogeneous level across the Chief Officer but there's also
 25 all the other things that go with that, participation to

<p style="text-align: right;">Page 1910</p> <p>1 the executive committee, etcetera.</p> <p>2 COMMISSIONER: Well she was on the</p> <p>3 executive committee, do you know that?</p> <p>4 MR MASSONE: As a guest.</p> <p>5 COMMISSIONER: Sorry?</p> <p>6 MR MASSONE: As a guest, I believe.</p> <p>7 COMMISSIONER: Sorry?</p> <p>8 MR MASSONE: As a guest. As Randal</p> <p>9 Carolissen was, so there were a number of invitees.</p> <p>10 MR KAHLA: You suggested earlier that you</p> <p>11 would have advised, and maybe you did advise that the role</p> <p>12 of the LBC and I suppose the leader of the LBC needed more</p> <p>13 enhancement, did I get you right on that?</p> <p>14 MR MASSONE: Agreed. Yes.</p> <p>15 MR KAHLA: Was that achieved through any</p> <p>16 of these structures?</p> <p>17 MR MASSONE: Could have. It could have.</p> <p>18 It depends on who you appoint there.</p> <p>19 MR KAHLA: And when you speak about</p> <p>20 enhancement in which way would you have looked at it and be</p> <p>21 enhanced? It was a GE level, would we have looked at it</p> <p>22 becoming a Chief Officer?</p> <p>23 MR MASSONE: Yes. That was the first</p> <p>24 step, focusing only on taxpayer service and education,</p> <p>25 strengthening on the analytics on that and the capabilities</p>	<p style="text-align: right;">Page 1912</p> <p>1 Malovhele's unit?</p> <p>2 MR MASSONE: I cannot remember what we</p> <p>3 recommended at the time. What I know is that, so first of</p> <p>4 all you mentioned retrenchment so people without a job. In</p> <p>5 our mandate there was no, specific input was no</p> <p>6 retrenchment, so in our idea everyone would have found a</p> <p>7 new job and like I said before, we do these exercises, you</p> <p>8 end up with more or less the same leadership team and the</p> <p>9 first two or three levels, just doing slightly different</p> <p>10 things. In this case then you find out they are completely</p> <p>11 different. The process that was then followed to do the</p> <p>12 implementation included a certain level of consultation and</p> <p>13 I explained before how there was a law firm and every level</p> <p>14 would appoint level, the following level. As they</p> <p>15 appointed that people could make a request for change to</p> <p>16 the structure. And that lasted for quite some time.</p> <p>17 That's why it took so long to do the structure, to</p> <p>18 implement the structure. And there were 370 requests for</p> <p>19 change. I remember reading that 150 were immediately</p> <p>20 accepted, 50 or 60 rejected and remaining parked for future</p> <p>21 review. Our role there was not to participate in decision</p> <p>22 making but again just to make sure that things happen and I</p> <p>23 remember there were a big number of meetings, steering</p> <p>24 committees where these decisions were made, in particular</p> <p>25 by the chief officers sitting in Exco, around what changes.</p>
<p style="text-align: right;">Page 1911</p> <p>1 there. And then the big point we made on LBC was the</p> <p>2 separation of the audit and enforcement, who also had to</p> <p>3 be, we believe had to be strengthened.</p> <p>4 MR KAHLA: But did that come through in</p> <p>5 the advice, all of what you've just said, did it come</p> <p>6 through in the advice to the Commissioner?</p> <p>7 MR MASSONE: In terms of advice it came</p> <p>8 definite through. That was one of the main points.</p> <p>9 COMMISSIONER: Yes, Ms Steinberg?</p> <p>10 MS STEINBERG: Are you finished?</p> <p>11 MR KAHLA: I'm done.</p> <p>12 MS STEINBERG: You done? Moving on from</p> <p>13 this, this is the top, the first layer of the organogram.</p> <p>14 There are many layers underneath it and what we heard last</p> <p>15 week was many people whose units were fragmented or didn't</p> <p>16 find a place in the structure at all. So you would have</p> <p>17 heard Dr Malovhele's evidence. He was compliance strategy</p> <p>18 and monitoring. When Bain came to SARS, this was a world</p> <p>19 class unit. It was recognised internationally, I think</p> <p>20 along with Canada as being one of the best in the world.</p> <p>21 And it played an essential role in SARS. Now it wasn't</p> <p>22 only fragmented, it was split into three but in fact a part</p> <p>23 of it never found a place in the structure. And that's led</p> <p>24 to a lot of trouble including misreporting. Now can you</p> <p>25 explain what Bain recommended when it came to Dr</p>	<p style="text-align: right;">Page 1913</p> <p>1 And if I get it right you're talking about compliance</p> <p>2 research. So I don't know where it was at the time or</p> <p>3 where it could be now, I don't know.</p> <p>4 MS STEINBERG: So are you saying you</p> <p>5 never recommended that this unit be broken up?</p> <p>6 MR MASSONE: I don't have recollection of</p> <p>7 that so I cannot say yes or no in a definitive way.</p> <p>8 COMMISSIONER: Now I would like to just</p> <p>9 go back to your models. I'm still having difficulty, but</p> <p>10 you carry on. I wonder if I, have we got it in hard copy,</p> <p>11 those two models? That one and, do you have a copy there?</p> <p>12 PROF KATZ: While you are busy, can I ask</p> <p>13 one question please?</p> <p>14 MS STEINBERG: Ja, it's going to take me</p> <p>15 a bit so maybe you should carry on.</p> <p>16 PROF KATZ: Sorry, in the whole process,</p> <p>17 although you didn't recommend initially five, did you</p> <p>18 ultimately approve it?</p> <p>19 MR MASSONE: Professor, I don't know if</p> <p>20 approve is the word that I would use meaning that there's</p> <p>21 no approval that a consultant does. We accepted to be part</p> <p>22 of the implementation.</p> <p>23 PROF KATZ: And when it was sent to the</p> <p>24 Minister, I think you said in your evidence that he</p> <p>25 approved your, when he approved five, that was put up as,</p>

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1 you were with it?

2 MR MASSONE: That's what we were told.

3 That's what was common knowledge in the organisation at the

4 time, so -

5 PROF KATZ: But it was the Bain model

6 that he approved? I think you had it in your -

7 MR MASSONE: I believe was submitted to

8 Treasury was the fifth model, but again I don't know,

9 that's what I was told, so I don't know what was actually

10 was submitted, if anything was submitted at all. I don't

11 have any view on that.

12 PROF KATZ: What I asked Mr Massone, when

13 he said in one of his answers to questions, that the model

14 was approved by the Minister and the implication was Bain's

15 work had been approved, if that was model 5, did the

16 Minister approve Bain as being model 5?

17 MS STEINBERG: I'll have to check my file

18 and we'll hear from the Minister tomorrow. But my

19 recollection is it wasn't quite as specific as that.

20 [15:22] Judge, are you wanting to -

21 COMMISSIONER: No, I'm just thinking.

22 MS STEINBERG: Just thinking.

23 MR KAHLA: I'm just trying to understand

24 just going back, I'm sticking on model option 4 or example

25 4, I see how you, that you've addressed us a lot around how

Page 1915

1 legal was to be structured. Was there a reason in this

2 model that you would have compliance structured the way it

3 is reflected there as opposed to the approach you took in

4 relation to legal for example?

5 MR MASSONE: Well, it should be similar.

6 That's why -

7 MR KAHLA: It's not -

8 MR MASSONE: That's why I say, sorry if I

9 interrupt you, that's why I say I cannot respond a question

10 because in our structure there is a central function but

11 clearly if that would happen I don't know if that has to do

12 with our work, what has happened afterwards.

13 MR KAHLA: But I'm looking at model, at

14 this example. Is this Bain's proposal?

15 MR MASSONE: Yes.

16 MR KAHLA: This is pre the decision by

17 the Commissioner.

18 MR MASSONE: Yes.

19 MR KAHLA: And I'm trying to understand

20 if I look at what you proposed, you approach compliance

21 differently from how you do or you've done with legal. Was

22 it deliberate?

23 MR MASSONE: We approach in the same way

24 so we put governance, risk and compliance in the same place

25 having them supervise what happens in the different

Page 1916

1 divisions and enforcement and IT.

2 MR KAHLA: So am I correct then in

3 understanding that whilst I may see those lines of

4 compliance across those three major segments the reporting

5 still lay at the governance, risk and compliance segment?

6 MR MASSONE: Oh, I see. So these are two

7 different compliances, sorry. Compliance from a taxpayer -

8 apologies, I misunderstood. Compliance from a taxpayer

9 perspective is part of the mission of the taxpayer unit in

10 terms of enforcing the compliance. Compliance at the

11 centre is SARS compliance and making sure that everyone is

12 complying with the rules of law and the policies. So there

13 are two different type of compliance.

14 MS STEINBERG: If I can remind you the

15 one compliance was Dr Malovhele. The other compliance, the

16 audit compliance, was Dr Kahn. Now, I was, I want to talk

17 about both of those units because different things happen

18 to them.

19 MR KAHLA: Could you as you do so please

20 help me understand, Advocate Steinberg, where does, in

21 which area in terms of this option 4 does Mr Kahn's one fit

22 and in which area does Dr Malovhele's portion fit but this

23 option?

24 MS STEINBERG: Well, Dr Malovhele's

25 testimony is that it didn't fit anywhere because it wasn't

Page 1917

1 on the operating model at all and he's in fact - in his

2 submission there are two emails that he sends to the

3 project team saying my unit is not on your operating model.

4 And he testifies that one Makomba says to him, yes, that's

5 an oversight, we'll find a place for it and never does.

6 And to this day it's not there and you won't find it there.

7 MR KAHLA: And Mr Kahn's one?

8 MS STEINBERG: Mr Kahn's one as I recall

9 fits under BAIT.

10 MR KAHLA: I'm trying if - should I look

11 at where I'm seeing compliance risk and case selections?

12 Is that where I should find it? I mean it's appearing both

13 under BAIT and customs.

14 MS STEINBERG: I don't know. I don't

15 understand this organogram well enough. I can tell you now

16 that it's under BAIT. What it's called there I'm not sure.

17 COMMISSIONER: Right. May I just clarify

18 something? I'm still not quite sure about something. Look

19 at your example 4. Now, you said that Mr, the Commissioner

20 said one problem that he wants to reduce the reporting

21 lines to him.

22 MR MASSONE: Yes.

23 COMMISSIONER: And he also said I want

24 individual and corporate tax merged together. Correct? Is

25 that correct?

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1 MR MASSONE: Yes.

2 COMMISSIONER: Now if you merge

3 individual and business tax then you don't need a, by

4 definition you don't need a DG because you don't have one

5 department going through a DG so you don't need a DG.

6 Correct?

7 MR MASSONE: No, you don't.

8 COMMISSIONER: And but you still have now

9 the head of the BAIT. You have that reporting to him

10 whereas before you had the DG reporting to him.

11 MR MASSONE: Yes.

12 COMMISSIONER: So you haven't removed a

13 reporting line at all. You've just changed the identity of

14 the reporting line. Before it was the DG. Now it is the

15 head of BAIT. That's all that's happened. Is that right?

16 MR MASSONE: Yes.

17 COMMISSIONER: So you didn't achieve any

18 reduction in reporting lines by changing to what he wanted.

19 MR MASSONE: Compared to this model, no.

20 It was -

21 COMMISSIONER: But what changed was the

22 identity of the reporting line.

23 MR MASSONE: Yes, and I was, that's what

24 I was alluding when I was agreeing with you on the possible

25 more power - if you don't have a deputy Commissioner that

Page 1919

1 will probably be able to contradict.

2 COMMISSIONER: No, I understand that but

3 you can see what's worrying me. The Commissioner said I

4 want to reduce, I want to do this because I want to reduce

5 the number of reporting lines. But in fact you don't

6 reduce the number of reporting lines. Just hear what I

7 say.

8 MR MASSONE: Yes.

9 COMMISSIONER: On this model you don't

10 actually reduce the reporting line as far as taxpayer - you

11 must listen to me. You can then point and do whatever but

12 I think it's good to just listen first. Maybe I've got it

13 all wrong here. You don't, you're not reducing the

14 reporting, number of reporting lines. You're just changing

15 the identity. There are other reporting lines that are

16 reduced. But as far as taxpayers' affairs are concerned

17 there is no reduction in the reporting lines. Is that

18 right?

19 MR MASSONE: It is correct compared to

20 this hypothesis. There was another hypothesis, for example

21 this -

22 COMMISSIONER: Sorry?

23 MR MASSONE: We proposed four different

24 models. Compared to this hypothesis, this model, you

25 actually achieved that.

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1 COMMISSIONER: You achieved what?

2 Reducing the -

3 MR MASSONE: The number of reporting

4 lines.

5 COMMISSIONER: Yes, I understand. But on

6 your example 4 it doesn't have any reduction.

7 MR MASSONE: It doesn't. It doesn't.

8 MR KAHLA: But taking you now again to

9 example 5 please.

10 MR MASSONE: Yes.

11 MR KAHLA: I'm trying to understand this

12 point around not reducing the reporting lines. If you're

13 talking about reporting lines you actually are making

14 reference, really looking to the span of control in

15 relation to the Commissioner.

16 MR MASSONE: Yes.

17 MR KAHLA: He gets under five one less

18 person reporting to him than he would've under four or the

19 other, or three. Am I getting you wrong on that?

20 MR MASSONE: It's probably three. Sorry,

21 my brain is working at 10% at the moment so allow me -

22 mathematics. So let's go to the -

23 COMMISSIONER: No, but that's one of

24 those that you presented to him.

25 MR MASSONE: Yes.

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1 COMMISSIONER: Okay.

2 MR MASSONE: So this one is 14 direct

3 reports.

4 MR KAHLA: But once you bring together

5 business and individual taxes instead of having them as

6 separate functions or areas the effect of that is the

7 Commissioner ends up with one person less reporting to him

8 than he would've if you had retained - I suppose that's

9 driven by of course you've got the deputy Commissioner that

10 would've -

11 COMMISSIONER: Ja, the deputy there.

12 MR MASSONE: Yes. And you also have

13 service channels so that would be the additional one.

14 Okay.

15 MR KAHLA: It's just an identity really

16 then.

17 COMMISSIONER: It's an identity that

18 changes. You no longer have the deputy reporting to him.

19 You have the head of taxpayers reporting to him.

20 MR MASSONE: Yes.

21 MR KAHLA: It's not a number.

22 PROF KATZ: And you've merged two

23 departments.

24 COMMISSIONER: I understand. You

25 concentrate the two and you've now created a direct

Page 1922

1 reporting line to the Commissioner and you haven't reduced
2 the number of reporting lines in that respect, maybe in
3 other respects but not in that respect.

4 MR MASSONE: Yes.

5 COMMISSIONER: Is that correct?

6 MR MASSONE: Yes, and if I follow the
7 logic, and tell me if I'm really lost, is there were other
8 ways to reduce the reporting lines because it's not only
9 about numbers as I think the advocate is saying. It's just
10 about the weight.

11 COMMISSIONER: But I'm saying, all I'm
12 saying is that it doesn't - in that respect it doesn't
13 reduce the number of reporting lines. That's all. It
14 changes the identity and that's all. Yes.

15 MS STEINBERG: Can we move on from the
16 four to the one?

17 COMMISSIONER: The four to the one?

18 MS STEINBERG: Four to the one. Yes.
19 The four models recommended, the one chosen.

20 COMMISSIONER: I thought we were on that.

21 MS STEINBERG: No, I'm saying can we move
22 away from that now.

23 COMMISSIONER: Oh, beyond it, yes.

24 MS STEINBERG: Because I've tried twice.

25 COMMISSIONER: Well, it's very

Page 1923

1 interesting.

2 MS STEINBERG: Clearly.

3 COMMISSIONER: Maybe you also found it
4 interesting and maybe you didn't but we found it
5 interesting.

6 MS STEINBERG: You clearly did.

7 COMMISSIONER: Well, at least I did.
8 Yes, let's go beyond -

9 MS STEINBERG: I want to finish this
10 point about Dr Malovhele's unit. He tells us he'd found no
11 place on number 5. He told the team that Bain was part of
12 twice in writing that it found no place. To this day it
13 finds no place. Now, that's not an isolated incident.
14 There are many, many, many like that. His stands out
15 because it was this world class unit that did such an
16 important job here and it had quite catastrophic
17 consequences for SARS. Can you explain how that happened?
18 How did a critical unit not find its way onto the new
19 organogram?

20 MR MASSONE: So I'm very surprised by
21 that. I would need to come back to you on that because I
22 don't have an answer at the moment. I would also like to
23 know the moment of that happening in time because that
24 would help me understand what might have happened.

25 MS STEINBERG: I can tell you when his

Page 1924

1 emails were sent, the 12th and 24th of February 2016.

2 MR MASSONE: Okay.

3 MS STEINBERG: And he got a response I
4 think from Ronald Makomva on the 13th of February 2016. And
5 in fact he arranged a meeting with both Mr Makomva and Mr
6 Makwakwa and they agreed that this function must find its
7 place in the new operating model. He sent a further email
8 to Mr Makomva on the 18th of May 2016 with a memo explaining
9 his function and showing that it's not there. And there
10 were no further - that was that.

11 MR MASSONE: That's really terrible for a
12 person to be asking for his job. Sorry, it's really
13 terrible. Like I said at the time, and that's why the
14 timing is very critical, our job was to make sure that
15 certain things were addressed. I will try to see if that -
16 and if you can give me the specific name of the unit, if
17 there was, if I can find anything that speaks about the
18 discussions there. But what I want to say is that these
19 are all things that were decided by Exco and each chief
20 officers within the unit. And so I will possibly not have
21 an answer to what happened there. I will try to see.

22 MR KAHLA: Do you stand by the suggestion
23 that those emails would've been brought to the attention of
24 Bain or did they just end up within SARS?

25 MS STEINBERG: Well, as I understand

Page 1925

1 there was a project committee and an implementing committee
2 that comprised Bain and SARS and that the emails were
3 channelled to that team precisely so that they could sort
4 out these problems.

5 MR KAHLA: Okay.

6 MR MASSONE: So if I may, so our role
7 there is making sure that certain things were, all the
8 requests for change I call them were addressed. And if
9 that request for change was then decided by Mr Makwakwa,
10 whoever else was in charge in that moment to not take it
11 into account or reject it we would not have any evidence of
12 that. That's what I'm saying. We were not being called in
13 in the opinions on that because there was a limitation of
14 the project at a point.

15 MS STEINBERG: But were you not still
16 involved in early 2016?

17 MR MASSONE: Yes, like I said in making
18 sure that - so if we had received that mail we would
19 certainly have had bring it to attention of the right
20 people, in this case the chief officer, and if it was part
21 of the BAIT this will be Mr Makwakwa and Mr Makomva as the
22 (inaudible) office. He was sort of supervising there from
23 a third party perspective across all the functions but then
24 we would not have any say or even any opinion asked on
25 whether it's a good request or it's not something to be

Page 1926

1 accepted.

2 MS STEINBERG: So this is important.

3 Just to be sure I understand your role at that point having

4 done these, drawn up these organograms, people were invited

5 to point out problems. They did so and your job was to

6 channel those problems to the SARS, the relevant SARS

7 official. Is that right?

8 MR MASSONE: Yes, and -

9 MS STEINBERG: And it ended there.

10 MR MASSONE: Yes, and ensuring there was

11 a cadence to address them so there were a number of

12 steering committees. That was our job. No, offer an

13 opinion if it's a right or wrong decision to be made. And

14 at that point like I said before the business as usual of

15 SARS, the 95 at that point was probably 99% was taking over

16 so our role was really minimum on this specific topic.

17 PROF KATZ: Sorry, it wasn't just a post

18 box. It had your recommendations on it. It wasn't just

19 getting it from X and passing it onto SARS. Getting it

20 from X, putting your opinion and then giving it to SARS.

21 MR MASSONE: Without opinion, Professor,

22 meaning at that point the changes were at an operational

23 level. Our recommendation was already there and it was the

24 prerogative of every chief officer to decide what units

25 they wanted and what, who would be running them. That's

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1 why our role was not to offer an opinion. On one or two I

2 remember, and if I may I can make an example because it was

3 very big, I think the head of strategy, one of the requests

4 were I, because I'm head of strategy all the strategy

5 officers that are around SARS need to report to me. And we

6 opposed that because that would've been a big violation of

7 what we were trying to achieve which is to focus on the

8 taxpayer and it's frankly it's also, you can call them both

9 strategy but they are very, two different strategies. One

10 is how I get more, to get to know my taxpayer and get

11 service to him. The other one is what will happen to SARS

12 in the 21st century. So that's the only one I recollect

13 because it was quite substantial. We were asked or we

14 actually offered an opinion.

15 MS STEINBERG: I want to ask you about Mr

16 Kahn's unit, compliance audit. I'm not sure if you've read

17 his testimony that he gave last week. Are you, did you

18 read his testimony from last week?

19 MR MASSONE: Partially. So if you can

20 point me towards that.

21 MS STEINBERG: Partially. He ran, I

22 mean, frankly this is one of the engine rooms of SARS,

23 compliance audit, and the figures show how exceptionally

24 well his unit did over time. And the units that you found

25 had one GE and four execs and one senior manager and 17

Page 1928

1 regional managers and this unit was downsized to one exec

2 and ten senior managers. He then testified that after that

3 drastic reduction with no reduction in the functions, just

4 less people to do the same critical job, there was then a

5 placement on the organogram where some of these senior

6 managers were put into regions where there was nobody to

7 manage and were actually needed somewhere else. You know,

8 it culminates in a desperate email to Mr Makwakwa saying,

9 you know, this is not working. It's about to break. So my

10 questions to you are again why do you take this critical

11 engine and drastically downsize it and then spread it all

12 over the country in a manner that doesn't even fit the

13 footprints?

14 MR MASSONE: I don't think this has

15 anything to do with us and I think again the time, location

16 would be important to understand. Our, in most of the

17 cases that we have actually discussed what we did is moving

18 boxes. It is called lift and shift. It wasn't about

19 downsizing at all. Like I said there was no mention of

20 that or spreading down around the territory. So I would be

21 really, really, really surprised if that was something that

22 we suggested, especially because of the level of detail,

23 those people in the branches in the territory. I will try

24 to look if I find something on that and if you can give me

25 the time and location of that event that would help me as

Page 1929

1 well.

2 MS STEINBERG: I must say I'm struggling

3 to understand where your function began and ended. Didn't

4 you give to SARS not only that level of organogram but

5 underneath that what each of those boxes had underneath

6 them?

7 MR MASSONE: Yes, we did. What I'm

8 alluding to, but clearly I don't know, is that a lot of

9 change has happened afterwards as we were still there doing

10 that project management role but even more afterwards when

11 we left of which I would not be able to provide any

12 feedback on. That's what I'm saying. So when I started

13 with the testimony I said that I believe there is a sixth

14 structure, and I don't want to complicate your life, but

15 there were a number of things that were happening. Some of

16 them we would know because again enforcement becoming a

17 responsibility of head of strategy we would hear it in the

18 corridor or someone would tell us or make us, give us a

19 phone call.

20 COMMISSIONER: All I say is that it's, I

21 don't know how my life can get more complicated but there

22 it is. Are you saying though that when you were there you

23 presented this, an organogram, and then changes were made

24 to that organogram?

25 MR MASSONE: I have to believe because I

Page 1930

1 don't -

2 COMMISSIONER: If you know you know. If

3 you don't know tell me you don't know.

4 MR MASSONE: I don't know.

5 COMMISSIONER: Otherwise I get -

6 [15:42] MR MASSONE: Well I know these two

7 because they were told to us I didn't see them on a

8 structure but I was told that this was happening and so

9 this one I am sure, the enforcement report into strategy

10 and IT report into BAIT.

11 COMMISSIONER: And did you agree with

12 this?

13 MR MASSONE: Absolutely not. No one

14 asked us anything and -

15 COMMISSIONER: But just explain this to

16 me. You've done a model, they change it and did you not

17 say anything, we don't agree with it, but you're still

18 employed there at the time. The work is not finished.

19 MR MASSONE: We were working on a tax

20 collection so we were not working anymore on the

21 organisation.

22 COMMISSIONER: But your project was not

23 yet finished.

24 MR MASSONE: Yes.

25 COMMISSIONER: So you hadn't yet earned

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1 your R164 million. Sorry just, the project had not yet

2 finished.

3 MR MASSONE: Yes.

4 COMMISSIONER: And changes were being

5 made which you didn't agree with.

6 MR MASSONE: Yes.

7 COMMISSIONER: And did you say to

8 someone, I don't agree with this?

9 MR MASSONE: Yes.

10 COMMISSIONER: And what happened?

11 MR MASSONE: Nothing.

12 COMMISSIONER: Sorry? Nothing?

13 MR MASSONE: Nothing.

14 MR KAHLA: And who's that someone?

15 MR MASSONE: Certainly Makwakwa and

16 certainly the Commissioner.

17 MS STEINBERG: Just, I hadn't finished

18 with Mr Khan. The downsized structure was the one that was

19 presented in the great unveiling of the model after there'd

20 been a period of secrecy. And then I think it was the COs

21 or the GEs were each given a pack and they had to go and

22 tell their team how they were going to change based on that

23 pack. It was there, it was at that point that Mr Khan's

24 compliance unit had been radically downsized and I want to

25 understand why.

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1 MR MASSONE: I will need to come back to

2 you on that. I will need to come back, what was the logic,

3 if we were involved in that.

4 COMMISSIONER: If you need to think about

5 it or get -

6 MR MASSONE: If we were involved in that,

7 so -

8 MS STEINBERG: Okay.

9 MR MASSONE: Do you know when this

10 happened in particular, when you said the unveiling -

11 MS STEINBERG: I'll have to get my dates

12 together and pass them onto you.

13 COMMISSIONER: Yes actually just

14 communicate about that when we finished and then you can do

15 it when you -

16 MR MASSONE: Yes, so just to say we are

17 not the custodians as consultants of the organisation

18 structure, that will be HR. And so the leadership can do

19 the changes they consider appropriate in any moment in time

20 and not even tell us, in this we were just through the

21 grapevine heard it.

22 COMMISSIONER: Ja, well I think it goes

23 back to the earlier question that Advocate Steinberg asked

24 you and that is do consultants simply do as they're told?

25 You know for example take Advocate Steinberg, she takes

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1 instructions from a client, but then some instructions she

2 will not take, she said I won't carry them out. Is that

3 not the case with consultants? Do they just do whatever

4 the client says they must do?

5 MR MASSONE: So we would not do any

6 illegal thing. I think the difference here that I think is

7 important and clarify is that there's no code that we're

8 applying and so if you move outside a code then you are in

9 the wrong. In the world of consulting is problem-solving

10 and the problem keeps changing. There is no code for like

11 we said in the organisational structure or in an audit

12 situation there is a set of rules and you are within the

13 rules or outside the rules, even then I believe there is

14 some margin for interpretation but it's pretty clear what

15 the rules are. When you speak about organisational

16 structure there is no code or rules that you say no, this

17 is in the red, for me it's a red flag at this point.

18 Certainly, like I said, now with the benefit of hindsight I

19 understand many, and this process where you are educating

20 me I actually understand more what might have happened

21 then.

22 COMMISSIONER: No I understand. Thank

23 you.

24 MS STEINBERG: Judge, may I suggest that

25 we end it for today? We have, unfortunately we had to

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1 interrupt your testimony because the only time the
 2 Ministers could come to talk to us was Friday morning. But
 3 we're nearly finished, as from my side but I'd rather we
 4 pick up on it after that tomorrow, if that's alright with
 5 you?
 6 MR MASSONE: Absolutely.
 7 COMMISSIONER: Did you manage in the
 8 lunch break, if you haven't it doesn't matter, to get some
 9 of these documents?
 10 MR MASSONE: No, but I have the answer on
 11 Kroon Commission. On the Kroon Commission you were asking
 12 how long was the meeting. So the meeting happened, I think
 13 it was the 27th April, but don't take that as, in the
 14 Intercontinental Hotel in front of the Oliver Tambo. It
 15 was one hour meeting. It was minuted, or at least there
 16 was someone minuting. After we left, my colleague left, Mr
 17 Makwakwa stayed and we don't know what happened.
 18 COMMISSIONER: So your presentation was
 19 for an hour?
 20 MR MASSONE: Yes.
 21 COMMISSIONER: Have you got that minute,
 22 by the way?
 23 MR MASSONE: No.
 24 COMMISSIONER: Oh okay. Sorry, and
 25 remember I asked you for the documents from which the

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1 quotation came, have you got them or not?
 2 MR MASSONE: Not yet, I will send them
 3 tomorrow.
 4 COMMISSIONER: Will you bring them
 5 tomorrow?
 6 MR MASSONE: Absolutely. Absolutely.
 7 MS STEINBERG: The date that I was
 8 referring to, the big unveiling event was on the 18th August
 9 2015. And in the days that followed that each leader was
 10 given a pack which they had to them explain to their teams
 11 and it was in that period that compliance audit was, Mr
 12 Khan noticed that it had been quite radically downscaled.
 13 MR MASSONE: Yes. And I can see how
 14 there could be a problem because the Chief Officers as we
 15 discussed really arrived only in October, November so again
 16 with the benefit of hindsight it was a big mistake to do
 17 the big unveiling in the moment where you don't have a
 18 leadership team in place and a lot of things can go wrong.
 19 But I will come back to you on that if I find something on
 20 this.
 21 MS STEINBERG: Alright, thank you.
 22 MR MASSONE: Thank you.
 23 COMMISSIONER: You know what time he
 24 should come back tomorrow? Have you got any idea?
 25 MS STEINBERG: It's hard to –

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1 COMMISSIONER: We don't want to waste
 2 your time unnecessarily.
 3 MR MASSONE: I've got all the time that
 4 is necessary, Judge.
 5 MS STEINBERG: It's hard to say how long
 6 tomorrow's evidence will take. We've got a Judge and two
 7 Ministers.
 8 COMMISSIONER: Not this judge, there's
 9 another judge, but anyway. I would have thought there, and
 10 after that there's no one else, is there?
 11 MS STEINBERG: No.
 12 COMMISSIONER: Should we just –
 13 MS STEINBERG: Oh and the procurement man
 14 from Treasury should be coming, so it should be a morning's
 15 worth.
 16 COMMISSIONER: I think you might want to
 17 be interested to hear the person from procurement. If you
 18 don't want to you don't have to but –
 19 MR MASSONE: In terms of education, yes.
 20 COMMISSIONER: It might be of interest to
 21 you. Why don't you come back at say, and if you have to
 22 hang around well I'm sorry about that. Come back at 11:00.
 23 How's that.
 24 MR MASSONE: Right.
 25 COMMISSIONER: And if you have to you can

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1 get a cup of tea and so on. Is that okay?
 2 MR MASSONE: Sure.
 3 COMMISSIONER: Thank you.
 4 MS STEINBERG: Thanks very much.
 5 MR MASSONE: Thank you.
 6 COMMISSIONER: Thank you.
 7 MS MASILO: Thank you.
 8 MR KAHLA: Thank you.
 9 [INQUIRY ADJOURNED]
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